

**BEFORE THE ENVIRONMENT COURT  
AUCKLAND REGISTRY**

**I MUA I TE KOOTI TAIAO O AOTEAROA**

**ENV-2021-AKL-**

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

**AND**

**IN THE MATTER** of an appeal under  
clause 14(1) of the First  
Schedule of the Act

**BETWEEN** **THE RALPH ESTATES**

**Appellant**

**AND** **WAIKATO DISTRICT  
COUNCIL**

**Respondent**

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**NOTICE OF APPEAL**

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**To:** The Registrar  
Environment Court  
Auckland

1. The Ralph Estates appeals against a decision of the Waikato District Council on the Proposed Waikato District Plan (**PWDP**), in relation to a submission by Ambury Properties Limited (**APL**) seeking the rezoning of land at Ohinewai.
2. The Ralph Estates made a further submission on the PWDP in opposition to APL's submission.
3. The Ralph Estates are not a trade competitor for the purposes of section 308D of the Act.
4. The Ralph Estates received notice of the decision on 24 May 2021.
5. The decision was made by an Independent Hearings Panel appointed by the Waikato District Council.
6. The decision that the Ralph Estates are appealing is the decision to accept APL's submission and rezone the sites at 231 Tahuna Road and 52, 56 and 58 Lumsden Road, Ohinewai (**APL Land**) from Rural Zone to the Ohinewai Zone with three precincts - the Ohinewai Industrial Precinct, Ohinewai Business Precinct and Ohinewai Residential Precinct. The provisions to be applied to the Ohinewai Zone (including its precincts) are described in this appeal as the **Ohinewai Zone provisions**. The decision was released in advance of the Waikato District Council's decisions on the remainder of the PWDP at APL's request and so the Ohinewai Zone provisions have been designed as standalone provisions.
7. The general reasons for the appeal are that the Council's decision to rezone the APL Land subject to the Ohinewai Zone provisions:
  - (a) will not promote sustainable management of natural and physical resources;
  - (b) is not the most appropriate way to achieve the purpose of the Act;

- (c) will not achieve the efficient use and development of natural and physical resources;
  - (d) does not represent the most appropriate way of exercising the Council's functions, having regard to the efficiency and effectiveness of the provisions, in particular the assessment of the benefits and costs of the effects that are anticipated from the implementation of the Ohinewai Zone provisions; and
  - (e) will mean that the Ralph Estates' interests in the APL Land are incapable of reasonable use pursuant to section 85 of the Act.
- 8.** Without limiting the generality of the above reasons, further reasons for the appeal are set out below:
- (a) the Ralph Estates are administered by the Public Trust and comprise 3 separate entities<sup>1</sup> with over 80 beneficiaries, including one significant beneficiary who holds a 70% share. This majority beneficiary is a charitable trust whose objectives are to provide educational opportunities for children, the deaf, refugees and the poor, and to help with the homeless;
  - (b) the Ralph Estates have retained the mineral interests in a large area of land in Ohinewai (and other parts of the Waikato). The Ralph Estates' mineral titles include all minerals including coal, aggregates (sands, gravels etc), peat, fireclay, greywacke and other minerals not reserved to the Crown that may be present in the land. The Ralph Estates' mineral interests provide unfettered rights of access to the surface land to mine their minerals, subject to providing reasonable compensation for land damage;
  - (c) the Ohinewai Zone provisions apply to land in which the Ralph Estates have mineral interests, including a substantial quantity of coal resources that form part of the Waikare Coalfield, and is in close proximity to other land in which the Ralph Estates have mineral interests;

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<sup>1</sup> William Joseph Ralph, Sarah Margaret Ralph and the Margaret Reilly Schlinker Trust.

- (d) the Ohinewai Zone provisions would effectively sterilise the Ralph Estates' mineral interests. If the APL Land is developed in accordance with the Ohinewai Zone provisions, the practical effect is that the Ralph Estates would not be able to enter the land and mine the minerals beneath the surface. The restriction that the Ohinewai Zone provisions would place on open cast mine development will also impact the Ralph Estates' mineral interests further to the south. Any open cast mine would have to be significantly smaller to achieve the necessary setbacks and slope angles, limiting the amount of coal that the Ralph Estates could access. In addition to the coal that could be accessed via an open cast mine, the Ohinewai Zone provisions will also have impacts on the ability to recover underground mineable coal and other minerals such as aggregates in the affected Ralph Estates mineral titles;
- (e) the Waikato District Council incorrectly decided that the Ralph Estates have made "no attempt to exercise" its mineral rights<sup>2</sup> when in reality coal owned by the Ralph Estates has been mined in the area continuously for 150 years, and specifically at Ohinewai an extensive amount of work has been carried out to explore, investigate and assess the coal resources, and the related geotechnical and mining challenges, environmental effects and economics, first as part of the New Zealand Coal Resources Survey and then by Solid Energy. A series of mining proposals for the interests have been developed, most recently by Solid Energy in 2015;
- (f) the assessment required when making a decision on proposed plan provisions has been broadly summarised by the Environment Court to distil down to an evaluation of which provisions are the most appropriate<sup>3</sup>. The Ohinewai Zone provisions, which will provide for residential, industrial, and business uses on the APL Land, cannot be the most appropriate, when these changes will effectively prevent the owner of the minerals beneath the surface from being able to make use of their interest in the APL Land. It would preclude the ability for the Ralph Estates to exercise their rights in the future to obtain the

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2 Report and Decisions of the Waikato District Plan Hearings Panel *Decision Report 2: Ohinewai Rezoning* at [210].

3 *Royal Forest & Bird Protection Society of NZ v Whakatane District Council* [2017] NZEnvC 051.

necessary authorisations (including resource consents) and access the APL Land to remove those minerals;

- (g) the Ohinewai Zone provisions will render the Ralph Estates' interests in the APL Land incapable of reasonable use for the purposes of section 85(3B)(a) of the Act; and
- (h) the Ohinewai Zone provisions will place an unfair and unreasonable burden on the Ralph Estates (and the beneficiaries) for the purposes of section 85(3B)(b) of the Act.

**9.** The Ralph Estates seek the following relief:

- (a) pursuant to section 85(3A) of the Act, that the Court directs the Waikato District Council to do whichever of the following the Waikato District Council considers appropriate:
  - (i) delete the Ohinewai Zone provisions and apply Rural zoning to the APL Land (or alternative modifications to the PWDP of like effect that the Court directs); or
  - (ii) acquire under the Public Works Act 1981 all of the Ralph Estates' interests in land affected by the decision; or
- (b) that the Ohinewai Zone provisions be deleted from the PWDP and the APL Land be zoned Rural; or
- (c) any alternative relief of the like effect; and
- (d) such other orders, relief or other consequential amendments as are considered appropriate or necessary by the Court to address the concerns set out in this appeal.

**10.** The Ralph Estates also seek costs of and incidental to the appeal.

**11.** The Ralph Estates attach the following documents to this notice:

- (a) a copy of its further submission (with a copy of the submission opposed by its further submission) (**Appendix 1**);

- (b) a copy of the relevant decision (**Appendix 2**); and
- (c) a list of names and addresses of persons to be served with a copy of this notice (**Appendix 3**).

**DATED** at Auckland this 5th day of July 2021



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Bill Loutit / Sarah Mitchell  
Counsel for the Ralph Estates

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## **Advice to recipients of copy of notice of appeal**

### *How to become party to proceedings*

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,-

- (a) within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in Form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- (b) within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Act for a waiver of the above timing or service requirements (see Form 38).

### *How to obtain copies of documents relating to appeal*

The copy of this notice served on you does not attach a copy of the appellant's further submission and the relevant decision. These documents may be obtained, on request, from the appellant.

### *Advice*

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.