



1 July 2021

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Environmental Protection Authority
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BY EMAIL

Dear Elliot and Alex

AMBURY PROPERTIES LIMITED – RESPONSE TO COMMENTS FROM RALPH ESTATES ON OHINEWAI FOAM FACTORY

1. INTRODUCTION

- 1.1 As you are aware, we act for Ambury Properties Limited (“APL”). We have been asked to review the comments received from Ralph Estates (“the comments”) on APL’s application for the Ohinewai Foam Factory, which is currently before the Expert Consenting Panel (“Panel”) for determination. Following that review, we respond to the issues raised in Ralph Estates’ comments as follows.
- 1.2 In the comments, Ralph Estates seeks that consent for the Foam Factory be declined by the Panel. The basis for this position is that:
- (a) APL’s application to the Panel for the Foam Factory does not meet the requirements of the Covid-19 Recovery (Fast Track Consenting) Act 2020 (“Act”), as it does not contain sufficient information as to Ralph Estates’ interest in the Foam Factory site and surrounding land, or on how the application would affect the beneficiaries of Ralph Estates;
 - (b) If the present application is granted, APL’s Foam Factory would effectively sterilise Ralph Estates’ mineral interests at Ohinewai; and
 - (c) The Ralph Estates’ mineral interests, and the demand for coal in New Zealand, are relevant other matters that are reasonably necessary to determine APL’s application.
- 1.3 In support of the comments, Ralph Estates have also attached the evidence provided on their behalf in respect of their further submission on APL’s submission to rezone its land at Ohinewai, under the proposed Waikato District Plan (“PWDP”).
- 1.4 The purpose of this letter is to respond to the comments and clarify APL’s position with respect to the effect of the Foam Factory development on Ralph Estates’ mineral interests. To that end, we have also collated the evidence filed on behalf of APL at the rezoning hearing, which specifically responded to Ralph Estates’ further submission. Those documents can be found in the OneDrive link [here](#).
- 1.5 For completeness and ease of reference, the material contained in the link is the following legal submissions and expert evidence presented on behalf of APL at the rezoning hearing:

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- (a) Legal submissions on behalf of APL dated 14 September 2020 (refer Section 20);
- (b) Closing legal submissions on behalf of APL dated 23 September 2020 (refer Section 12);
- (c) Statement of evidence of David Gaze (refer [2.49], [9.13]-[9.14]);
- (d) Statement of evidence of Cameron Lines;
- (e) Statement of rebuttal evidence of Cameron Lines;
- (f) Summary statement of Cameron Lines; and
- (g) Statement of evidence of Stuart Penfold (refer [6.3]-[6.10]).

1.6 We note that the evidence of Cameron Lines was commissioned specifically to address the further submission made by Ralph Estates in relation to their mineral rights.¹

1.7 APL does not dispute the nature of Ralph Estates' mineral interests at Ohinewai, as set out in Section 2 of the comments. However, it does not accept or agree with the concerns raised in respect of those minerals interests, as summarised in paragraph 1.2 above. We therefore now turn to address each of those three specific matters, as follows.

2. SUFFICIENCY OF INFORMATION ABOUT RALPH ESTATES' INTERESTS

2.1 It is correct that APL's application for the Foam Factory does not identify Ralph Estates as one of the land owners affected by the application. That said, APL's position is that the application contains more than sufficient information (including regarding any potential impacts on Ralph Estates mineral interests) to meet the requirements of the Act. The reasons for this are as follows:

- (a) Ralph Estates is not the owner of the relevant land or adjacent land. It holds rights to minerals only. The two are distinct and clause 9(1)(d) of Schedule 6 to the Act requires identification of land owners only. It does not require identification of the holder of any other interests in land.
- (b) In any event, APL's application clearly identifies the location and geographic extent of the land on which the Foam Factory is to be constructed, as well as the relevant records of title (which record Ralph Estates' minerals interest). As such, the information provided is more than sufficient to meet the requirements of clause 9(1)(d) of Schedule 6 to the Act.
- (c) Further, the location of the Foam Factory does not affect or traverse any land that is subject to Ralph Estates rights or mineral interests. This matter is addressed in more detail below.
- (d) Having regard to the above and the matters addressed in detail in Section 3 below, the present application will not result in any adverse effects on the Ralph Estates' mineral interests and/or on the beneficiaries of the Ralph Estates. As such, the information provided is more than sufficient to meet the requirements of clause 9(4) of Schedule 6 to the Act.

2.2 With respect to paragraph 2.1(c) above and as identified in Section 3.2 of the assessment of environmental effects ("AEE") submitted in support of APL's application, the only aspect of APL's application which relates to 109 and 231 Tahuna Road is the stormwater conveyance swale, which runs along the northern boundary of that property. As can be seen from the maps **attached as Annexures 1 and 2** respectively, the Foam

¹ Statement of evidence of Cameron Lines, at [1.5].

Factory itself does not affect or occupy any land in respect of which Ralph Estates hold minerals rights.

- 2.3 In light of the above, it is incorrect for Ralph Estates to assert that they should have been identified as an owner of both the application site and of land adjacent to the application site.
- 2.4 Finally, we note that as required by clause 3 of Schedule 6 to the Act, the EPA has already assessed and determined that the application:
 - (a) Does not breach clause 2(3)(c) or (4) of Schedule 6 to the Act; and
 - (b) Contains all the information required under clauses 9 to 13 of Schedule 6 to the Act.
- 2.5 It is not for Ralph Estates to now second guess the basis of EPA's assessment and determination.

3. **POTENTIAL EFFECTS ON RALPH ESTATES' INTERESTS**

- 3.1 APL specifically addressed the potential effects of its proposed Ohinewai development (including the Foam Factory) in the hearings regarding its submission to rezone its land at Ohinewai under the PWD. This was, of course, in response to Ralph Estates' further submission opposing that rezoning request.
- 3.2 APL's position (as demonstrated via the evidence at the rezoning hearing) is that the Foam Factory will not have adverse effects on any viable interests of Ralph Estates in the coal resource. In summary, the basis for that position is as follows.

Foam Factory does not overlap Ralph Estates' mineral interests

- 3.3 First (and most importantly), the location of the Foam Factory does not affect or traverse any land that is subject to Ralph Estates rights or mineral interests. As such (and even absent any of the viability issues addressed below), establishing the Foam Factory will not sterilise any minerals interests held by Ralph Estates. The assertions to the contrary in their comments on the application are therefore incorrect and unsustainable.

Minerals interests are effectively already "sterilised"

- 3.4 Second, even if the Foam Factory did affect any land in respect of which Ralph Estates held minerals rights (which it does not), it is not currently economically or practically viable for them to mine those minerals. Further, that position is not likely to change for the foreseeable future. As such, to the extent that their minerals rights have been "sterilised", this has already occurred as a result of factors completely unrelated to APL's Foam Factory application.
- 3.5 With respect to Ralph Estates being able to viably mine coal at Ohinewai, APL's evidence at the rezoning hearing (included at the link provided in paragraph 1.4 above) set out as follows:
 - (a) Mining the coal resource at Ohinewai by conventional methods, including underground or opencast, is not economically or practically viable. This is due to a range of factors, including the technical challenges of extracting the coal, consenting issues and high operational costs (largely associated with attempting to overcome the various technical obstacles).²

² Ibid, at [6.8].

- (b) With respect to the technical challenges that Ralph Estates would face in trying to extract coal at Ohinewai, Mr Lines' evidence was that these would include the following:³
- (i) Groundwater drawdown would result in a cone of groundwater depression around the mine;
 - (ii) The depth of drawdown required could be expected to result in widespread surface settlement; and
 - (iii) Given the potential hydraulic connection between Tauranga Group Sediments and the adjacent Lakes Rotokawau and Waikare, could result in draining of those lakes.
- (c) APL's evidence also identified a range of consenting issues which, in combination, would effectively preclude Ralph Estates from being able to obtain consent to mine the coal, even if that was technically feasible. We note that these consenting challenges are (rightfully) acknowledged by Ralph Estates in the comments. These include:
- (i) The significant environmental effects of such mining, including ecological/biodiversity, freshwater (potentially the removal of Lake Rotokawau and possibly Lake Ohinewai), traffic and air quality effects, as well as the impact of such mining on the discharge of greenhouse gas emissions (which will become a relevant matter for consideration under section 104 of the Resource Management Act 1991, from 1 January 2022).
 - (ii) The impact of a range of national direction, including the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 ("NES Freshwater"), which would likely make the earthworks required for mining a prohibited activity.
 - (iii) The fact that the sites relevant to Ralph Estates' mineral interests are not identified within any Mining or Minerals overlay under the PWDP.
- (d) Finally, it was also noted that demand for coal has significantly reduced (and will continue to reduce) in favour of sustainable alternatives to greenhouse gases.⁴ Development of new mines will therefore become progressively less economic.

3.6 The legal submissions of counsel on behalf of APL also identified that there have been various mining proposals for Ohinewai, none of which were undertaken or realised, even when coal demand was significantly greater than it is currently.⁵

Decision of the Hearings Panel on rezoning

3.7 The Hearings Panel for the Ohinewai rezoning noted Ralph Estates' interests in their decision, but found that resource consents would be required to realise those interests. They also considered any mineral extraction would have "significant actual or potential effects on any aspect of the environment or on any person".⁶

3.8 The Panel further noted that despite Ralph Estates having held mining interests over the land since the 19th century, there has been no attempt to exercise those rights.⁷

³ Rebuttal evidence of Cameron Lines, at [3.4], as addressed in the opening legal submissions [20.4].

⁴ Supra Note 1, at [6.8].

⁵ Opening legal submissions of counsel on behalf of APL, at [20.5].

⁶ Decision of the Waikato District Plan Hearings Panel on Ohinewai Rezoning, at [209].

⁷ Ibid, at [210].

- 3.9 Finally, the Panel held that the recently gazetted NES Freshwater made earthworks within a natural wetland a prohibited activity, and ultimately concluded that the Ralph Estates mineral interests are not a reason not to rezone.⁸

Summary – Potential effects on Ralph Estates’ interests

- 3.10 In light of the above, APL’s position is that the development of a coal mine (either open cast or underground) at Ohinewai is highly unlikely to be either economically or practically viable. Given that context, Ralph Estates’ assertion that APL’s present application would “sterilise” its interests (and consequently adversely affect Ralph Estate and its beneficiaries) is therefore not correct or sustainable.

4. MATTERS REASONABLY NECESSARY TO DETERMINE APL’S APPLICATION

- 4.1 Having regard to the above assessment, APL’s position is as follows:

- (a) The Ralph Estates’ mineral interests and the demand for coal in New Zealand are not matters that it is necessary for the Panel to consider or address in detail, in order to determine APL’s present application.
- (b) To the extent that the Panel determines (contrary to the position outlined in paragraph 4.1(a) above) that it is reasonably necessary for it to consider Ralph Estates’ interests and demand for coal in New Zealand:
 - (i) There is sufficient information with respect to those matters in APL’s application material and this further response, in order for it to be able to determine APL’s application; and
 - (ii) Those matters fall far short of warranting APL’s application being declined, as sought by Ralph Estates (as it was similarly determined that they did not warrant APL’s rezoning proposal being declined).

5. CONCLUSION

- 5.1 We trust the above provides a sufficient basis for the Panel to consider and address the comments received regarding APL’s present application from Ralph Estates. We are happy to provide more detail on any aspect of our response, or matter raised in Ralph Estates’ comments, as required.

Yours sincerely



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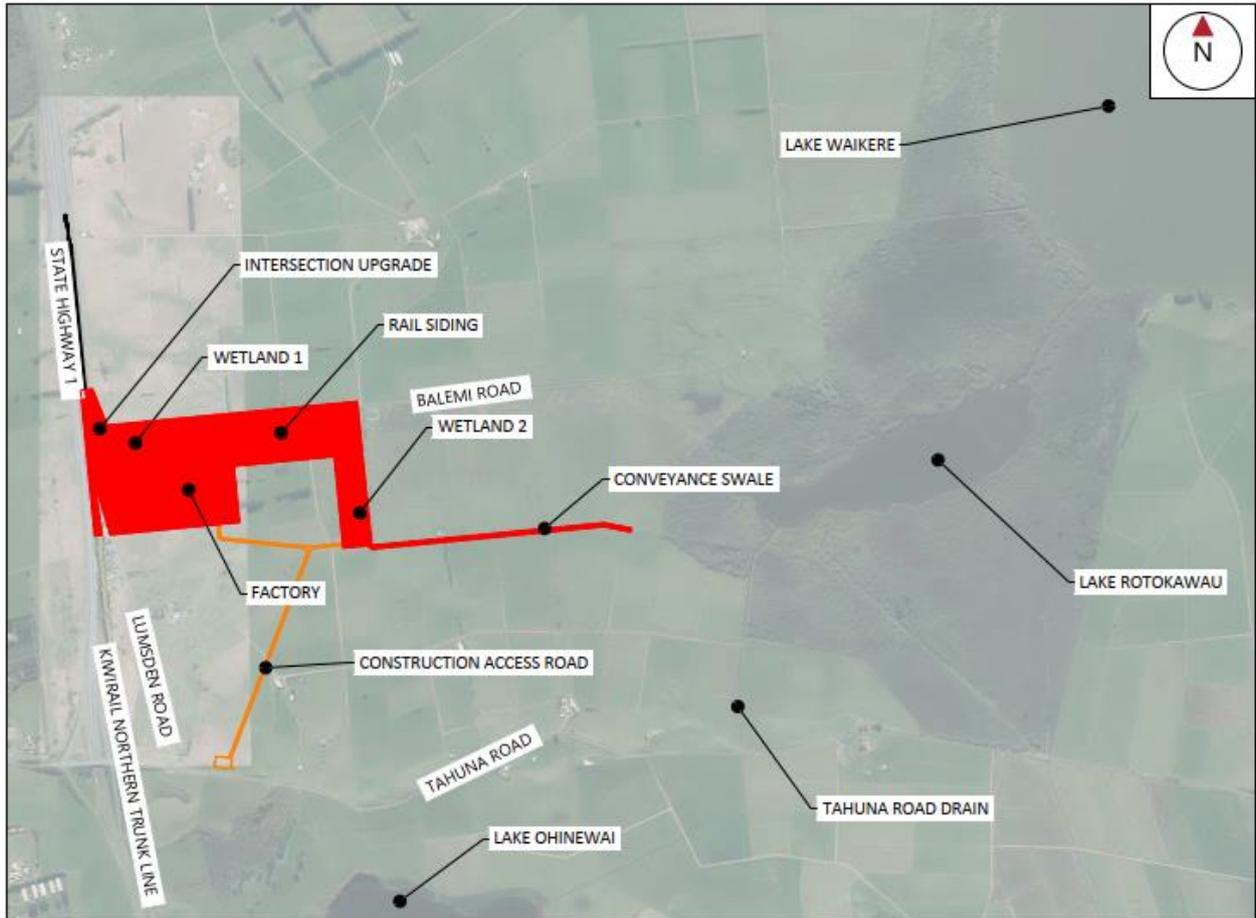
Encl.

⁸ Ibid, at [211].

ANNEXURE 1

EXTENT OF FOAM FACTORY SITE

(SOURCE: FIGURE 3.2 OF THE AEE)



ANNEXURE 2

EXTENT OF RALPH ESTATES MINERAL INTERESTS AT OHINEWAI

(SOURCE: FIGURE 6 FROM THE STATEMENT OF EVIDENCE OF DEAN ANDREW FERGUSSON ON BEHALF OF THE RALPH ESTATES, 13 AUGUST 2020)

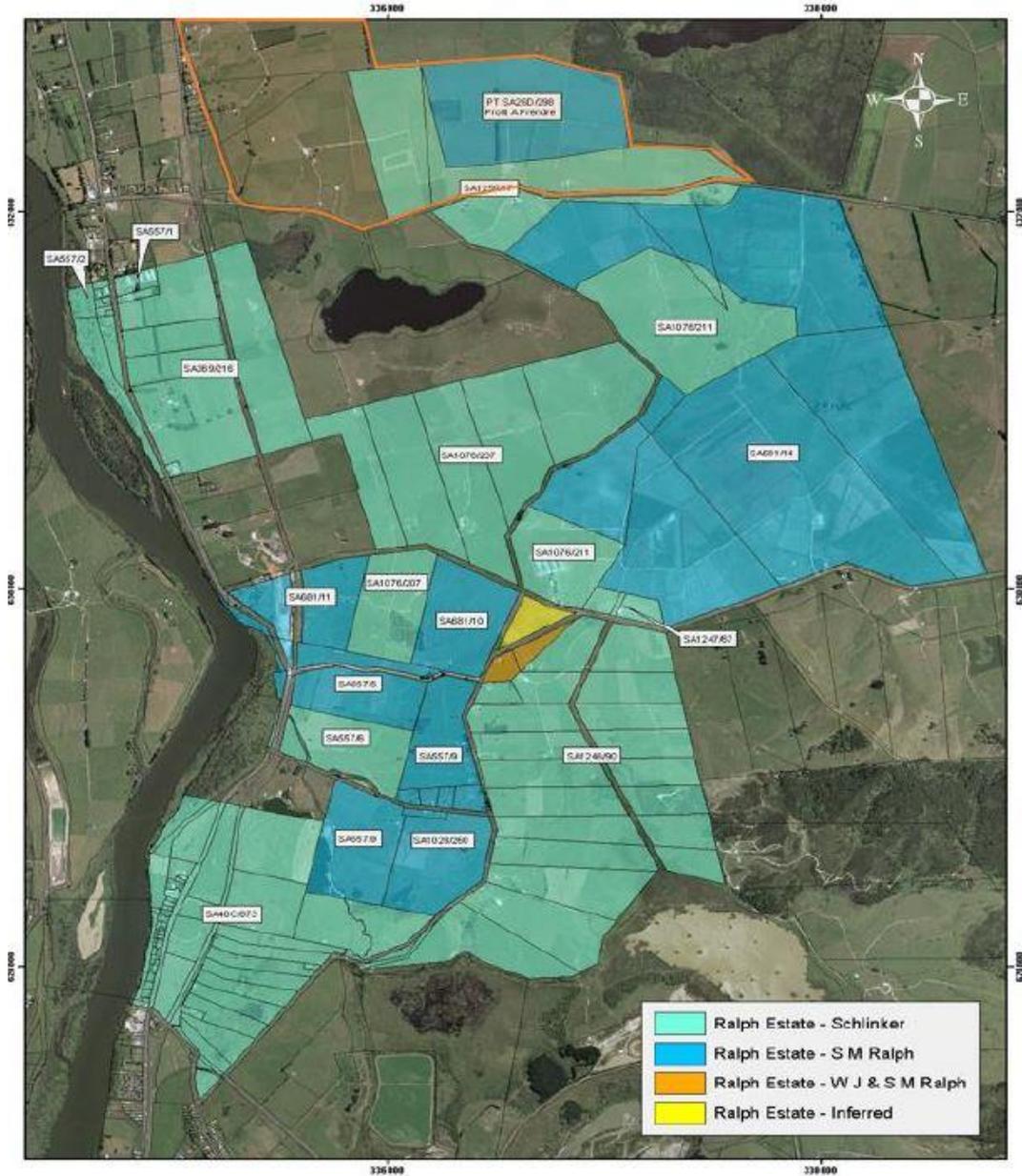


Figure 6 – Ralph Estates’ mineral titles in the vicinity of the proposed rezoning area (orange outline). The Ralph mineral titles are also present west and south west of the Waikato River.