

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

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)**

**STATEMENT OF EVIDENCE OF BRIAN WILLIAM PUTT, TOWN PLANNER
FOR AND ON BEHALF OF THE ABOVEMENTIONED SUBMITTER**

Dated: 19 July 2024 and amended 29 October 2024

STATEMENT OF EVIDENCE OF BRIAN WILLIAM PUTT

1.0 INTRODUCTION

- 1.1 My name is Brian William Putt. I am a principal of Metro Planning Ltd. I am a qualified Town Planner with 50 years' experience in New Zealand and the United Kingdom. I hold the qualifications of Bachelor of Arts in History and Psychology and a Diploma in Town Planning, both from Auckland University. I also hold a Diploma in Accounting and Finance from Central London Polytechnic. I have been a full member of the New Zealand Planning Institute since 1977.
- 1.2 I confirm that I have read the Code of Conduct for expert witnesses contained in the Environment Court Practice Note and I have complied with it when preparing my statement of evidence. I agree to comply with it when I present this evidence before the Hearings Commissioners at Kaikohe.
- 1.3 I am experienced in all aspects of New Zealand statutory and land use planning and have specialised in recent years in development co-ordination, social and environmental reporting on major projects, due diligence analysis for development project investment purposes and the analysis and presentation of applications for resource consents. I regularly appear as an expert witness before district councils, the Environment Court and less frequently, the High Court, in matters of town planning and resource management litigation.
- 1.4 I have been a regular user of the legacy Far North District Plans and their legacy versions of district schemes. I am very familiar with Te Tai Tokerau having provided planning advice and analysis throughout the district for more than 40 years. In 2021, I was involved in a detailed level of consultation during the preparation of the Far North Proposed District Plan. I attended several consultative meetings with the FNDC planning team in respect of the Matauri Bay land use and zone selection matters which are the subject of my evidence today.

The Submitter

Submitter 177 – Cavalli Properties Ltd (Cavalli)

- 1.5 Cavalli is the successive owner of the urban subdivision at Matauri Bay. There is a significant history as to how Cavalli became the owner of the subdivision, but in essence, Cavalli's actions preserved the land in question at Matauri Bay (**Land**) for the beneficial ownership of Matauri X Incorporation when it purchased the unsold 77 titles in the Stage 1 subdivision and consents providing for the Stage 2 subdivision in 2016 from the receiver of Strategic Finance Ltd (**Strategic**) who encountered difficulties after the global financial crisis. Strategic had purchased the Land from an earlier financier (Bridgecorp/Instant Finance) which had funded the original application to subdivide the Land into 139 leasehold residential Lots as a two-stage urban coastal development which was approved by the Council in 2006.
- 1.6 I was involved as the planning consultant in association with my colleague, Dennis Scott – landscape architect – who undertook the design aspects of the application. Stage 1 comprised 88 lots and Stage 2 comprises 44 lots which are in the process of being completed with infrastructure and road formation planned to be implemented in spring 2024. The design and details of the coastal subdivision were heralded at the time as a good example of sustainable coastal development.
- 1.6 In the Stage 1 subdivision, which was fully completed with titles issued in 2008, 11 sections are held in private ownership and the balance 77 sections are owned by Cavalli. To enable the sale of the sections, Matauri applied to the Maori land Court to change the status of the Land from Maori leasehold land to Maori freehold land. This was a significant undertaking but was a critical element to increase the saleability of the sections from the subdivision.
- 1.7 The entire subdivision was also underpinned by the construction of a state-of-the-art wastewater treatment plant (Innoflow) at the rear of the subdivision a cost of over \$1m. The Innoflow system was designed to not only have capacity to service the entire subdivision, it would also have capacity to service other new areas of development and existing developments close by, to replace very old, ad hoc waste treatment systems comprising soakage pits and sewage tanks. It was heralded as a wonderful addition to Matauri Bay: not only was it state of the art and praised by environmental groups, as allowing wastewater to be treated to a high standard in a sensitive environment; it also solved an acute problem for the Council by enabling properties in and around Matauri

Bay to be connected at no cost to the Council. It was a real “win – win” arrangement. It also meant that any new houses from the subdivision had an immediate connection to wastewater services.

- 1.8 In return it was agreed between the Council and Matauri X that once built, the Innoflow system would be transferred to Council ownership for commissioning and operation. That way the Council could levy a targeted rate against properties using the Innoflow system in its Long Term Plan as provided for in all other urban areas where the Council provides a wastewater treatment service. A formal agreement to this effect was executed in in 2009 (**2009 Agreement**) whereby the Innoflow plant would vest in the Council at a nominated settlement date. The Council then signed off the completion of the range of conditions of consent imposed both by it and the Northland Regional Council under the obligations of s224c RMA. Regional Council consents were required for the discharge of treated wastewater to land as well as earthworks (subdivision site works), stream works (new roads) and air discharges from the wastewater treatment plant which were all granted and approved.
- 1.9 However, things did not run at all smoothly after that. Unfortunately, despite the clear wording of the 2009 Agreement, and despite ownership transferring to the Council, it never took any steps at all to commission or operate the Innoflow plant. Things remained idle until around 2017 when, following the transfer of ownership to Cavalli, the Council declared that, despite the Agreement, it has no obligations to commission or operate the Innoflow plant, and for that reason, the subdivision was unable to connect to a wastewater system. Given my detailed involvement throughout these proceedings, Cavalli turned to me and the project manager to review the position and to provide the Council with the relevant material, including the 2009 Agreement which we fortunately still held. By 2018 Cavalli had proved to the Council that the Council was in fact the owner of the Innoflow system. However, for reasons that are still not clear to me, the Council refused to acknowledge its obligations under the 2009 Agreement, and so it also failed to ensure that the plant entered the Council’s asset register with appropriate charges reflected in the wastewater rates policy to cover this new wastewater treatment area.
- 1.10 This started a round of very stressful and protracted “negotiations” with the Council. Cavalli, having by this time incurred significant expense in preserving ownership of the Land for Matauri X and providing the Innoflow plant and wastewater solution for the Council, understandably wanted to progress the sale of the coastal urban sections in

partnership with the local hapu, Ngati Kura, which is represented in the partnership by its commercial arm, Matauri X Corporation. The arrangement between Cavalli and Matauri X Corporation is that the Corporation benefits from a percentage of the sale price of all sections. In addition, beneficiaries of the Matauri X Corporation receive a discounted price if they wish to purchase one of the Cavalli titles.

- 1.11 The 2009 Agreement required Matauri X to make an initial contribution of \$55,000 to the council for maintenance of the Innoflow system and to extend the service to adjacent papakainga area (which it paid) and the Council still refused to change its position. The hiatus created by the Council's refusal to accept responsibility for the Innoflow plant has obviously created a significant obstacle to land sales programme and Cavalli has incurred substantial losses, and holding costs and legal and expert fees as a result. The difficulty for any purchaser undertaking due diligence prior to purchase, is the lack of clarity from the Council on the provision of urban services and the inappropriate zoning placed over the land in the proposed district plan.

2.0 LIAISON IN PREPARATION OF PROPOSED DISTRICT PLAN

- 2.1 Because the Cavalli subdivision was designed and approved as an **urban coastal** settlement with a self-supporting wastewater treatment plant, it had been intended for the zone of the subject land (Stages 1 & 2) to be changed to *Coastal Residential* as a plan change to the Operative District Plan back in 2009. That was the essence of the agreement with the Council when the wastewater treatment plant was transferred to the Council's ownership in 2009 by the 2009 Agreement. However, that commitment was never followed through by the Council and was lost from the focus of the owners because of the various ownership, funding and insolvency difficulties that arose for two different funders between 2009 and the purchase by Cavalli in 2016.
- 2.2 Consequently, when I was re-engaged to assist in 2017, the first matter on my mind was that the land use zone for the subject site had not been updated to reflect the urban subdivision consent that had been granted in 2006. My reminder to the Council of the obligation to impose the correct zone over the subject land, was met with obstruction. When the invitation was open in 2021 to liaise with the Council in preparation for the proposed district plan, I again took the initiative to represent the Cavalli and Matauri X concerns about the inappropriateness of the *General Coastal Zone* which was imposed across the site in the operative District Plan. Through the consultation discussions it became clear that a new regime of zones was being

designed for the Proposed District Plan (**PDP**), of which the *General Residential Zone* was written and designed for existing consented and infrastructure-serviced urban settlements with no distinction for coastal locations. The subject land at Matauri Bay fitted that expectation exactly. In the discussions I had with the Council planning team, I therefore requested the *General Residential Zone* be placed over the Cavalli subdivision and other adjacent land owned by Matauri X Corporation which was to be serviced by the Matauri wastewater treatment plant installed for the Cavalli subdivision.

- 2.3 In fact it was a condition of consent for the subdivision that trunkline services were extended along the new public road corridor to allow connection for wastewater at the papakāinga known as the *Roto* with a further extension to the Matauri Bay camping ground and the ability to link the few houses in Putataua Bay into the system. This infrastructure was put in place and certified by both the installer – Innoflow Ltd – and later by the Northland Regional Council. These connections remain in the road network awaiting appropriate connections for those settlement areas in due course.
- 2.4 However, my efforts were thwarted because the proposed plan drafting team simply refused to accept that the new subdivision was supported by a Council approved and owned wastewater treatment plant. This refusal continued despite my numerous discussions with them and provision of proof that the plant was in place, certified and ready to operate. The drafting team obstinately refused to accept that this area was a legitimate and approved urban residential coastal settlement complying with the expectations of the purpose, objectives and policies of the *General Residential Zone*.
- 2.5 Over the course of 2021 and 2022, I and Cavalli representatives attended several meetings with the former Mayor and former Council CEO to resolve the impasse that had occurred over the operation of the Innoflow system. We were joined with the support of Ngati Kura kaumatua, and Rangatira Dover Samuels. Their mana and firsthand knowledge of events made no difference to the Council's position. At that point, it was obvious to me that the proposed plan drafting team were responding to executive instructions from above. This was the only explanation for their zone selection for the subject land being contrary to the s32 underpinning report for the proposed *General Residential Zone*. By acting this way, the Council's obligation to operate the Innoflow system would be stalled as long as possible.
- 2.6 The result was that without any rational s32 analysis or explanation, the proposed plan zoned the privately owned lots at Matauri Bay – *Maori Purposes Rural* – and the

balance of the lots owned by Cavalli - *Settlement Zone*. In the PDP zone structure, these zones are in the basket of rural zones. Yet because the subdivision was serviced by a wastewater system (subject to the Council agreeing to fulfil its commitments under the 2009 Agreement), the subdivision at Matauri Bay requires an urban zone to remain consistent with objectives and policies of the PDP aside from the obvious issue of plan integrity. However, I am pleased to report that a breakthrough was made around June 2023 whereby the Council finally accepted responsibility for commissioning and operating the Innoflow system. Cavalli has materially and financially assisted with this process by covering the cost of the operation of the Innoflow plant until the special wastewater rate is struck off this area. As I understand the position, the Council now accepts the subdivision is properly serviced by a wastewater system.

3.0 PURPOSE OF SUBMISSION #177

- 3.1 The fundamental purpose of the submission #177 is to ensure that the appropriate zone is selected for the Matauri Bay subdivision, that zone being *General Residential*. That part of the submission is to be heard later in the hearings schedule. The second issue is the request to remove the *Coastal Environment Overlay* from Matauri Bay except in so far as it is required to cover areas with an outstanding natural character, an outstanding natural landscape or an outstanding natural feature. None of those features are apparent in the Matauri Bay subdivision. Importantly, and taking guidance from the higher order and more relevant Northland Regional Plan, at a regional planning level, the areas within the Matauri Bay coastal catchment deemed subject to either outstanding natural landscape qualities or high landscape character do not include the flat beach hinterland within the catchment which contains the approved subdivision.
- 3.2 Accordingly, submission #177, in respect of the coastal management aspect which is subject of Hearing No. 4, is a holding device until such time as the appropriate PDP zone is placed over the subject land. The appropriate zone, according to Residential Objective 2 and Objective 4, is *General Residential*. Various policies support those two primary objectives. This PDP intention is without doubt and requires no additional s32 RMA justification.
- 3.3 If the *General Residential Zone* is placed over the subject land, the Coastal Residential reference in the submission can be set aside. In fact, the recommendations arising in

the s.32 report can be supported by these submitters. This is simply because, with the *General Residential Zone* in place, a single dwelling on each of these lots becomes a permitted activity as intended by the original subdivision consent.

4.0 CONCLUSION

- 4.1 The coastal environment component of Submission #177 is a protective action by the submitter to avoid the residential urban sites from being blighted to the extent that owners are unable to build a single dwelling as a permitted activity. This problem is overcome when the approved subdivision is zoned appropriately as *General Residential*. That zone selection will satisfy Submission #177 in respect of the opposition to the coastal environment rules set out in the submission.
- 4.2 This matter is easily resolved, and the submitters are hopeful that the Council will issue an **erratum** to the district plan to rezone the approved subdivision *General Residential* given that the plan preparation team was misguided or instructed to keep the subdivision outside of a serviced urban area for an ulterior purpose. To the contrary, the approved subdivision has been properly serviced in a complying manner since the issue of titles and the certification under s.224C RMA occurred in 2009. The submitter should not be held responsible for the failure of the Council to acknowledge its ownership and operational responsibility for the Matauri Bay wastewater system as servicing urban land.
- 4.3 To assist the Council's management of the Matauri Bay wastewater system, Cavalli has recently upgraded the wastewater treatment plant infrastructure at its cost, and I have arranged for the NRC discharge consent to be extended through to 2051. In addition, the Council has now agreed to become the holder of the NRC discharge consent. The transfer authority is being processed at present. In addition, the Council has notified the Northland Regional Council that it is the owner of the Innoflow plant and accepts responsibility as consent holder.
- 4.4 As these hearings take place, the Council is on the cusp of setting a wastewater rate for the Cavalli subdivision sections which will complete the actions required to confirm that the area is a coastal **urban** settlement, fully served by a Council owned and operated high quality and consented wastewater treatment system.

- 4.5 The submitter requests the *General Residential Zone* over the subject land and makes the unusual request to the Panel that it **recommends** that the Council issue an erratum **now** to the Proposed District Plan to correct this obvious zone selection error.

Brian William Putt

Town Planner

29 October 2024