

9. STATUTORY CONSIDERATIONS

Introduction

- 9.1 The Resource Management Act 1991 (*RMA*) provides the statutory framework under which this discharge permit application is processed. This chapter sets out the relevant statutory provisions and then sets out an assessment of those provisions against this proposal.
- 9.2 The coal stockyard site is located within the coastal environment of the Christchurch District and within the Canterbury Region. The statutory planning documents under the RMA that are relevant to this application are therefore the:
- a. Resource Management (National Environmental Standards for Air Quality) (NESAQ);
 - b. New Zealand Coastal Policy Statement (*'NZ Coastal Policy Statement'*);
 - c. Canterbury Regional Policy Statement (*'Regional Policy Statement'*);
 - d. The Canterbury Air Regional Plan (*'Air Plan'*);
 - e. The Christchurch District Plan (*'District Plan'*);
 - f. Regional Coastal Environment Plan for Canterbury (*'Coastal Plan'*); and
 - g. Canterbury Land and Water Regional Plan (*'Land and Water Plan'*).

Status of the Application

- 9.3 An **industrial or trade process** under the RMA includes every part of a process from the receipt of raw material to the dispatch or use in another process or disposal of any product or waste material, and any intervening storage of the raw material, partly processed matter, or product. The coal stockyard falls within this definition and is defined as an industrial or trade premise under the RMA.
- 9.4 Section 15(1)(c) of the RMA states that no person may discharge any contaminant from any industrial or trade premises into air unless the discharge is expressly allowed by a national environmental standard or a rule in a regional plan or alternatively authorised by a resource consent.
- 9.5 The discharge of coal dust from the storing and handling of coal at the stockyard is not expressly allowed (permitted) under the Air Plan.

- 9.6 Therefore, a replacement discharge to air permit is required and the application is to be assessed as a **discretionary activity**. The details of the rules and status of the discharge activities is discussed later.
- 9.7 The Air Plan only applies to the boundary of the coastal marine area. Within the coastal marine area, the Coastal Plan applies but does not contain any rules on discharging contaminants to air. Only very minor amounts of coal dust are generated in the coastal marine area during the loading of a vessel; but, for avoidance of doubt the discharge is considered **innominate** under the coastal plan rules and therefore again a **discretionary activity**.¹
- 9.8 The discharge of veneer product and surfactant to land is permitted under Rule 5.18 of the Land and Water Plan provided the dust suppressant is approved under the Hazardous Substances and New Organisms Act 1996. LPC currently uses an approved non-hazardous veneer product² and there are a range of proprietary dust suppression surfactants available, of which at least some appear to be able to meet the HSNO requirements.³ Therefore, the discharge of these products is assumed to be permitted under Rule 5.18.
- 9.9 Pursuant to section 87A(4) the consent authority may decline the permit or grant the discretionary activity permit with or without conditions.
- 9.10 Regulation 17 of the NESAQ requires a consent authority to decline an application for a resource consent to discharge PM₁₀ if the discharge would be likely, at any time, to increase the concentration of PM₁₀ by more than 2.5 micrograms per cubic metre (calculated as a 24-hour mean) in any part of a polluted airshed. Regulation 17 does not apply if:
- (a) the proposed activity would not be likely, at any time, to increase the concentration of PM₁₀ by more than 2.5 micrograms per cubic metre in any part of a polluted airshed (Regulation 17(1)); or

¹ Noting that section 87B(1)(a) of the RMA provides that where a plan requires a resource consent to be obtained for an activity, but does not classify the activity as controlled, restricted discretionary, discretionary or non-complying, the application for resource consent should be treated as an application for a discretionary activity

² A mix of non-hazardous organic materials and synthetic polymers and natural polymers

³ For example, "Vital Hydra Wet 130, prepared by Vital Chemicals is not classified as an environmental hazard

- (b) the proposed activity is for the same activity on the same site as another resource consent held by the applicant when the application was made, the amount and rate of PM₁₀ discharge is the same or less than the existing consent, and the discharge under the proposed consent would only occur when discharges no longer occur under the existing consent (Regulation 17(2)); or
- (c) the consent authority is satisfied that the applicant can offset the discharge within 12 months of the discharge commencing (Regulation 17(3)).

9.11 The air quality assessment attached in **Appendix 6**, has stated that the coal dust is too far away from the boundary of Christchurch Airshed to contribute any appreciable levels of PM₁₀ to that airshed. Therefore, Regulation 17 does not apply.

Information Requirements

- 9.12 Section 88(2) of the RMA states that an application must include information relating to the activity, including an assessment of the activity's effects on the environment as required by Schedule 4.
- 9.13 Clause 2 of Schedule 4 sets out the information required in all applications, and Clause 6 sets out what information is required in an assessment of environmental effects. Clause 7 further details the matters which must be addressed by an assessment of environmental effects. This AEE has addressed relevant matters set out in Schedule 4.

Decision-Making

- 9.14 Section 104 of the Resource Management Act sets out the matters to which a consent authority must have regard when considering applications for resource consents. In particular, section 104(1) provides:

- “(1) When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to –
- (a) any actual and potential effects on the environment of allowing the activity; and
 - (b) any relevant provisions of –
 - (i) a national policy statement;
 - (ii) a New Zealand coastal policy statement;
 - (iii) a regional policy statement or proposed regional policy statement;
 - (iv) a plan or proposed plan; and
 - (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.”

- 9.15 The Ngāi Tahu Claims Settlement Act 1998 and Mahaanui Iwi Management Plan ('MIMP') are relevant and consideration of the same is reasonably necessary to determine the application.
- 9.16 Section 104(2A) states that when considering an application affected by section 124 or 165ZH(1)(c), the consent authority must have regard to the value of the investment of the existing consent holder. Section 104(2A) is a relevant consideration because the existing permit to discharge coal dust from the coal stockyard is due to expire and this application is for a replacement discharge permit.
- 9.17 Section 105 requires the consent authority to have regard to the nature of the discharge and the sensitivity of the receiving environment, the applicant's reasons for the proposed choice and possible alternative methods of discharge. These matters have been addressed in various chapters of the AEE
- 9.18 Section 108 enables the Consent Authority to impose conditions on the discharge permit.
- 9.19 Those matters set out 104 are subject to Part 2 (Purpose and Principles) of the Act.
- 9.20 The purpose of the RMA is to promote the sustainable management of natural and physical resources. The recent Court of Appeal decision in *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316 in essence states that RMA decision makers would need to consider Part 2 when making decisions on resource consents unless the relevant plan provisions clearly give effect to Part 2 and consideration would not add anything to the evaluative exercise. In other words, genuine consideration of the relevant plan provisions may leave little room for Part 2 to influence the outcome.
- 9.21 The Air Plan is a relatively recent document, being made operative on 31 October 2017, and presumably there might be little room for Part 2 to influence the outcome of this particular application as the provisions of the Air Plan already give effect to Part 2. Nevertheless, for completeness Part 2 of the RMA is considered below.
- 9.22 Sustainable management is defined as:
- “...managing the use, development, and protection of natural and physical resources in a way or at a rate that enables people and communities to provide for their social, economic and cultural wellbeing, and for their health and safety, while
- (a) Sustaining the potential for natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations;

- (b) Safeguarding the life supporting capacity of air, water, soil and ecosystems; and
- (c) Avoiding, remedying or mitigating any adverse effects of activities on the environment”.

9.23 Matters of national importance (Section 6) relevant to this application (which must be recognised and provided for) include the following:

- “(a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands and rivers and their margins and the protection of them from inappropriate subdivision, use and development;
- (c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna;
- (e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga.”

9.24 Relevant matters to which regard must be had (Section 7) include the following:

- “(a) kaitiakitanga
- (aa) the ethic of stewardship
- (b) the efficient use and development of natural and physical resources
- (c) the maintenance and enhancement of amenity values
- (d) intrinsic values of ecosystems
- (f) maintenance and enhancement of the quality of the environment’

9.25 Section 8 requires that the principles of the Treaty of Waitangi must be taken into account by all persons exercising functions and powers under the Act in relation to managing the use, development and protection of natural and physical resources.

Assessment of the Application against the Statutory Framework

Assessment of the Rules in the Air Plan

9.26 Rule 7.63(2) of the Air Plan states that the discharge of contaminants into air from an industrial or trade premise that is not managed by Rules 7.47-7.62 is a discretionary activity (unless specified as a prohibited activity). Given rules 7.47-7.62 are not relevant to the discharge of coal dust from the coal stockyard, the application is for a **discretionary activity** under Rule 7.63.

9.27 Nevertheless, for completeness, Rules 7.35-7.36 are assessed below (as they were presumably intended to apply). These rules are part of a package of rules that involve managing dust generating activities from industrial and trade or commercial activities (Rules 7.31-7.40) assuming industrial and trade activities are synonymous with an industrial and trade process as defined in the RMA.

9.28 Rules 7.35 and 7.36 permit the discharge of dust from the handling or outdoor storage of bulk solid materials subject to a range of conditions.

9.29 The Air Plan defines bulk solid materials as follows:

“means materials consisting of, or including, fragments that could be discharged as dust or particulate. These materials include but are not limited to: gravel, quarried rock, fertiliser, coal, cement, flour, rock aggregate, grains, compost and woodchip.”

9.30 **Table 8.1** evaluates the coal stockyard against the relevant conditions of Rules 7.35 and **Table 8.2** evaluates the coal stockyard against the relevant conditions of 7.36.

Rule 7.35: Discharge of contaminants into air from the handling of bulk solid materials		
Relevant Conditions	Assessment	Compliance
1 <i>The discharge of dust does not cause an offensive or objectionable effect beyond the boundary of the property of origin, when assessed in accordance with Schedule 2;</i>	The coal stockyard will comply with this condition. Refer to Chapters 5 and 6 of the AEE.	√
2. <i>The handling occurs indoors, or where the handling occurs outdoors the rate of handling does not exceed 100t per hour;</i>	The coal stockyard loads in rate is approximately 350 tonnes per hour of coal and load-out rate to vessels of appropriately 2,000 tonnes per hour and therefore condition 2 cannot be complied with.	X
4 <i>Where the handling occurs outdoors and the rate of handling exceeds 20t per hour, a dust management plan is prepared in accordance with Schedule 2 and implemented by the person responsible for the discharge into air;</i>	The coal stockyard currently operates under a dust management plan and an updated plan is attached in Appendix 3 of this application and so this is complied with.	√

<p>6. <i>The discharge does not occur within 200m of a sensitive activity, wāhi tapu, wāhi taonga or place of significance to Ngāi Tahu that is identified in an Iwi Management Plan;</i></p>	<p>The Air Plan defines a sensitive activity as follows:</p> <p><i>“means an activity undertaken in:</i></p> <ul style="list-style-type: none"> <i>a. the area within 20m of the façade of an occupied dwelling; or</i> <i>b. a residential area or zone as defined in a district plan; or</i> <i>c. a public amenity area, including those parts of any building and associated outdoor areas normally available for use by the general public, excluding any areas used for services or access areas; or</i> <i>d. a place, outside of the Coastal Marine Area, of public assembly for recreation, education, worship, culture or deliberation purposes.”</i> <p>The distance to the nearest dwelling is approximately 450m and so complies with clause 6. However, the Windy Point viewing platform off Sumner Road and also the multi-use tracks within Urumau Reserve would be considered a public amenity area and therefore are within 200m of the coal stockyard boundary.</p> <p>In addition, the adjoining harbour (Whakaraupō) is a place of significance to Ngāi Tahu. Whakaraupō is part of Te Tai o Mahaanui which was identified as a Coastal Statutory Acknowledgement area under the Ngāi Tahu Claims Settlement (Resource Management Consent Notification) Regulations 1999. Those regulations have now expired but Policy TAN1.1 in the Mahaanui Iwi Management Plan states that the Statutory Acknowledgements continue to be relevant and necessary to the effective participation of tāngata whenua in RMA 1991 processes.</p> <p>Therefore, the coal stockyard cannot comply with this aspect of the setback condition as it is within 200m of a place of significance to Ngāi Tahu and within 200m of the Windy Point viewing platform and public tracks within Urumau Reserve</p> 	<p>X</p>
---	--	----------

Table 8.1: Evaluation of the coal stockyard location and operation against the relevant conditions of Rule 7.35.

Rule 7.36: Discharge of contaminants into air from the outdoor storage of bulk solid materials		
Relevant Conditions	Assessment	Compliance
1 <i>The discharge of dust does not cause an offensive or objectionable effect beyond the boundary of the property of origin, when assessed in accordance with Schedule 2;</i>	Same assessment as for Rule 7.35	√
2. <i>The amount of material stored does not exceed 1000t when it has an average particle size of less than 3.5mm;</i>	The coal yard can store about 245,000 tonnes of coal although in recent years about 150,000 to 180,000 tonnes is stored in the yard at any one time. The average particle size varies but on average is likely to be less than 3.5mm.	X
4 <i>Where the storage exceeds 200t, a dust management plan is prepared in accordance with Schedule 2 and implemented by the person responsible for the discharge into air;</i>	Same assessment as for Rule 7.35	√
5. <i>The discharge does not occur within 200m of a sensitive activity, wāhi tapu, wāhi taonga or place of significance to Ngāi Tahu that is identified in an Iwi Management Plan</i>	Same assessment as for Rule 7.35	X

Table 8.2: Evaluation of the coal stockyard location and operation against the relevant conditions of Rule 7.36.

9.31 Given the application to continue to operate the coal stockyard cannot comply with some of these conditions then a resource consent is required. The Air Plan however does not classify an activity failing to meet the pre-conditions listed under these rules and as a

consequence the application would be classified as an innominate activity. Section 87B(1)(a) of the RMA provides that where a plan requires a resource consent to be obtained for an activity, but does not classify the activity as controlled, restricted discretionary, discretionary or non-complying, the application for resource consent should be treated as an application for a discretionary activity. Therefore, regardless of how the rules are interpreted, the application is classified as a **discretionary activity**.

Assessment of Objectives and Policies contained in the Relevant Statutory Documents

- 9.32 The following is a summary discussion of relevant objectives and policies contained in the statutory documents. The relevant objectives and policies of the Air Plan, which is the most relevant statutory document, are also provided for in **Table 8.3** at the end of this Chapter.
- 9.33 The NZ Coastal Policy Statement recognises that a sustainable national transport system requires an efficient national network of safe ports, servicing national and international shipping, with efficient connections with other transport modes.⁴ The policy states that regional policy statements and plans need to consider where, how and when to provide for the efficient and safe operation of these ports, the development of their capacity for shipping, and their connections with other transport modes.
- 9.34 The Regional Policy Statement lists Lyttelton Port as 'strategic infrastructure' and by definition strategic infrastructure is deemed to be regionally significant infrastructure (page 1244). The Regional Policy Statement provides for its efficient and effective development, operation, maintenance and upgrade regionally significant infrastructure located in coastal environment although such provision should avoid, remedy or mitigate the adverse effects on that environment.⁵
- 9.35 Likewise, the District Plan states that the social, economic, environmental and cultural benefits of infrastructure, including strategic infrastructure, are recognised and provided for, and its safe, efficient and effective development, upgrade, maintenance and operation is enabled.⁶

⁴ Policy 9

⁵ Policy 8.3.6

⁶ Strategic Objective 3.3.12

- 9.36 The Coastal Plan specifically recognises that Lyttelton Port is essential to the regional economy and that its continued operation is essential for the recovery of greater Christchurch. Finally, the Air Plan recognises the contribution of nationally and regionally significant infrastructure to people's social and economic wellbeing and provides for discharges associated with the development, operation, and maintenance of that infrastructure.⁷
- 9.37 The continued operation of the coal stockyard is consistent with the above objectives and policies that recognise and provide for the development, operation, and maintenance of port infrastructure.
- 9.38 There are also a large number of objectives and policies that are concerned with the recovery of Lyttelton Port after the 2010-2011 Canterbury earthquake sequence. While the continued operation of the coal stockyard could, in broad terms, be considered part of the on-going recovery the port, the policies are not examined further, suffice to say that recovery-related objectives and policies serve to highlight the strategic importance of the port by providing for the expedited recovery of Lyttelton Port, including its repair, rebuild and reconfiguration.⁸
- 9.39 Chapter 14 of the Regional Policy Statement addresses air quality. The Regional Policy Statement contains two objectives: the first addresses ambient air quality and the second addresses localised adverse effects. The Regional Policy Statement describes ambient air quality as the "quality of the surrounding air" which is "measured as an average level over a specified period, or periods, within an identified geographic region." Of particular interest is the cumulative effects of PM₁₀ and PM_{2.5} over a geographic area.⁹
- 9.40 The Regional Policy Statement describes localised adverse effects as those effects that occur in the vicinity of the discharge and are attributable to the discharge. Unless appropriately managed localised adverse effects can affect human health, well-being or cause significant nuisance.¹⁰
- 9.41 The objectives and policies, in essence, seek to improve ambient air quality in polluted airsheds and maintain ambient air quality elsewhere and to avoid significant localised

⁷ Policy 6.14

⁸ Eg. Policy 8.3.6 of the RPS, Objective 10.1 and Policy 10.1.1 of the Coastal Plan and Objective 13.8.2.1 of the District Plan

⁹ Explanation to Issue 14.1.1

¹⁰ Explanation to Issue 14.1.2

adverse effects on air quality.¹¹ The policies also recognise that existing activities, such as the coal stockyard, adopt the best practicable option ('BPO') particularly where reverse sensitivity is an issue.¹²

9.42 The above principles flow into the Air Plan: that is improve ambient air quality in polluted airsheds and otherwise to maintain ambient air that is considered to be of an acceptable quality.¹³ Otherwise, applications for a consent need to address the localised effects from a discharge;¹⁴ and, in this respect, the discharge of coal dust from the coal stockyard needs to:

- a. Avoid diverse effects on human health and well-being;¹⁵
- b. Avoid adverse effects on the mauri and life supporting capacity of ecosystems, plants or animals;¹⁶
- c. Manage the adverse effects of the discharge on places of significance to Ngāi Tahu;¹⁷
- d. Avoid significant soiling of structures or property¹⁸ and otherwise maintain amenity values generally;¹⁹
- e. Avoid offensive and objectionable effects;²⁰ and
- f. Apply the best practicable option.²¹

9.43 The above matters are specifically addressed in **Chapter 5** of the AEE and the application of the best practicable option to prevent or minimise the effects of coal dust are described in **Chapter 6** of the AEE and reflected in the proposed conditions contained in **Appendix 4**. They are discussed in order.

9.44 Before this discussion, the issue of the coal stock yard and the potential for reverse sensitivity is first addressed. Policy 6.10 states that if the sensitivity of the receiving environment is altered by authorised land use change so that an existing discharge results in significant adverse effects on the receiving environment, require the effects of that

¹¹ Objectives 14.2.1 and 14.2.2 and Policies 14.3.1 and 14.3.3

¹² Policy 14.3.5 (2).

¹³ Objective 5.4 and Policies 6.3 to 6.6

¹⁴ Policy 6.25 (b)

¹⁵ Policy 6.1 (a)

¹⁶ Policy 6.1 (b)

¹⁷ Policy 6.2

¹⁸ Policy 6.1 (c) and (d)

¹⁹ Objective 5.6

²⁰ Policy 6.8

²¹ Policies 6.13 and 6.22.

discharge to be reduced and provide a reasonable timeframe for achieving that reduction. This policy does not apply. Future housing cannot reasonably encroach the coal stockyard due to the position of the Residential Banks Peninsula Zone boundary in the District Plan and the zone boundary cannot realistically change due to terrain constraints and because of Urumau Reserve which is zoned Open Space. Furthermore, there is little opportunity for intensification within the existing zone because of section sizes, terrain constraints and the rules in the District Plan.

- 9.45 There are walking and cycling tracks in Urumau Reserve. The definition of the “sensitive activity” under the Air Plan includes a place, outside of the Coastal Marine Area, of public assembly for recreation, education, worship, culture or deliberation purposes. Therefore, the recreational activities carried out within the reserve Urumau are considered a sensitive activity as would be the viewing platform at Windy Point. However, the air quality assessment as discussed in **Chapter 5** considers the effects on these recreational activities to be negligible because the activities are transient.

Ambient Air

- 9.46 Turning first to the ambient air objectives and policies of the Air Plan (refer **Table 8.3**). The Lyttelton Port is located outside the Gazetted Airshed for Christchurch City and the Christchurch City Clean Air Zone. The air quality assessment has determined that the discharge of coal is well under the relevant guidelines and would not impact on ambient air.

Human Health

- 9.47 With respect to human health aspects of the Air Plan (refer **Table 8.3**), the air quality assessment has concluded that there are no discernible effects on human health from the discharge of PM₁₀ or PM_{2.5} coal dust particles and therefore the proposed discharge would achieve Policy 6.1(a).

Ecosystems, Plants and Animals

- 9.48 Policy 6.1(b) of the Air Plan is concerned to ensure that there no adverse effects on the mauri and life supporting capacity of ecosystems, plants or animals. This is taken to mean that the discharge should not be of a nature that destroys habitat to an extent that it cannot support the

“life force” or life-supporting capacity of biota generally. The terrestrial and marine ecology assessments contained in **Appendices 7 to 9** conclude that the potential effects of coal dust on marine and terrestrial ecology generally is assessed as being low to very low and therefore would not cause adverse effects on the mauri and life supporting capacity of ecosystems, plants or animals.

- 9.49 The NZ Coastal Policy Statement, Regional Policy Statement, Coastal Plan, and the District Plan also contain policies relating to managing biodiversity that in broad terms seek to:
- a. Avoid adverse effects on threatened or at risk species;²²
 - b. Protect significant indigenous vegetation or significant habitats of indigenous fauna;²³
 - c. Control activities and development to avoid significant adverse effects on areas of significant natural value and areas of high natural, physical, heritage or cultural value;²⁴ and
 - d. Avoid significant adverse effects on coastal process and ecosystems generally and also indigenous vegetation generally (and otherwise to remedy or mitigate effects).²⁵
- 9.50 **Chapter 5** of the AEE and the associated marine and terrestrial assessments again conclude that there will be no adverse effects on threatened or at risk species from the discharge of coal dust, and the discharges of coal dust pose no significant adverse effects on the marine and terrestrial ecosystems generally.

Cultural matters

- 9.51 Policy 6.2 of Air Plan is relevant because Lyttelton Harbour lies within the Statutory Acknowledgement Area for Te Tai o Mahaanui (Banks Peninsula and Selwyn) identified under the Ngāi Tahu Claims Settlement Act 1998.
- 9.52 The Crown has acknowledged the statements by Te Rūnanga o Ngāi Tahu of the particular cultural, historic, spiritual and traditional association with Te Tai o Mahaanui.

²² i.e. Policy 11(a) of the NZ Coastal Policy Statement.

²³ i.e. Policy 9.3.1 and Policy 8.3.3 of the Regional Policy Statement although the latter states there may be situations where it is impracticable to avoid effects; and Policy 9.1.2.2.6 of the District Plan (using a hierarchy of protection, including offsetting).

²⁴ Policy 6.1 of the Coastal Plan but noting the coastal plan has not identified on the planning maps any areas of significant natural value or areas high natural, physical, heritage or cultural value in the vicinity of the coal stockyard.

²⁵ i.e. Policy 6.1 of the Coastal Plan, Policy 11 (b) of the NZ Coastal Policy and Policy 9.1.2.2.6 of the District Plan

When considering resource consent applications, section 95E(2)(c) of the RMA requires consent authorities to have regard to the statutory acknowledgements when forming a view on whether Mana Whenua are an affected person.

- 9.53 Te Tai o Mahaanui covers the coastal marine area around Banks Peninsula and down to, and just past, the mouth of the Rakaia River. As described in **Chapter 4**, much of Whakaraupō/Lyttelton Harbour is identified as a Mataitai area. Therefore, Te Hapū o Ngāti Wheke and Te Rūnanga o Ngāi Tahu are affected by the application.
- 9.54 In addition to the Air Plan, there are a range of other policies contained in the other statutory documents that address cultural matters. Objective 3 and Policy 2 of the NZ Coastal Policy Statement also recognises and seeks to protect characteristics of the coastal environment that are of special value to tangata whenua.
- 9.55 Table 3 of Schedule 9.5.6.4 in the District Plan also identifies the coastal waters within Whakaraupō/Lyttelton Harbour as Ngā Wai (ID 96) i.e. these waters form part of Te Tai o Mahaanui as described above. Objective 9.5.2.1.3 in the District Plan recognises the cultural significance of Te Tai o Mahaanui and seeks to enable Ngāi Tahu to exercise kaitiakitanga and undertake customary uses in accordance with tikanga within the coastal environment. The policies are however concerned with landuse activities.
- 9.56 The coastal environment chapter of the Regional Policy Statement states adverse effects should be avoided on coastal areas of cultural significance to Ngāi Tahu as tangata whenua, but where this is not practicable to remedy or mitigate adverse effects within the coastal environment.²⁶ In this context, the Regional Policy Statement that, depending on the case, a cultural impact assessment or cultural value assessment may be needed as part of an assessment of environmental effects prepared under the Schedule 4 of the RMA. The Coastal Plan seeks to protect areas of high cultural value.²⁷ Although the subject area is not identified as a specific area of high cultural value in Schedule 2 of the Coastal Plan, from a cultural perspective Whakaraupō is a highly sensitive environment to Te Hapū o Ngāti Wheke. The engagement process and agreement between Te Hapū o Ngāti Wheke and LPC is described further in **Chapter**

²⁶ Policy 8.3.3

²⁷ Policy 6.1.

8 and detailed in **Appendix 10**.

Soiling of Structures and Property

- 9.57 Some properties above Sumner Road and centred at the eastern end of Randolph, Reserve and Gilmore Terraces have experienced soiling in the past, although has been less of an issue in recent years due to the reduced throughput of coal. The additional response measures to reduce coal dust emissions as well as the introduction of additional mitigation measure beyond an annual throughput of 1.75 millions tonnes means no significant soiling should occur at these properties into the future. Further, the proposed condition that caps the throughput at 2 million tonnes per annum means those peak volumes experienced a decade ago will not occur. For these reasons Policy 6.1(d) of the Air Plan would be achieved. Proposed condition 5 (refer **Appendix 4**) which states there shall be no offensive or objectionable effects of coal dust beyond the boundary of LPC is consistent with Policy 6.8 of the Air Plan.

Best Practicable Option

- 9.58 The BPO is an examination of the best method for preventing or minimising adverse effects on the environment having regard, among other things, to—
- a. the nature of the discharge or emission and the sensitivity of the receiving environment to adverse effects; and
 - b. the financial implications, and the effects on the environment, of that option when compared with other options; and
 - c. the current state of technical knowledge and the likelihood that the option can be successfully applied.
- 9.59 The BPO is the optimum combination of methods (a)-(c) to prevent or minimise adverse effects to the greatest extent practicable. With respect to this application, the effects on the environment are well known and the use water as the method to prevent or minimise adverse effects continues to be the best practicable option.
- 9.60 The BPO for this application is being achieved by a three-pronged approach through:

- a. The introduction of better response and dust management mechanisms being put in place that should further reduce the potential for fugitive emissions;
 - b. The introduction of additional mitigation measures should the annual throughput exceed the 1.75 million tonnes; and
 - c. The introduction of a cap on annual throughput and continued limits on depositional dust as measured by a network of monitoring gauges.
- 9.61 The above approach is reflected in the proposed conditions attached in **Appendix 4** and further detailed in the draft dust management plan attached in **Appendix 3**.
- 9.62 To conclude, the policies discussed above do not preclude the grant of this replacement consent provided appropriate conditions are imposed on the consent (such as those set out in **Appendix 4**).

Assessment of any other matter the consent authority considers relevant and reasonably necessary to determine the application under Section 104(1)(c) of the RMA

- 9.63 The Mahaanui Iwi Management Plan (MIMP) was released February 2013. The MIMP reflects the collective efforts of six Papatipu Rūnanga that represent the hapū who hold manawhenua rights over lands and waters within the takiwā from the Hurunui River to the Hakatere River and inland to Kā Tiritiri o Te Moana (page 17). This relevantly includes the takiwā of Te Hapū o Ngāti Wheke (Rāpaki).
- 9.64 Part 3 of the MIMP (Wāhi Tuatoru) also provides a brief introduction to the marae, history and takiwā of each of the six Rūnanga. The relevant issues, objectives and policies are discussed in Chapter 4 of the MIMP.
- 9.65 The first Ngā Paetae objective for Rāpaki is the restoration of the cultural health of Whakaraupō, including elimination of wastewater discharges, reducing sedimentation and achieving a water quality standard consistent with the Harbour as mahinga kai. There are also policies on the relationship between Rāpaki and LPC. Policy WH2.4 (page 253) states the following:

“WH2.4 To require that LPC recognise and provide for the relationship of Ngāi Tahu to Whakaraupō, and aspirations to manage the harbour as mahinga kai, by:

- (a) *Ensuring that port activities avoid contributing to pollution in the outer harbour;*
- (b) *Ensuring that port activities at all times seek to avoid or minimise pollution in the inner harbour; and*
- (c) *Providing appropriate mitigation and/or compensation where cultural and environmental effects cannot be avoided, including but not limited to:*
 - (i) *Funds for restoration projects.”*

9.66 Section 5.2 of the MIMP also addresses discharges to air. Air is viewed as a taonga derived from Ranginui (the Sky Father) and Objective (1) and Policy R1.1 seek to protect the mauri of air from adverse effects related to the discharge of contaminants to air. Policy R1.2 requires the regional council to recognise and provide for the relationship of Ngāi Tahu with air, and the specific cultural considerations for air quality, including the effects of discharge to air activities on sites and resources of significance to tāngata whenua and the protection of cultural amenity values. In this respect, the Air Plan rules incorporate setbacks from sites or resources of significance to tāngata whenua; and, as described earlier, Whakaraupō/Lyttelton Harbour is a site or resource of significance to Te Hapū o Ngāti Wheke (Rāpaki).

9.67 As noted earlier, the engagement process and agreement between Te Hapū o Ngāti Wheke and LPC is described further in **Chapter 8** and detailed in **Appendix 10**.

Assessment of Part 2 of the RMA

9.68 Lyttelton Port is the major gateway for importers and exporters in the Canterbury Region and is by far the most significant port in the South Island in terms of total tonnages of cargo and containers, the value of exports and the value of imports. It is identified as Regionally Significant Infrastructure in the Policy Statement and Air Plan.

9.69 The proposal would enable businesses to provide for their economic and social wellbeing under Section 5(2) of the RMA as described in the economic assessment attached in **Appendix 5**. The use of the existing coal stockyard means that the existing infrastructure developed for this activity, including the rail connection, constitutes an efficient use of resources (Section 7(b) of the RMA). The economic impact of this consent being refused or made uneconomic due to unreasonable conditions would be significant, particularly for

the West Coast. As noted in the economic assessment, without coal using Midland Railway line the economics of keeping the west coast line could be called into question.

- 9.70 In terms of Section 5(2)(b) and (c) of the RMA, the investigation work expects that the life supporting capacity of the marine ecosystems will be safeguarded and any actual or potential effects otherwise will appropriately avoided, remedied or mitigated, as reflected in the proposed conditions of consent and the associated dust management plan.
- 9.71 The coal stockyard is located in the takiwā (traditional territory) of Te Hapū o Ngāti Wheke (Rāpaki). As noted earlier the adjoining coastal marine area, known as Te Tai o Mahaanui, is identified in the Ngāi Tahu Claims Settlement Act 1998 as a Statutory Acknowledgement site, reflecting the particular cultural, spiritual, historical and traditional associations of Ngāi Tahu to this area and established Mātaihai. Therefore sections 6(e) and 7(a) and (b) are relevant to replacement consent and have been addressed as described previously.
- 9.72 Section 6(c) is relevant because the proposal area is part of wider habitat used by Hector's Dolphin and a number of marine avifauna classified as threatened nationally vulnerable. There is also the potential for lizards and possibly some individual plant species that are considered to be threatened within the vicinity of the coal stockyard. The assessment work concludes that there are unlikely to be any effects on such species.
- 9.73 With respect to Section 6(a), previous work has concluded that coastal area around the Port exhibits low natural character and given the potential for ecological effects are considered to be low or very low then the coal dust would not alter the natural character of area.
- 9.74 With respect to Section 7(c), the proposed mitigation measures should see dust emissions further reduced which will maintain amenity values; and, in the event that annual throughputs increase, additional mitigation is to be implemented.
- 9.75 In terms of Section 7(d), the intrinsic values of ecosystems of the marine and terrestrial ecosystems are not expected to diminish as a result of the replacement consent and with respect to Section 7(f), there is no evidence to suggest that the quality of the environment is likely to deteriorate because of the coal dust.

Regard to the Value of the Existing Investment under Section 104 (2A) of the RMA

- 9.76 The value to LPC of its investment in its coal stockyard can be considered in terms of either LPC's investment in the coal stockyard facilities (\$109.0 million) or the foregone future earnings of the coal stockyard if it was forced to close (\$1.6 million per annum) on the basis of the forecast financial returns in the year ending 30 June, 2021. The economic assessment observes that the value of investment to applicant is significant by both of these measures and is therefore a relevant matter when determining the application.

Table 8.3: Relevant Objectives and Policies of the Air Plan

Objectives 5.1-5.3	Evaluation
<p><i>5.1 Air quality protects the mauri and life supporting capacity of the environment.</i></p> <p><i>5.2 Ambient air quality provides for the health and wellbeing of the people of Canterbury.</i></p> <p><i>5.4 Degraded ambient air quality is improved over time and where ambient air quality is acceptable it is maintained.</i></p>	<p>Objectives 5.1, 5.2 and 5.4 of the Air Plan are relevant to this application insofar as they broadly address the desired state for air quality in the region.</p> <p>The discharges to air from the coal stockyard are consistent with these objectives as the discharges are assessed as having only minor effects on air quality with appropriate mitigation measures in place. Consequently, there should be no impact on the mauri and life supporting capacity of the environment or on the health and wellbeing of the people of Canterbury.</p> <p>Air quality in Lyttelton is assessed as being acceptable and will be maintained, noting that measured air quality is discussed in Chapter 5. Lyttelton is not a designated Clean Air Zone.</p>
Objectives 5.5	Evaluation
<p><i>5.5 Air quality is managed in a way that provides for the cultural values and traditions of Ngāi Tahu.</i></p>	<p>LPC has engaged with Te Hapū o Ngāti Wheke (Rāpaki) during the preparation of this resource consent application. As discussed in Chapter 8, the tangata whenua are satisfied that its issues have been addressed sufficiently as discussed in the letter attached in Appendix 10.</p>
Objective 5.8	Evaluation
<p><i>5.8 Discharges from existing activities are managed in response to evolving characteristics of the receiving environment.</i></p>	<p>Objective 5.8 recognises that there may be situations where an existing discharge needs to improve because of changes in the nature of the receiving environment (i.e. development of sensitive receptors and increased potential for reverse sensitivity effects). There have been no relevant changes in the receiving environment in the vicinity of the generators, given the constraints of the terrain, and could only be little if any further residential housing in the vicinity of the coal stockyard.</p>
Objective 5.9	Evaluation
<p><i>5.9 Offensive and objectionable effects and noxious or dangerous effects on the environment are generally avoided.</i></p>	<p>The limits set out in the proposed conditions attached in Appendix 4 and the existing and proposed mitigation measures are designed to achieve those limits and this objective.</p>
Policies	Evaluation
<p>6.1. Discharges of contaminants into air, either individually or in combination with other discharges, do not cause:</p> <ul style="list-style-type: none"> a. Adverse effects on human health and wellbeing; or b. Adverse effects on the mauri or life supporting capacity of ecosystems, plants or animals c. Significantly diminished visibility; or d. Corrosion or significant soiling of structures or property. 	<p>This policy is central to this application and is discussed in this chapter of the AEE. The assessment of effects describes how the discharges from the coal stockyard are expected to have insignificant effects on air quality, including in combination and with other discharges, and would not adversely affect human health or mauri of ecosystems and constituent species, nor does the coal dust diminish visibility.</p> <p>The discharges of coal dust can soil houses and associated structures which has been an issue in the past but less so in recent years. The existing and proposed mitigation measures set out in the conditions have been introduced to avoid the potential for significant soiling in the future.</p>

6.6. Maintain ambient air quality in locations where the quality is acceptable when assessed against an ambient air quality standard set in a national ambient air quality standard or guideline.	The air quality assessment concludes that the discharge of coal dust will not diminish ambient air quality and otherwise meet the relevant guidelines.
6.8 Offensive and objectionable effects are unacceptable and actively managed by plan provisions and the implementation of management plans.	The proposed mitigation measures should result in improved management of coal dust and additional mitigation measures have been factored in the event that annual throughput increases as a means to avoid offensive and objectionable effects for nearby residents. Proposed condition 5 reflects the policy.
<p>6.13 Minimise the cumulative effects of discharges of contaminants into air by requiring:</p> <ul style="list-style-type: none"> a. permitted discharges to apply good environmental practices; and b. discharges allowed by a resource consent to apply the best practicable option. <p>6.22 Applications for resource consent for discharges of contaminants into air from <i>large scale fuel burning devices</i> and industrial or trade activities shall identify the best practicable option to be adopted to minimise effects</p>	The best practicable option has been applied to minimise effects as discussed in this chapter.
6.26 When considering applications for resource consent for the discharge of contaminants into air from large scale fuel burning devices or from industrial, trade or commercial activities, the CRC will consider the combined effect of all consented discharges into air occurring on the property.	The assessment of effects has assessed the combined effects of all discharges from the port and the conclusion is that will be acceptable given the existing mitigation measures used at the coal stockyard and proposed additional measures to be used.