

**BEFORE AN INDEPENDENT HEARING PANEL
APPOINTED BY QUEENSTOWN LAKES DISTRICT COUNCIL**

UNDER Resource Management Act 1991

IN THE MATTER of a Variation to the proposed Queenstown Lakes District Plan (Te Pūtahi Ladies Mile) in accordance with Part 5 of Schedule 1 to the Resource Management Act 1991

STATEMENT OF EVIDENCE OF TIMOTHY PAUL ALLAN

Dated: 20 October 2023

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Qualifications and Experience

- 1 My full name is Timothy Paul Allan.
- 2 I hold the degree of Bachelor of Commerce from the University of Canterbury and have post-graduate qualifications in engineering and environmental management.
- 3 I am a Chartered Accountant with the Chartered Accountants Australia and New Zealand.
- 4 For the last 23 years I have promoted developments in the renewable energy, tourism, property and housing sectors and led large multi-disciplinary project teams to advance these projects through engineering, environmental acceptance, regulatory, commercialisation and construction phases.
- 5 My relevant previous experience includes Water Infrastructure Development Manager at Meridian Energy Limited, Renewable Energy Project Manager at Solid Energy New Zealand Limited and Kainga Ora where I was Manager – Canterbury Investment Plan, Strategy and Implementation and later Development Strategist.
- 6 In my roles at Kainga Ora I was responsible for the team that over 4 years delivered 850 new homes into the post-earthquake Christchurch environment to replace Kainga Ora's earthquake damaged housing capacity. Much of this development involved the early adoption of medium density housing in existing low density suburban settings. My later role had a national focus and included the implementation of strategies that has now resulted in the redevelopment of 139 Greys Ave, Auckland CBD; Eponi, Lower Hutt and other medium density redevelopments around the country in cities such as Hamilton, Porirua.
- 7 I was a Company Director of Creating Communities Limited which was the private development company that developed 331 affordable homes in New Lynn, Auckland. This project was the catalyst for the council led Tamaki regeneration programme which seeks to bring 10,500 new homes to the wider area over the next two decades.
- 8 Among my current directorships I am a company director of nation-wide house builder David Reid Homes Limited and Development Director of land owner Koko Ridge Limited (Koko Ridge).

9 While not defined an expert witness in this process, I have read the Code of Conduct for Expert Witnesses contained in Part 7 of the Environment Court Practice Note 2023. Where I have relied on the evidence of another person I have stated that I have done so. I have not omitted to consider material facts known to me. Where I express a difference of opinion with the opinions of planning and other experts, I base my opinion on my significant experience in the New Zealand residential construction sector. That experience has been focused on the provision of high quality, affordable developments, which is the exact goal of Plan Change Te Putahi – Ladies Mile (TPLM).

I have focused my evidence on the factors that are critical to the success of the Koko Ridge H2 zone.

While I do not comment on every relevant aspect of TPLM, the absence of a comment should not be taken to mean that I agree with the proposal or provision.

Background

- 10 Koko Ridge is the landowner of 8.9 hectares on Ladies Mile and comprises the entire Sub-Area H2 in the proposed Structure Plan.
- 11 The land is currently zoned Large Lot Residential-A (LLR-A) and is being sub-divided under RM190553 and RM211276 into 37 Residential lots. Title for stage one, comprising 26 lots has been achieved and over half these lots have been sold or subject to unconditional contracts for sale.
- 12 Given the first settlement only occurred on 6 October 2023, Koko Ridge is not only representing itself, it is seeking to advance the interests of these new land owners.

Consultation and Engagement

- 13 Koko Ridge provided initial advice and constraints to QLDC consultants on the Te Putahi Ladies Mile on 22 September 2020. The minutes of that meeting are attached as Appendix [A].
- 14 While some time has passed the following points that were discussed in September 2020 remain pertinent. In particular;
- (a) The Koko Ridge land, being terraced, and mostly below State Highway 6 is well positioned to support a low to medium density

housing development that is visually unobtrusive and sympathetic to the adjacent low density Shotover Country subdivision.

- (b) As part of the Special Housing Area (SHA) process both independent experts and the Council Officers supported a 156 residential housing development. This equates to a housing density of 17.5 homes per Hectare
- (c) This 156 home scheme provided for cycle and pedestrian paths, open spaces and a dedicated bus slip lane onto to State Highway 6 and would have helped secure central government funding of wider roading improvements. Nevertheless, the existing (ie pre-intensification) traffic congestion remained a substantial challenge and was the reason the SHA was not approved by the Councillors despite being approved by Council Officers and within a Council defined SHA area. Colin Shields acknowledged that transport was a significant challenge and advised *“that they were seeking a 40% modal shift through improved public transport, roading improvements and the provision of local services and new schools east of the Shotover Bridge ...”*.

- 15 It is observed that the only new item in this statement from Mr Shields was the proposed new schools which will increase traffic flows. Despite nothing new being on offer to manage congestion we are now expected to believe there will be a significant modal shift to public and active travel, I highlight that there is some risk with designing a zone based on such an assumption given that a such a high percentage modal shift has not previously occurred.
- 16 Following this initial consultation, Koko Ridge has remained engaged and made a written submission on 19 January 2022 and followed this with further meeting attendances and correspondence dated 20 April 2022, 4 May 2022 and 13 August 2022. These are attached as Appendix [B]
- 17 Recently we have made a formal submissions on 9 June 2023, being Koko Ridge Limited (#80) and Tim Allan (#103). Further submissions where subsequently made in respect of Corona Trust (#99) and Waka Kotahi (#104) and Steven Brent and Sheena Haywood (#92). This evidence relates directly to these submissions and further submissions.

Land Development Update

- 18 In good faith, Koko Ridge held back on breaking ground using its existing resource consent RM190553 until after March 2021 as requested by TPLM at the time. This has caused Koko Ridge to incur holding costs, without any commercial benefit to Koko Ridge. Construction of Stage 1 comprising 26 lots commenced in July 2021 and this 26 lot residential subdivision is now complete.
- 19 Construction is nearing practical completion for Stage 2 for the final 11 lots of the 37 lot subdivision. All titles are anticipated prior to May 2024 when a decision is required on this proposed plan change.
- 20 The implementation of RM190553 had practical implications for the TPLM Structure Plan and associated rules and these matters should have been anticipated by TPLM. Furthermore, these matters should have been addressed by TPLM following our initial meeting on 22 September 2020, formal submissions on 19 January 2022 and subsequent correspondence. It is our view that the Council team running the TPLM Plan Change have failed to take into account the best interests of creating a functional low density residential lifestyle area as described by Koko Ridge during this engagement. A further example is the section 42A report which has only made a passing reference to existing consents, rather than describing how the TPLM will apply to an existing consented environment. We are disappointed that despite Koko Ridge's constructive engagement, the TPLM provisions that were notified contain significant errors and omissions.

Narrowing the issues

- 21 Notwithstanding our view that the TPLM team have failed in their analysis, we acknowledge that the TPLM team may have been directed to provide advice with limited resources. To compensate for this, my evidence has been simplified and limited to the matters that are essential to the successful implementation of the TPLM Plan Change with respect to Sub-area H2. I do not intend to address wider issues that we have been raised in various consultations and submissions.
- 22 Matters where we have made submissions and we are now sufficiently aligned or where the matters do not impact on H2 are recorded in Appendix [C] as a matter of record.

Matters essential to a functional Plan Change for Sub-Area H2**Grandfathering of existing Large Lot Residential-A Bulk and Location rules**

- 23 As noted above Sub Area H2 is consented by RM190553 and RM211276 to be subdivided into 37 lots. While many of these lots have been sold this month to new owners only 3 lots have been built on. Associated with the LLR-A zoning are council Bulk and Location rules that these lot owners are required to build under.
- 24 In the pre-hearing meeting legal counsel for the Council advised that these Bulk and Location rules will endure and that no amendment is required within the proposed TPLM Plan change to protect the application of the existing Bulk and Location rules. Legal counsel for the Council offered to confirm this position in writing, however at the time of writing this evidence has not done so. Koko Ridge's legal counsel have advised the Bulk and Location rules will by default be overridden and therefore need to be preserved by a new rule. This advice is summarised in Koko Ridge's legal submission to be presented at the hearing, and I do not comment further on the specifics of this topic.
- 25 It is now my understanding that with the adoption of the TPLM Plan Change the existing LLR-A Bulk and Location rules will be replaced with the low density residential rules of the TPLM plan. This may be an unintended consequence of the TPLM and therefore, consideration must be given to making adequate provision for "grandfathering" of these existing provisions so that the new land owners' expectations of a high quality development are met.
- 26 Many of the TPLM rules seek to achieve area-wide objectives such as accessibility, support public transport, low traffic zones and safe active travel links in order to support a new self-contained community on the north side of SH6 and therefore reduce traffic spill into the wider Queenstown traffic network. These rules while well-meaning are incompatible with the existing use of Sub-area H2 which is on the south side of SH6, already connected to Shotover Country and already zoned for residential housing under LLR-A zoning.
- 27 For example, there is anticipated and permitted car parking use by owners of the LLR-A sections in Sub-area H2. Specifically these homes are large, have generous setbacks, have more than 3 bedrooms, may

operate a home based business and the occupiers have boats, caravans and other high value recreation assets that they keep on their properties. It is easy to envisage these families having 3 vehicles, a trailer and motor boat or RV kept on their properties. Rule 29.5 would restrict these homes on 2,000m² lots to just two carparking spaces (including garaging). This is obviously insufficient for existing and anticipated use requirements. Essentially, provisions for intensive urban living have been applied to large lot, low density residential lifestyle lots. This is clearly a “mis-match” and is an example of the QLDC failing to fully analyse the TPLM provisions with respect to the existing environment.

Required Change:

- 28 To resolve this conflict, Koko Ridge proposes that the TPLM make provision for the H2 Zone, so that lots over 2,000m² must use the existing LLR-A Bulk and Location rules.

Integration and Density

Background

- 29 Koko Ridge has made repeated representations, submissions and correspondence with QLDC and its consultants regarding errors and omissions with respect to Integration and Density. Every single piece of correspondence referenced in the Consultation and Engagement section above refers to this issue.
- 30 A fundamental issue that remains to be addressed is the maximum number of residential units stipulated in rule 49.5.11. This was reiterated to the TPLM team in an email dated 13 August 2022 which is attached as Appendix [E] and partially repeated below:

“In regards to the residential density figures in table 49.5.11 (June 2022 – draft) your team appear to have treated this as a typographical error (ie switched the maximum number of residential units ‘38’ and ‘60’ between Sub-areas H1 and H2). This may have been a typo but our issue was the limits on density which are inconsistent and not aligned to the proposed low density housing (section size 450m² or more).

To draw this out I attach your own Yield table with workings that demonstrate the inconsistent yields across the H and I zones. The

yield on sub-area H2 is only 7.23 homes per hectare which is only about half the density that should be achieved and inconsistent with the yields of ~13/ha provided for sub-areas H1 and I1.

I am hoping you can tidy this error up prior to the document going to the minister as it would be disappointing (not to mention time consuming) for us to go through the submission process again just because the error was not fixed correctly the first time.”

- 31 There was no response to this email and we had to repeat this matter in our latest submission. The section 42A report has also failed to address this issue. The issue was raised again at pre-hearing meeting and the consenting officer present claimed not to be aware of the issue, despite being the author of the correspondence on 29 April 2022 on this matter.
- 32 Following the pre-hearing meeting the TPLM team advised they have now considered the issue and are unable to provide any explanation for the “anomaly”. We have been verbally advised that the TPLM team “understand the issue and agree in principle that the maximum number should be increased but will not correct the anomaly as it is now dependent on transport modelling”.
- 33 We have advised the TPLM team that 108 homes would achieve the same residential density of 13 homes per Hectare as Sub-areas H1 and I1. Mr Devlin sets this out further in his statement of evidence.
- 34 We know from earlier traffic modelling of Stalker Road by Bartlett Consulting that there is sufficient capacity with 225 residences provided for in the vicinity of Stalker Road in the Council’s Lead Policy for assessing SHA requests. Site specific traffic modelling in support of our earlier application of 156 home sub-division on Sub-area H2 demonstrated this, was peer reviewed and accepted by Opus, the Council’s own experts at the time. We reject categorically that traffic modelling would constrain the low density subdivision of Sub-areas H1, H2 (corrected to 108 residences) and I1 that provides for a maximum total of just 176 residences. This is considerably less than the 225 provided for in the Council’s Lead Policy. The Bartlett Consulting report is attached as Appendix [F]
- 35 As an aside we observe this ‘listen but defer’ response is analogous to a response we received on 20 April 2022

"I am happy to have a discussion on the feedback that you provided back in January, but unfortunately we will not be in a position to make any changes to the planning provisions as we are currently finalising the documents ready for the Full Council meeting in June."

36 At the pre-hearing it was also explained to me how issues can get 'lost' if they are not easy to resolve or respond to.

37 Surely, this was the perfect time to resolve this issue, and if not then there have been 3 other prior opportunities to address this issue rather than ignore it. This only reconfirms our view that the TPLM team have failed in their assessment of the appropriate provisions for TPLM.

38 The teams failure to correct rule 49.5.11 in TPLM has added considerable complexity to our submissions and related issues that would all be resolved by correcting the maximum number of residential units to 108 in the H2 zone and must now be determined as part of the TPLM hearing process. Specifically, our related submissions on rules 49.2.2.4, 49.2.7.8 and 49.8 provide further scope for correcting this error in the maximum density rule.

Correcting Rule 49.5.11

39 For the benefit of the Hearing Panel we must now restate the issue and seek the correction of rule 49.5.11 to a maximum of 108 residential units from the 'anomalous' 60. I say that the limit of 60 residential units in the H2 zone is an anomaly as it does not appear to be supported by detailed evidence on how this limit was reached, and as I explain above, it appears to have been an error for some time.

40 As noted above, sub-area H2 is subdivided into 37 lots. This is a yield of 4.5 homes per Hectare. These existing lots comply with the existing LLR-A District Plan rules and specifically are all in excess of 2,000m².

41 Under the proposed TPLM Plan Change the maximum number of residential units in Sub-area H2 is restricted to 60. This is a maximum yield of 7.2 homes per Hectare. This will result in at an average lot size of over 1,200m² if the area was fully developed under the currently proposed rule.

- 42 For comparison, the nearby Shotover Country and Lake Hayes Estate are conventional low density residential sub-divisions with an as built residential density of approximately 14 homes per hectare.
- 43 Subzones H1, H2 [Koko Ridge] and I1 are all proposed to be rezoned for low density residential housing under the TPLM plan change, and are to be constrained by a specified maximum number of homes per zone. The yield for H1 and I1 is approximately 13 homes per hectare and the yield for H2 [Koko Ridge] is just 7.2 homes per hectare. An obvious 'anomaly'.
- 44 To achieve a consistent residential density of 13 homes per hectare the maximum number of homes for Sub-area H2 should be increased **108**.
- 45 Even at this fully developed yield the average section size would be over 750m².
- 46 As noted in paragraph [32], the failure to correct this 'anomaly' on the grounds of a potentially flawed traffic assessment is not an appropriate evidential basis for this limit to be imposed.
- 47 **Koko Ridge** therefore seeks that the table in rule 49.5.11 is changed so that the maximum number of residential units is 108 for Sub-area H2. If a lesser maximum is stipulated then any exceedance should be Discretionary (not Non-Complying).

Other integration and density matters

- 48 The s42A reports' proposed deletion of Rule 49.4.7 that made Residential Flats a non-complying activity is consistent with our submissions and is supported.
- 49 The s42A reports proposed change to Rule 49.5.1 reducing the minimum lot area to 300m² to assist with practical subdivision of existing 2,000m² lots and provide for housing diversity is important to Koko Ridge and is supported. This rule is co-dependent on the requested correction to Rule 49.5.11 increasing the maximum number of residential units across area Sub-area H2 to 108.
- 50 The s42A reports proposed change to Rule 49.5.10 removing the obligation to wait until public infrastructure required for the northern side of State Highway 6 is built before any development of Sub-areas H1, H2 & I1 can commence is strongly supported.

- 51 We have received clarification from the TPLM team on the definition of an 'Active Travel Link'. We are advised it is not a footpath nor a cycleway, but access to an unformed route, suitable for walking and cycling that enables a linkage to a bus stop¹ and that public access is protected by a public easement. We suggest the following definition is added to the Plan Change to reflect that understanding:

“Definition: Active Travel Link is a public easement to enable a linkage to the nearest bus stop.”

Corona Trust Submission

- 52 The Corona Trust [#99] has made a submission against the TPLM Plan Change and raised specific matters in respect of the Koko Ridge Land [Sub-area H2]. As noted above Koko Ridge has made further submissions so as to be able to adequately respond.
- 53 Firstly, we note that the photoshopped photos provided by the Corona Trust are at best mis-leading and furthermore they could have submitted professional work in their possession but chose not to as it does not support their submission. Specifically, using a distorting zoom lens or other technique, Figure 3 of the Corona Trust submission purports to show a 5.5m pole extending maybe three times the height of Slope hill, yet in Figure 4 these same poles are hardly discernible. The wall shown in Figure 5 is outrageous hyperbole. These photos have no evidential standing, figures 3 & 5 should be struck out and not considered further in this process.
- 54 In addition, Corona Trust referred to reports by Landscape Architects, Isthmus Group Limited (Isthmus) and claimed it supported their position when it does not.
- 55 It is clear from the DCM visual assessment report dated 9 September 2022, submitted as evidence that this issue has been given considerable attention in the past.

¹ For Koko Ridge this has been explicitly defined as a public easement to enable a linkage to the a bus stop proposed to be located on the South side of State Highway 6 to the West of Stalker Road.

- 56 This assessment was undertaken with the objective of avoiding cost and time impost of a public notification of RM211276 which incentivised a compromise in order to move forward.
- 57 Nevertheless, the outcome, which gave Corona Trust generous concessions in light of the expert findings was not accepted and the Corona Trust threatened to judicially review the Council's decision not to notify.
- 58 The issue is now in the public arena and we simply confirm that Koko Ridge is aligned with the conclusions expressed by Mr Lowe's report. Koko Ridge concurs that with respect to the submission made by the Corona Trust, no further changes to TPLM are appropriate or necessary.

Scope and location of issue

- 59 Both the Corona Trust Land and Sub Area H2 are currently zoned LLR-A. Therefore both land owners can build up to 8m in height within 4m of their shared boundary. This is the current permitted baseline. It is unclear this is understood by Mr Lowe in his evidence or within the s42A analysis.
- 60 In addition, the policy objective of the LLR-A zoning is as a buffer between low density residential and rural land and the 4m setback on the LLR-A side of the LLR-A/low density residential interface is considered sufficient with a 1m setback on the Low-Density side of the boundary.
- 61 The title boundary is physically located on the upper terrace and already setback from the Southern terrace edge. The title boundary setback is shown in the plan view (drawing 3) of the DCM evidence. This title setback ranges between approximately 1.5m to over 6m in the relevant area.
- 62 The Council in assessing RM211276, considered unsolicited information from Corona Trust that posited that the 75m Building Restriction Area (BRA), while established to protect highway viewshafts, provided enhanced visual amenity to their property. Furthermore, this reliance on the BRA, is an insincere position as the Corona Trust is currently seeking the removal of the BRA through an appeal to the Environment Court of the council's operative District Plan (ENV-2019-CHC -xxx notice of appeal attached as appendix [G].

- 63 Legal submissions from counsel for Koko Ridge do not support the use of the BRA for private purposes. To continue, the Corona Trust need to establish the legal basis for their position to rely on the BRA for an unintended purpose.
- 64 Regardless of validity, Corona Trust's submission opposes the reduction in the BRA due to causing alleged potential adverse effects on their land. The proposed reduction to the dimensions of the BRA only has effects on that area where the shared boundary is impacted by the current 75m BRA. This is why the Council concurred that the location of any potential effects must be limited to lots 28-30 of RM211276 and land to the south.
- 65 Further, I note that the QLDC is, through this plan change, promoting a 25m BRA along the boundary shared by the Koko Ridge Land and SH6. The QLDC's section 42A report records at para 12.45, that QLDC considers no further landscape buffer or BRA is necessary in this location. Koko Ridge agrees with the QLDC's assessment because the purpose of this BRA is to protect the viewshaft from SH6, and not to benefit a private land owner.

Evidence of DCM

- 66 The DCM Urban evidence including the appended visual assessment which has peer reviewed by Isthmus Group Limited (Isthmus) specifically addresses the matters raised by the Corona Trust and is referred to in my evidence below.
- 67 Putting aside the validity of relying on the reduction of the BRA as outlined above, DCM were asked to assume the purpose of the BRA had the intent posited by Corona Trust and to consider what potential effects, if any, arise with the BRA being reduced from 75m and what mitigation would be effective.
- 68 In terms of land to the South, this is further limited to just the Corona Trust land as drawing 1 of the DCM evidence established that any potential views from 49 Maxs Way are completely screened by an existing hedge on 49 Maxs Way
- 69 In the interests of an expedient resolution DCM proposed some mitigations and found that the effects would be **Low (less than minor)**.

70 The DCM evidence was peer reviewed by Isthmus on behalf of the Council and the visual assessment accepted. Isthmus also concluded the potential effects would be **Low (less than minor)**.

71 The proposed mitigation in the DCM evidence was volunteered by Koko Ridge and is codified as conditions 34 - 36 of RM211276 as set out below.

Consent Notice Condition to be registered on Lots 28, 29 and 30 – Additional Visual Mitigation in relation to Southern Boundaries

34. Any building shall be less than 5.5 meters above the finished ground level of that Lot as at the date of deposit of survey Plan DP#### for subdivision consent RM211276.
35. Any building (including accessory buildings) shall be setback at least 4 meters from the southern lot boundary.
36. Within 12 months of a building consent being issued for Lots 28, 29 and 30 an evergreen specimen tree, with a planted height of 2.5m or greater, will be planted every 4.5 meters on the southern lot boundary where the building elevation (including roofline) is visible from 1.5 meters above viewpoints A, B, C & D as shown on the DCM Urban Visual Assessment Memo dated 9 September 2022 (VAM figure [3]) submitted with RM211276.
 - Podocarpus laetus – Hall's Totorā (or similar) is recommended as a suitable tree species that is capable of establishing an evergreen canopy to 5m above ground level.
 - These specimen tree plantings shall be retained and maintained. If any tree should die or become diseased it shall be replaced. The Council shall have the right to monitor compliance with this consent notice.

Consent notices 34 - 36 shall no longer be applicable in the event that the 75m Building Restriction Area shown on the Proposed District Plan south of State Highway 6 is removed as a result of appeals to the Proposed District Plan, or reduced to 30m or less.

72 These conditions are given a certain weight by the s42a analysis in determining appropriate mitigation and therefore need to be explained in context.

- (a) Condition 34 repeats the restriction in the private covenant and therefore does not achieve anything new.
- (b) Condition 35 repeats the standard building setback of 4m required under the LLR-A zone and therefore does not achieve anything new.
- (c) Condition 36 requires the planting of specimen trees where a building is visible from specific locations. This condition is noteworthy as it does not require any hedging as it would be required to be located on Sub-area H2 boundary which is setback from the terrace edge and thus would be an ineffective mitigation.
- (d) Conditions 34 – 36 lapse if the BRA is reduced by this plan change or removed by Corona Trust appeal or the Proposed District Plan. This mechanism extinguished the conditions

confirms the linkage to the BRA, its likely flawed legal basis and the insincere connection to the BRA made by the Corona Trust.

- 73 In summary, these conditions reflect the **Low (less than minor)** potential effects were anticipated to be transitory and achieve little beyond existing Bulk and Location rules contained in the LLR-A and private covenant E15907860.3.

Evidence of Mr Lowe

- 74 Mr Lowe's assessment relied on misleading and photoshopped photos provided by the Corona Trust.
- 75 In paragraph 53 of his evidence, Mr Lowe the Councils Urban Design expert witness assessed the substantive issue of overlooking and concluded the 8m height overlay is appropriate and a reduction to 5.5m is unnecessary. However, presumably based on the mis-leading photos provided by the Corona Trust, not understanding the permitted baseline, and not fully appreciating where the actual title boundary is in relation to the terrace edge, suggested that a localised building height reduction to 5.5m near the submitters boundary was appropriate.
- 76 In paragraph 54 of his evidence, Mr Lowe correctly observes that any potential effects could be *"mitigated on the submitters own accord by planting vegetative screening within their own large property"*.
- 77 The observation made by Mr Lowe can be best demonstrated in the cross sections provided in drawings 5 - 7 in Mr Greenshields visual assessment in the DCM evidence. These cross sections show the screening resulting from an existing windbreak type fence on the terrace edge, which is near the terrace edge and entirely within the Corona Trust land. A hedge in this location would be even more effective.
- 78 Last year, Koko Ridge offered to fund such a vegetative screen as part of a comprehensive resolution, but this has not been agreed with the Corona Trust
- 79 Koko Ridge considers it is unnecessary to prescribe vegetative screening as part of the TPLM process as this is a matter that the Corona Trust can attend to on its own land.

Section 42A report

- 80 The s42A report provides an analysis of the Corona Trust submission in paragraphs 12.34 to 12.45.
- 81 In paragraph 12.37 the analysis is incorrect where it states:
- (a) conditions were imposed – they were volunteered as explained above; and
 - (b) That four lots were impacted – it is three lots being lot 28 – 30 as explained above.
- 82 We concur that covenant E15907860.3 (Attached as Appendix [H]) on the title of Lot 2 DP325561 is enforceable by the Corona Trust and cannot be removed except with the agreement of the Corona Trust and three other landowners along the southern boundary. This covenant provides a strong degree of certainty as to the future aesthetics of the H2 zone and the likely low visual effects.
- 83 The s42A analysis incorrectly assumes that the title boundary is on the terrace edge. As noted above, the title boundary is located on the upper edge between approximately 1.5m and over 6m back from the terrace edge. In proposing an effective potential mitigation of potential effects the s42A analysis could have made a principled recommendation of a setback of 4m from the *terrace edge* rather than the *title boundary*. It is the terrace edge, a the physical feature, that impacts most on any potential visual effects.
- 84 In paragraph 12.45 the s42A analysis, relying on the evidence of Mr Lowe who proposed a very localised 5.5m building height restriction, inexplicitly proposes a doubling of the 2m setback along the entire shared LLR-A title boundary to 4m. This shared boundary extends over 1km in length. (New proposed Rule 49.5.6.5. on page 152 of s42a report.). This flawed new rule is then erroneously translated into new Rule 49.5.6.5 encompassing the **entire** Southern boundary of Sub-area H2 (pg 198). This boundary is over 1.5km in length.
- 85 New Rule 49.5.6.5 as drafted is unnecessary, ineffective and far too wide in application. It is opposed.

Conclusions

86 Based on legal advice there is no basis for the reduction of the BRA to be used as justification for requiring potential effects on the Corona Trust land to be mitigated by Koko Ridge.

87 Taking into account the permitted baseline the only potential effects will result from reducing the existing setback of 4m to the proposed 2m.

88 In helping the Hearing Panel consider if there is any potential effect, I draw your attention to the 2nd paragraph of Page 3 of the DCM visual assessment evidence:

“With regards to the proposed 4m setback of the building platforms from the southern lot boundaries, representative cross sections have been prepared (refer to attached Figures). I considered the difference in visibility of the future dwellings if the setback was increased to be more than 4m and conclude this will not make a noticeable difference on dwelling visibility in all considered cases. Any additional setback will not be easily apparent due to the distance and view angle the lots are viewed from by the neighbouring dwellings below. The differing topology of future dwellings will further add to this undisguisable visible height difference due to the likely variance in scale, roof pitch, materiality and individual desired internal setback within the building platforms. The proposed 4m setback is considered to be adequate, with little difference or reduction of visual effects to be gained by requiring a greater setback. I support the retention of the proposed setback at 4m from lot boundaries.”

89 While the DCM evidence was considering the effects of an *increase* in setback, the same analysis and conclusion would apply equally to a *minor decrease* of 2m in the building setbacks.

90 Therefore I consider that no mitigation is required as there are no discernible new effects and that the setbacks under TPLM Low Density zone should remain at 2m as proposed. This will result in setbacks from the terrace edge between 3.5m and 8m.

91 Should the panel conclude that they do have a legal basis to take into account potential effects on the Corona Trust land then the advice of the Councils own expert should be followed and a “5.5m height restriction

over a zone of 17m from the Southern” terrace edge could be imposed on lots 28 -30 of RM211276.