

**BEFORE THE HEARINGS COMMISSIONERS
APPOINTED BY THE FAR NORTH DISTRICT COUNCIL
AT PAIHIA**

IN THE MATTER OF the Resource Management Act 1991 (RMA)

AND

IN THE MATTER OF Hearings on Submissions on the Far North Proposed
District Plan
Hearing 4 – National Environment Values and Coastal
Environment

PRESENTED ON BEHALF OF **Submitter #177 (Cavalli Properties Ltd)**

**SUPPLEMENTARY STATEMENT OF EVIDENCE OF BRIAN WILLIAM PUTT,
TOWN PLANNER**

FOR AND ON BEHALF OF THE ABOVEMENTIONED SUBMITTER

Dated: 18 November 2024

Introduction

1. This supplementary brief of evidence is provided to assist the Hearings Panel in understanding the history and complexities of the Matauri bay subdivision. As set out in my evidence in chief, my involvement at Matauri Bay commenced in August 2003 following an approach by John Greenwood, Coastal Property Manager – Bayleys, Auckland, who had been asked by MXI to scope out the potential for an acceptable development at Matauri Bay as a means of generating funds to repay debts to Bridgecorp and Instant Finance. Preliminary investigations with my colleague, Dennis Scott – Landscape Architect – and a review of due diligence issues led to the production of an outline plan of development. This is set out in my letter of advice to John Greenwood dated 05 September 2003. I confirm my qualifications and statements made in the Introduction to my evidence in chief apply to this supplementary brief of evidence.

Contact with FNDC

2. On 29 April 2005 I sent a letter to Clive Manley, CEO, recording the outcome of a meeting on 22 April 2005 with Council Environmental Services staff - Pam Greenfield, Pat Killalea and Wayne Smith. The purpose of the meeting was to outline the Structure Plan for the development of Matauri Bay and application process for the proposed MXI and MBPL development to be sanctioned by that structure plan. We received an enthusiastic confirmation from FNDC to use the Management Plan technique in the General Coastal Zone (Rule 13.9.2, Operative District Plan).
3. At the meeting FNDC confirmed that it had already commenced a review of wastewater management issues at Matauri Bay, including planning for the provision of a traditional wastewater treatment plant to collect wastewater from the upper residential village, marae and associated commercial buildings; the Roto papakainga, the whanau campground on the foreshore, the public campground on the foreshore and recent development in Putataua Bay. The scoping and costs of this service were being investigated. Therefore, the management plan proposal was welcomed to assist resolve that issue.
4. On 6 October 2005 I wrote to Councillor Gary Weekes seeking the support of the District Policy Committee for a plan change to change the zoning of the proposed Matauri Bay subdivision area with the Coastal Residential Zone. That zone is used in Putataua Bay, the campground, within the Roto papakainga and over the upper settlement area. It was the logical and appropriate zone to use over the proposed subdivision area. However, given that the new Far North District Plan was close to becoming operative, the Council did not wish to prepare any plan change until after that had occurred.
5. Accordingly, between October 2005 to March 2006 a team of experts put extensive effort into the preparation of the necessary applications for the subdivision consent. This involved civil engineering design work, geotechnical engineering assessments, survey, archaeology, landscape architecture and traffic engineering. It had been decided that a standalone wastewater plant would be provided for the subdivision using a new technology developed in the USA by Innoflow Technologies Ltd. The

technology was beginning to be used in locations around New Zealand with great success.

Lodgement of Applications

6. On 28 March 2006 applications for the resource consents for subdivision and necessary earthworks were lodged with the Far North District Council and applications for various discharge consents to cover the wastewater treatment plant and the earthworks associated were lodged with the Northland Regional Council (NRC).
7. On 11 August 2006 I wrote to the Council (Pat Killalea) outlining the Applicant's position in terms of potential development contributions and acknowledging the public infrastructure and benefits that would need to be considered as credits. This included the proposed beachfront carpark and public toilet facilities as well as a part contribution to the new public road network. The public road proposal was environmentally important because it removed the existing Maori land accessway along the sensitive sand dunes and created a new public roadway including the significant upgrading and realignment of the Matauri Bay road down the steep access hillside.
8. Discussions with the Council had initially suggested that a 90% Ministry of Health subsidy would be available towards the costs of the wastewater treatment plant. However, that funding could not be accessed as the lead time for granting a subsidy was several years. However, the Council was clear at that stage that it wanted to connect other Matauri Bay residential areas (mentioned above) to the Innoflow system rather than build a separate more conventional treatment plant within the Bay. This made sense. From this point the Council and the parties proceeded on the basis that the Innoflow system, originally planned just for the MXI subdivision, would be expanded and used for a wider public benefit. This led to a review of the design by the Innoflow team to ensure that the capacity would be available, both in terms of the land needed for the additional treatment pods and for the wastewater discharge area within the wider MXI landholdings, particularly Lots 190 and 191. This review and expanded capacity were at significant cost to MXI as developer.

Stakeholder Discussions

9. Early consultation about the MXI subdivision, and the use of the Innoflow system to service that proposal as well as a wider residential area occurred, with potential stakeholders beyond FNDC and NRC including the Environmental Defence Society and Department of Conservation - Northland Conservancy. I conducted those consultation meetings with Gary Taylor (EDS) and Andrew Riddell (DoC) and successfully resolved their issues by agreeing conditions of consent to cover their concerns. These matters are set out in my Memo to Taylor and Riddell on 24 August 2006. This agreement became the basis of the EDS and DoC support for the MXI subdivision application at the hearing. Their major concern was to ensure that water quality at the coastal marine edge of Matauri Bay was maintained at a high standard. Their concerns were that existing septic systems within the catchment were leaching into the bay so the proposal by the Council to connect these existing systems to the Innoflow wastewater plant being installed for the subdivision was the remedy for this adverse effect and was fully supported by EDS and DoC. EDS support went so far as

to applaud the Matauri Bay subdivision in the EDS publication *Castles in the Sand* edited by Raewyn Peart in 2010. This book is the culmination and summary of many years of vigilance from EDS towards coastal development, coastal activities and coastal management.

10. Landscape character issues were not a dominant concern in the area where the subdivision was proposed. The Regional Plan identified the foreshore area and the upper surrounding hills encasing Matauri Bay as the significant landscapes. The application landscape assessment demonstrated the environmental enhancement integrated with the overall design. This involved extensive planting areas and the wetland restoration – now all extant. These features (including house design constraints) were enforced through conditions of consent.

Hearing of the Applications

11. In my evidence dated 27 August 2006, for the hearing on the MXI subdivision application, I confirmed that the applicant would accept a condition of consent requiring the Innoflow system to enable connections for the existing residential and campground in line with the discussions outlined above. For example, my evidence expressly referred to discussions that had been held with FNDC and the application details that provided for additional capacity and appropriate connection points in the public road to connect the Roto papakāinga, the whanau campground, the public campground and, if necessary, development at Putataua Bay.
12. The hearing of the applications was held in September 2006. On 4 September 2006 I received the draft conditions of consent which the FNDC reporting planner had prepared and circulated. Included was Condition 15 which required the Applicant to provide two future connection points to be placed in the public road to service the campgrounds and the Roto as well as providing the full reticulation service to the public amenity building in the carpark which was also to be constructed by the Applicant. This condition reflected the discussions which the Applicant's representatives had conducted with FNDC officers since early 2005.
13. On 30 November 2006, consent was granted for all applications from both FNDC and NRC, including the condition set out above requiring the Applicant to provide the future connection points described.

Agreement to Engineering Details - Post Consent

14. On 12 December 2006 I attended a meeting at FNDC accompanied by other key experts advising the Applicant. The meeting was arranged by Pat Killalea and was attended by Maurice Gabriels, Lars Fog and Rex Shand, all senior FNDC technical staff. The discussion was about the staging of the engineering works, the roads to vest, the possible availability of some road subsidy, and the installation and operation of the Innoflow system. FNDC requested the timetable for the installation and commissioning of the plant in order to enter that project into the LTCCP Programme for 2007. General details of the finished value of the plant were provided for the LTCCP

entry to be correct. A further meeting with Lars Fog, MBPL and Innoflow was arranged for January 2007.

Subdivision Completion

15. The Stage 1 subdivision construction took place through 2007 and 2008 leading to a s.221 RMA notice from FNDC received on 8 August 2008. Item 10 of this notice (to be placed on all titles) required connection to the public wastewater system using the treatment tank process on individual properties as designed and recommended by Innoflow. This individual on-site treatment arrangement is an integral part of the Innoflow technology and was therefore imposed as a condition of consent. Other conditions ensured that the appropriate wastewater infrastructure was placed in the roads to be vested, with a service connection to each individual property.
16. With the Project Engineer, I prepared the Final Management Plan following subdivision completion and forwarded the Plan to the Council on 13 August 2008. The Plan includes a section on the Innoflow system and confirms that the Council engineers had inspected it and were satisfied with the operational certification of the plant from Innoflow Technologies Ltd. In addition, the NRC had supervised the installation of the Innoflow system and confirmed that the installation and operation complied with the relevant NRC conditions of consent.
17. As part of the survey required to create and finalise the new lots in the consented subdivision, a series of easements were prepared to ensure that the Council, as owner and operator of the Innoflow plant, would have access to all the land where the Innoflow plant was located or was required for discharge and related maintenance services. These easement arrangements were concluded as part of the subdivision survey scheme plan and were approved through the RMA provisions of ss223 and 224c. The easements became part of the discussions and arrangements for the transfer and vesting of the Innoflow plant to the Council. Mr Durham's evidence sets out these details.
18. A letter dated 26 April 2012 was sent to FNDC from Mike Elrick, surveyor and engineer of Lands and Survey Ltd, the lead design team for the subdivision. This letter is important because it concludes and confirms that the subdivision vesting arrangements that were imposed through the conditions of consent have been implemented. Within the letter under the heading *Section 7 – Effluent Disposal Manual* – it states – “The effluent treatment plant has now been transferred to FNDC who have accepted on-going responsibility for the plant....”
19. This letter confirms the completion of the project and the transfer and vesting of assets to the Council as required under the conditions of consent. It also confirms that the s.224c RMA certification has completed and the titles for all lots with their various Consent Notices attached, have been issued. This process confirms that FNDC as consent authority, is satisfied that the consent holder has met all obligations, which included the provision of the required wastewater infrastructure and the means to connect other parts of the Matauri Bay residential and summertime camping activities to the Innoflow system, as well as confirming the completion and operational status of

the Innoflow system and the certification of the wastewater infrastructure within the new public roads serving the individual new titles. The vesting of the new public roads and the completed hill access road upgrading were included in the s224c certification.

Land Use Activity Status

20. The subdivision development was progressed based on the management plan technique that was a special feature of the operative District Plan. A management plan allowed the more intensive development of rural and coastal land outside of any urban setting provided significant environmental benefits arose from the development. This technique had been endorsed by numerous Environment Court decisions through the 1990's and had led to several environmentally beneficial rural subdivisions across the Far North. At Matauri Bay, the General Coastal Zone included the opportunity for a management plan subdivision which MPL utilised for this subdivision application. On my advice this technique was chosen because at that time the subsequent construction of a dwelling on any of the newly created consented lots would be a controlled activity under Rule 10.6.5.2.2 – Visual Amenity (Operative DP). The developer, MPL, and its land sales advisors saw no impediment to the sale of lots if the consent required was a controlled activity. In addition, once the subdivision was consented, the zone of the subject land was expected to be changed to *Coastal Residential* where a single residential dwelling is a permitted activity. This arrangement was part of the deal negotiated with the Council at the time of the vesting and transfer of the Innoflow plant to the Council in 2009.
21. Rule 10.6.5.2.2 provides for the controlled activity where the new building is located entirely within a building envelope that has been approved under a resource consent. That is the exact situation arising within the MPL approved subdivision. All 88 urban coastal lots created were the subject of a geotechnical report that confirmed that each could allow a residential building to be constructed within the framework of the building code. The only constraints recognised were the boundary setbacks and height in relation to boundary controls arising from the rules of the operative District Plan. The building envelope created by these constraints, measured from the side boundaries, became the approved building envelope through the subdivision consent process. The resulting building envelope was further enforced by the design constraints in the consent notice attached to each title. This was the logical process to determine that a new dwelling on each of the approved lots would be processed as a controlled activity under Rule 10.6.5.2.2.
22. In my evidence-in-chief I described the difficult consultation I undertook with the Proposed District Plan drafting team to ensure that the appropriate urban zone would be placed over the MPL subdivision – both Stages 1 and 2. Unfortunately the zones selected in the Proposed District Plan present landowners with significant and unnecessary consenting difficulties. Submission #177 addresses this zone selection mistake.
23. Eleven of the sites in Stage 1 have been zoned *Maori Purpose – Rural*. These are the lots owned by third party individuals who have independently purchased their titles from the developer. In this zone, at Rule MPZ-R4, residential activity is only permitted

where the site area for a standalone residential unit is at least 40 ha. Where compliance cannot be met with the permitted standard, the application falls to be discretionary.

24. The balance of the Stage 1 subdivision, (comprising the lots held by the submitter) is within the *Settlement Zone*. In the *Settlement Zone*, residential activity under Rule RSZ-R3 is a permitted activity on sites of at least 3,000m². Again, the failure to comply leads to a discretionary activity. A further zone selection omission is the consented Stage 2 area which is currently under construction and will comprise 58 urban residential lots. It is zoned *Rural Production*.
25. The overlay for the *Coastal Environment* control poses a further difficulty for consenting. Because neither the Maori Purpose – Rural Zone or the *Settlement Zone* are considered as *Urban Zones*, the permitted status for a dwelling is not provided for. Again, the failure to comply with, in this case – Rule CE-R1 – requires a discretionary activity consent.
26. Because of these unnecessary and illogical constraints on consented urban land serviced with a Council-owned and operated wastewater system, it is clear why the submitter is anxious to have the appropriate *General Residential Zone* imposed across both Stages 1 and 2 of the MPL subdivision. The constraints arising from the zone and overlay selections in the Proposed District Plan are a serious impediment to the sale of these coastal urban lots which were developed to support and enhance the Matauri Bay environment in economic, social and cultural aspects.
27. It is without doubt in my opinion that the *General Residential Zone* is the only logical choice when the zone overview, objectives and policies are considered. This is the zone to be applied where available urban infrastructure is present. That is the case in Matauri Bay. The proposed zones undermine the integrity of the District Plan and present a significant inconsistency that amounts to a gross planning error in land use management. The selected zones – *Maori Purposes Rural, Settlement and Rural Production* - contain overview statements, objectives and policies which exclude the presence of urban serviced residential lots. Accordingly, those zone selections are wrong and illogical. In my opinion the answer to this error is to use the provision of clause 16, First Schedule RMA to correct the zone selection mistake as a directive recommendation from the Hearings Panel to the Council.
28. This outcome would comply with the relevant s32 RMA reports prepared in support of the Proposed District Plan for the affected land use zones – *General Residential, Settlement, Maori Purposes Rural and Rural Production*. I particularly note the misleading error in the *Settlement Zone* s32 Report at Appendix 2 where the spatial locations are set out. The comment on *Matauri X Development* states that the wastewater plant is not activated when in fact it is, and has been since 2009. The plant is not in the FNDC Long Term Plan and there is no special rate for the area of benefit to cover the operation of the plant. The submitter has been emphatically requesting these inclusions since 2021 and to avoid the continuing Council obfuscation regarding the operation of the plant, Cavalli has contracted to cover operating costs until the special rate is struck; most likely in the July 2025 rates year.

Further Involvement

29. Following the completion of the subdivision consenting process, I effectively had completed my involvement in the project. I did not become involved again until 2018 after Cavalli purchased the subdivision asset as a going concern from the receivers of Strategic Finance Ltd. Since 2018 I have re-engaged with the project, assisting in providing:
- background information to the new owners,
 - preparing and achieving a resource consent for the development's show home on Lot 1 in 2019,
 - meeting with the Mayor, CEO and other senior officers in August 2019 to deal with the Innoflow ownership dispute,
 - preparing a Private Plan Change (PPC23) to achieve the *Coastal Residential Zone* over the subject land which sits on hold awaiting public notification in the Council office in 2020,
 - most recently lodging an application for a different show home on Lot 1 in August 2021,
 - an extension to the landuse consents to allow the construction of the Stage 2 approved development which is underway and to be completed in the 2024/2025 construction season,
 - an extension to the various NRC discharge consents until 2051 and
 - the transfer of the relevant water and air discharge consents from the submitter to FNDC as operator.
30. Overall, I consider that my knowledge of this project is detailed and intimate, and I confirm that at the outset of the subdivision process, there was never hesitation on the part of the Council to become the operator of the Matauri Bay Innoflow Wastewater Treatment Plant to serve both the new subdivision and all existing dwellings and facilities within the Matauri Bay catchment. The hesitation came in 2019 when a new CEO at FNDC did not want the Council to take on this service responsibility. The recent agreements identified in evidence have confirmed the Council's responsibility for the Matauri Bay plant.
31. This reality requires the subject land to be zoned *General Residential* to maintain integrity and consistency with the PDP and the purpose of the consented subdivision. This is the purpose of Submission #177.

Brian William Putt
Town Planner
18 November 2024