

BEFORE THE FAR NORTH DISTRICT COUNCIL

IN THE MATTER of the Resource Management Act 1991 (“**Act**”)

AND

IN THE MATTER of an application by Cavalli Limited for a new zone at Matauri Bay, Northland.

BRIEF OF EVIDENCE OF PAT DURHAM

Dated: 28 November 2024

MAY IT PLEASE THE COMMISSIONERS:

1. My name is Pat Durham, and I have been involved as an adviser to Matauri X Corporation (**Matauri X**) since about 2003 around dealings with its land at Matauri Bay.
2. I am authorised to give this statement of evidence on behalf of Cavalli Properties Limited (**Cavalli**).
3. I will provide a very brief summary of the extremely important background from 2003 when my involvement commenced to 2015 when Cavalli’s involvement commenced.
4. I also provide information about the wastewater treatment system manufactured and installed at Matauri Bay (**System**) by Innoflow Technologies NZ Limited (**Innoflow**) and explain how it is ready to be commissioned and operated by the Far North District Council (**Council**). I will confirm that the Council has agreed to levy a target rate in its Long-Term Plan to cover the operating costs of the System.

Background Summary

5. Matauri X was incorporated in 7 March 1967 by order of the Maori Land Court acting pursuant to s 272 of the Maori Affairs Act 1953. The order consolidated various Maori interests in 544.3 ha of land surrounding Matauri Bay (**Land**). The Land was worth approximately \$9m. Matauri X was asset rich, but cash poor.

6. Matauri X was managed by a management committee and in around 2001, it decided to proceed with a joint venture in respect of a bottling plant proposal. The Land was used as security (by way of first mortgage) for the necessary loan for Matauri X to fulfil its JV financial obligations (**Security**).
7. However, the JV failed and was put into receivership. Matauri X had not repaid the loan or interest.
8. By 2003, when the Security was called in Matauri X was in danger of losing the Land which was their entire whenua [link](#).
9. I became involved at about that time. Some urgent and difficult decisions needed to be made. For example to ensure Matauri X could keep the *majority* of the Land, *part* of the Land was changed from Maori Leasehold to Maori Freehold title in order for the sections to be developed and sold [link](#) which would secure the remainder of the Land for the beneficiaries of Matauri X. This was achieved via an application to the Maori Land Court which was approved.
10. It was then decided that an independent entity should be established to conduct negotiations with the mortgagor and the Council and to apply for a resource consent to develop part of the Land and a new entity (Matauri Bay Properties Limited (**MPL**)) was incorporated on 15 April 2005 to achieve these purposes.
11. I have strong family connections to Matauri Bay and was involved in the discussions leading up to the incorporation of MPL and became one of the two directors of MPL. In this role I was centrally involved in discussions with the financier at the time and with the Council to bring this proposal to fruition.
12. I was retained by Cavalli from 2015 as an advisor¹. Accordingly, I have a full knowledge of the background events leading to the incorporation of MPL and of the events since 2005 until the present time. I am authorised to present this evidence on behalf of Cavalli.
13. MPL held many discussions with the Council to prepare for the filing of a resource consent for development of the Land. This was granted in 2006 (**2006 Consent**). One side of the discussions related to obtaining rates relief as part of the settlement with the financier, and the other side involved discussions around the proposed development, for example: around a new (more sympathetic) zoning for the land and how to structure the development. The Council was very enthusiastic about the possibility of development in and around Matauri Bay as it

¹ MPL was then liquidated in October 2016.

provided an opportunity to provide additional and better housing solutions that were much needed in the area, it would provide an additional rating base, and as discussed further below, it provided a solution for the treatment of wastewater for Matauri Bay and immediate surrounds.

Wastewater Solution

14. A feature of the discussions with the Council was MPL's proposal to install the new, state of the art System to support the development anticipated by the 2006 Consent and additional development.
15. I should note that Innoflow is a very successful company which has since 1994 designed and built more than 10,000 wastewater treatment systems for rural homes, communities, holiday parks, commercial sites and resorts throughout New Zealand, Australia and the Pacific.
16. One of the submitters on the resource consent application was the Environmental Defence Society (**EDS**). The EDS was very impressed with the System and wrote an article about it which strongly praised the quality of the System as a means of treating and disposing of wastewater. It was regarded as being extremely environmentally sustainable and seen as heralding a new era for the cost effective and efficient treatment of wastewater in the far north.
17. The Council was also very enthusiastic about this part of the proposal. Each area of settlement at Matauri Bay had its own wastewater solution (soakage pits, oxidation ponds, wastewater tanks etc) and none of them were long term solutions, nor were they able to maintain acceptable environmental standards. Nor could any of them be added to if any of the settlements or the campground increased in size. At some stage an overall response was required from the Council to resolve wastewater issues at Matauri Bay to provide a long-term sustainable wastewater treatment system.²
18. Accordingly, installation of the System was welcomed because it would solve a major issue for the Council about how to unify all the different systems servicing the various settlements developed so far. The Northland Regional Council (**NRC**) strongly endorsed the System as the replacement for the existing Matauri X oxidation pond which was at near capacity and subject to termination of consents. Temporary consent/s granted for existing as a transition arrangement pending activation of the System.

² There were also other infrastructure concerns relating to the provision of roads and the maintenance of the environment generally.

19. MPL advised the Council that the System had capacity to service these existing developments and discussions focussed on how the Council could utilise the System to connect to these developments.
20. It was always anticipated by the Council that the residential Lots being developed pursuant to the 2006 Consent would connect to the System. For example:
 - (a) In August 2008 the Council issued consent notices to be registered against the titles to Lots 1 - 81 (even though the titles hadn't by that stage been issued) in the first stage of the development and Lot 91 which, amongst other things, required the new owners to install appropriate interceptor tanks to connect to the new System which had been approved by the resource consent; and
 - (b) The Council wanted to know the date for the installation of the System so that they could arrange to allow for a targeted rate to cover the operational costs of the System in the LTP. The Council also commissioned MPL to install additional reticulation pipes between the subdivision entrance and the corner by the church in readiness for connection to the Whanau camp, Roto and Te Tapui up the hill. This work was completed by MPL and paid for by Council. The cost was approximately \$30,000 + GST.
21. Around this time NRC also granted a discharge and earthworks consent (**NRC Consent**) to enable the System to be operated which anticipated the System servicing:
 - (a) The 139 residential dwellings in the MBPL subdivision;
 - (b) The 15 residential dwellings in the Cavalli Coastal Villas subdivision; and
 - (c) The 34 residential dwellings not included in a) or b) above.
22. The NRC Consent has a scheme plan annexed to it showing the areas the system would serve including the location of the sewer pipes installed at the Council's request noted above. This consent was extended by the NRC in 2016 with an expiry date of 2026.
23. A Heads of Agreement document was prepared in 2007 for use as a discussion paper for MPL and the Council to work through how the Council would come to own and operate the System, and the sorts of things the Council would have to consider. Importantly, this included

the Council implementing a targeted rate to cover ongoing operational and maintenance costs.

24. In 2008 MPL had discussions with the Council about the easements required over its land in favour of the Council to enable the Council to operate and maintain the System. As a practical matter, MPL needed to include the appropriate easement areas in the plan of its subdivision. MPL's preference was for the Council to purchase the System prior to the first stage of 81 leasehold titles being released, so the System could simply be transferred to the Council prior to the release of those titles. Notwithstanding the transfer by this time, MPL remained willing to discuss deferred payment by the Council for the System.
25. I should record that a key focus during engagement with the Council was to ensure the System was future proofed in the sense it could increase processing capacity to meet demand. This included connection to Te Tapui Marae and existing housing on Te Tapui Road. This was also provided for in the easements (discussed below) providing for additional land areas for discharge.

Events between 2008 – Present

26. Actions to progress the development under the 2006 Consent initially progressed as expected with the result that:
 - (d) The 81 leasehold titles were created on 22 July 2008, each with a term of 52 years from that date. These titles are shown on deposited plan 3936655 (**Leasehold Plan**); and
 - (e) A resident's society was incorporated – The Matauri Bay Residents Society Incorporated (**Society**) as the entity to hold all the new lessees' interests in Lot 191 of the Leasehold Plan.
27. In the normal way the leasehold titles were marketed for sale from that point.
28. However, by around 2012/2013 it became obvious to MPL that leasehold titles were not attractive to buyers. Mainly because of the global financial crisis, the market did not support the sale of leasehold titles with associated residents' societies. By 2013 only 8 of the leasehold titles had been sold.
29. This in turn created financial difficulties for MPL and so in conjunction with its then financier Strategic Finance Limited, (**Strategic**), MPL decided on a new course of action which was to freehold the titles but replicating the boundaries of the leasehold Lots so as to create 81

Maori freehold Lots. The application to create Māori freehold titles to replace the leasehold titles was extremely complicated but eventually the Māori Land Court made such orders in around December 2013, so that MPL became the owner of the converted Māori freehold titles. It is important to note that the conversion to freehold titles came with the inbuilt protection that sections must be offered to Matauri X beneficiaries first.

30. Shortly after, in around 2015 Cavalli agreed to purchase the Security from Strategic and became the registered owner of the (Māori freehold titles) to the Land. This action by Cavalli ensured the remaining loan and interest secured against the Land would be written off. In other words, by purchasing the Security, Cavalli enabled all the Land to become unencumbered from the Security. Further, in good faith Cavalli agreed to pay Matauri X a 5% commission on all sections sold back to Matauri X shareholders (to help develop papakainga Housing and other iwi initiatives) and offered a sizeable discount to Matauri X shareholders.
31. The Cavalli directors also had a family connection the Land, and that is why it agreed to become involved and to make every effort to continue with the development proposed by the 2006 Consent.
32. With the introduction of Cavalli, MPL could be placed into liquidation, and this occurred on 5 October 2016.
33. However, unbelievably, an issue then arose in respect of the ownership, and operation of the System.

Ownership and Operation of the System

34. As above, it was always agreed that the System would vest in the Council in the normal way with core infrastructure. Neither MPL (nor Cavalli) had the expertise to operate nor maintain the System, and nor did they want to. This agreement was given effect to by the key documents discussed below.

Easement

35. The first stage was procuring an easement allowing the Council to discharge wastewater (from the System) over the Land.
36. This easement was granted by the Society as grantor to the Council as grantee dated 18 November 2008 (**Easement**). The purpose of the Easement was for effluent treatment and disposal on areas marked "E", "G", "I" and "M" on DP 393664, with the servient tenement being Lot 191 DP393665. It was an easement in gross. The Easement obviously

needs to be read in its entirety, but I want to make special reference to the following clauses. Clause 1 was titled *Operation of Rights and Powers* and stated:

1.1 Notwithstanding that the Grantor [Society] and Grantee [Council] have entered into this instrument and notwithstanding the registration of this instrument against the computer leasehold register identifier of the Servient land the terms of this Instrument, including the rights hereby granted to the Grantee, shall not become operative unless the Grantee has first acquired and become the owner of the Easement Systems from the Grantor.

37. The Easement Systems referred to are defined later in the Easement and identify the Innoflow System referred to above.
38. The Easement recorded at clause 2.2 *Right to Dispose Effluent* that the upon obtaining ownership of the System the Council would be:

...responsible for the operation, repair, maintenance, modification, and replacement wherever necessary of the ... System...

Agreement

39. The mechanism to transfer ownership of the System to the Council was negotiated after the Easement was granted and recorded in an agreement being executed between MPL, the Council and Matauri X on 21 May 2009 (**2009 Agreement**). I draw attention to key clauses.
40. The *BACKGROUND* to the Agreement states (using slightly different terminology) at paragraph E that:

The Council proposes to purchase the Scheme [the System] to service the Development [the MPL development] as well as other properties and facilities at Matauri Bay adjoining or proximate to the Development.

41. The “Development” referred to is defined in the Agreement as the 139 Lot development being carried out by MPL pursuant to the 2006 Consent.
42. Clause 2.1 of the Agreement then states:

In consideration of the Initial Purchase Price to be paid by the Council to MBPL on the Settlement Date MBPL agrees to sell and the Council agrees to acquire the Scheme on the terms set out in this Agreement.

43. The Initial Purchase Price was \$1 (notwithstanding it cost MPL \$1,100,000 to purchase and install the System), and the Settlement Date was the date the Agreement i.e. 21 May 2009.³

44. Clause 4.2 of the Agreement then states:

From and including the Settlement Date, the Council shall operate and maintain the Scheme for the benefit of the Development, the Cavalli Land, the public toilets located within the car park area shown on Lot 189 Deposited Plan 393664, and for any other land connected to the Scheme from time to time and the Council shall receive the benefit of the Easements for the treatment and disposal of effluent from the Scheme.

45. I can confirm that MPL fulfilled all its obligations under the Agreement to ensure ownership transferred to the Council. I can also confirm the Matauri X made an initial transfer of \$55,000 in accordance with clause 5.1 of the Agreement.

Change in Attitude within the Council

46. Originally the Council was very enthusiastic about the development pursuant to the 2006 Consent, and the installation of the System ready for the Council to own and operate it. In the period up to 2015 when Cavalli assumed ownership of the Land there was never any doubt that the Council owned the System and had the obligation to operate it. But over time the Council position changed to refusing it owned the System, to now accepting it owns the System but says it can't operate it. For example, in the appendix to the s 32 Report for the *Settlement* zone in reference to it is recorded that:

Council owned waste water infrastructure, but not activated nor is it listed in the Long Term Plan or Infrastructure strategy as programmed for use. No rates yet struck to fund it either. Large scale development for residential uses only - housing has been delayed due to change in ownership and multiple attempts prior to that for the local hapū to develop the land.

47. I assume that the reference to "change of ownership" refers to the Land, but as above, this has not been a relevant issue since at least 2015.

48. I am however very pleased to report that recently, since the Council accepted ownership of the System and staff have worked closely with me (on behalf of Cavalli) and the NRC to ensure the smooth operational transfer of the System to the Council and the renewal of the NRC discharge consent which enabled the Council to identify the area of benefit for a targeted rate to be applied in its Long-Term Plan.

³ See Definitions and Interpretation section 1.1 of the 2009 Agreement.

49. As I understand it, the NRC Consent has now been transferred to the Council and the Council has committed to applying a targeted rate to the area of benefit at Matauri Bay covered by the NRC discharge consent.

Conclusion

50. Matauri X and Cavalli continue to have a very good relationship and are working together to ensure Matauri Bay continues to be one of the jewels in the crown for the North. A very brief summary of the initiatives is:
- (a) Development of a strategic plan to create enhanced sustainable activities on the Land;
 - (b) A strong focus on development of papakaingna; and
 - (c) Investigations into the development of enhanced tourism opportunities.
51. Matauri X and Cavalli have suffered enormously from the action of the Council in relation to the System, including the Council's proposal for a *Settlement* zone to be imposed on the subdivision land. There is absolutely no reason to categorise that subdivision as not being connected to (operating) reticulation. Clearly it is.
52. The following video provides an excellent understanding of the importance of this issue – **Video** – [Link](#).

Dated: 28 November 2024

Pat Durham

For and on behalf of Cavalli Properties Limited