5 STATUTORY PLANNING

5.1 Local Matters

5.1.1 Botany Local Environmental Plan 1995

Botany Local Environmental Plan 1995 (Botany LEP 1995) is the principal local environmental planning instrument applying to the Site.

The objectives of Botany LEP 1995 related to industry are:

‘(a) to restrict industrial uses to defined zoned areas,

(b) to encourage new developments with a high standard of design and form that are compatible with adjoining developments, whilst ensuring a high level of environmental amenity,

(c) to minimise the adverse environmental effects of industries,

(d) to restrict the development and expansion of hazardous and offensive industries,

(e) to improve the environmental quality of the local government area of Botany by minimising disturbances caused by any form or type of pollutant,

(f) to ensure that industries conform to strict hazard minimisation and environmental guidelines, and

(g) to ensure adequate buffers between industries and other land uses, particularly residential, are provided.’

Once completed, the proposed remediation works are intended to allow the CPWE area to be suitable for productive industrial use, a form that is compatible with surrounding land uses within the BIP. This is not possible under current conditions. As the proposal involves the remediation of existing contamination, the proposed works will result in overall improvements to the environmental quality and amenity of the Botany LGA.

As the Site is located within an industrial park, the surrounding land use is largely of an industrial nature. The construction of the ESB and FSB will screen a large portion of the proposal as excavation and material pre-treatment works will take place within these buildings. The FSB, treated material stockpiles (when developed), existing vegetation and Site topography will also screen the DTD Plant. A sporting oval – Hensley Athletics Field, exists to the east of the site with residential development some 150 m further east. Given the industrial nature of the CPWE and the surrounding BIP and the separation of the remediation works from sensitive land uses such as residential development, the overall impacts of the proposal upon amenity are considered to be manageable.

The proposed remediation works are therefore considered to be consistent with the objectives of Botany LEP 1995.

Zoning

Under the provisions of Botany LEP 1995, the Site is zoned ‘4(a) Industrial’. The primary objective of the 4(a) Industrial zone is:

‘…to ensure that development for industrial purposes is carried out in a manner which contributes to the economic and employment growth of the area and, in so

doing, improves amenity and does not affect adversely the environment or give rise to unacceptable levels of risk in the area.'

The proposed works will result in the remediation of existing contamination at the CPWE with resultant benefits for the environment and improvements in amenity, both at the CPWE, the broader Site and the surrounding area. The remediation of the CPWE will also allow for the return of the land to productive industrial use, in line with the objective of the 4(a) Industrial zone and in keeping with surrounding development within the BIP. The potential risks associated with the proposed remediation works have been assessed in this EA and found to be manageable. Further, the proposal will generate employment throughout the duration of the remediation works, as well as in the longer term through the return of the CPWE to productive industrial use, thus contributing to the economic and employment growth of the area. The proposed remediation works are therefore considered to be in accordance with the primary objective of the 4(a) Industrial zone.

The secondary objectives of the 4(a) Industrial zone are:

'(a) to encourage development which does not affect adversely the efficient operation of the local and regional road system,

(b) to improve the environmental quality of the local government area by ensuring that industries conform to strict environmental and hazard reduction guidelines,

(c) to provide for retail and non-residential development which provides direct services to the industrial activities and their workforce, and

(d) to encourage energy efficiency and energy conservation in all forms of development permissible within the zone.'

Traffic generated as a result of the proposal will be temporary and mainly internal to the Site. Accordingly, there will be no significant impact upon the local or regional road system. The technology to be utilised for the proposed remediation works has been designed to minimise hazard and risk and the operation of the plant will be subject to a range of management and mitigation measures to ensure that the environment is protected for the duration of the remediation works. The remediation of the contaminants that currently exist in the CPWE area will inherently reduce hazard and risk to the environment, in line with the objectives of the zone. Further, all reasonable measures will be implemented in the carrying out the project to maximise energy efficiency and conservation.

Permissibility

Clause 10 of Botany LEP 1995 details what form of development may and may not be carried out within each zone. Within the 4(a) Industrial zone a range of development may be carried out with the consent of City of Botany Bay Council (CoBB) including bulk stores, bus depots, container terminals, light industries, industries and road transport terminals. Other development (other than exempt development) not listed as permissible with consent is prohibited in the 4(a) Industrial zone.

The proposed project, involving remediation works, is not defined under Botany LEP 1995. As it is not listed as permissible with consent in the 4(a) zone, it is deemed to be prohibited development.

However, clause 8(1) of SEPP 55 states that:

'A person may carry out a remediation work in accordance with this Policy, despite any provision to the contrary in an environmental planning instrument, except as provided by clause 19 (3).'

Clause 19(3) of SEPP 55 states that:

> *'If a provision of another State environmental planning policy or of a regional environmental plan, whether made before or after this Policy, requires development consent for a remediation work, a provision of this Policy that permits the carrying out of the work without development consent does not prevail over that provision.'*

Clause 19(3) is not relevant to the proposal, and therefore the proposed remediation works are permissible in accordance with Clause 8(1) of SEPP 55.

Special Provisions

Part 3 of Botany LEP 1995 contains special provisions to be considered in relation to development proposals.

Clause 13A

Clause 13A of Botany LEP 1995 relates to noise and vibration and states that:

> *'The Council must not consent to any proposed development that, in the opinion of the Council, is likely to be adversely impacted upon by road, rail, port or air traffic or other source of noise or vibration unless it is satisfied that the development:*
>
> *(a) incorporates noise or vibration minimisation measures for the noise or vibration concerned (such as appropriate dwelling layout and construction), and*
>
> *(b) takes into account relevant Australian Standards and Environmental Protection Authority criteria relating to noise or vibration.'*

The proposed project involves remediation work which is not a noise sensitive land use. The proposed remediation works will generate noise and these impacts have been assessed as discussed in **Section 8.2** of this EA.

Future development on the CPWE area, following remediation, will be subject to a separate assessment and approvals process.

Given the nature of the proposed project, the potential noise and vibration impacts from nearby roads will not have a significant adverse impact upon the proposal.

Clause 17

Clause 17 sets out provisions for development in industrial zones that must be considered before development consent is granted. Pursuant to this clause, the Council must be satisfied that:

> *'(a) the development provides adequate off-street parking,'*

Off-street parking will not be required as adequate parking will be available within the BIP. More information is provided below.

> *'(b) the development provides an efficient and safe system for the manoeuvring, loading and unloading of vehicles,'*

The proposed remediation works will require the movement of heavy vehicles within the BIP to transport excavated soil from the ESB to the FSB. Internal haul roads will be used for this activity and these will be designed to allow for heavy vehicle access and adequate loading, unloading and manoeuvring areas within the BIP. Given the industrial nature of the BIP, the existing internal road system and surrounding road network have been designed to accommodate heavy vehicles and also provide for efficient and safe manoeuvring, loading and unloading facilities capable of accommodating the proposal during both the construction and operation stages.

> *'(c) the operations of the development will not have an adverse impact on the functions of the surrounding road network,'*

Traffic movements in relation to the proposal are expected to be minimal and generally limited to the BIP. Traffic movements external to the Site, as a result of the proposal, on roads such as Denison Street and Wentworth Avenue are expected to be less than 1 percent of existing traffic flows along these roads. The works are temporary and not anticipated to result in a significant adverse impact. Further discussion of traffic impacts is provided in **Section 8.5** of this EA.

> *'(d) any goods, plant, equipment and other material resulting from the operations of the development will be stored within a building or wholly within the site and screened suitably from public view,'*

The proposal will involve the construction of the ESB and the FSB which will accommodate much of the equipment to be used for the remediation works. The DTD Plant will not be enclosed within a building. However, Site topography, treated soil stockpiles (when developed), the FSB and existing vegetation, particularly along Corish Circle and Denison Street will provide some screening of the Plant and associated equipment to nearby public spaces.

> *(e) there is sufficient area on-site for the storage and parking of vehicles associated with the operations of the development,*

The Site is currently vacant. During remediation works, parking will be available in the BIP contractors' car park located between Gates 3 and 4 and adjacent to the ESB, in the Olefines facility car park. These areas currently provide approximately 300 parking spaces, which is considered to be more than adequate for the 40 to 45 workers expected on site at any time. The proposed Site layout also allows for sufficient space for the storage of plant (such as a front end loader, etc) associated with the remediation works.

Once the proposed remediation works are completed, the CPWE site may be redeveloped. However, this would be subject to a separate assessment and approvals process.

As the CPWE is not currently used for car parking, the remediation and future reuse of the site will not diminish the availability of car parking within the BIP.

> *'(f) landscaping will be provided that is integral to the design and function of the building and the site to improve the appearance of the development, enhance the streetscape and add to the amenity of the adjoining area,'*

Soil will be initially stockpiled in the STA, to the south and west of the DTD Plant and FSB, in order to create visual and acoustic screening. Further, the reinstatement of the CPWE site will, at completion, include a landscaped mound along the boundary with Corish Circle in order to screen the CPWE area from nearby residential and recreational areas.

> *'(g) the development is of a height, scale and design that is sympathetic to adjoining land uses and built form,'*

The proposed remediation works will involve the construction of a number of temporary structures including the ESB and associated ECS with stack, the FSB and associated ECS with stack and the DTD Plant and associated ECS stack. The tallest structures on the Site are the three stacks, at 30 m above ground. Whilst these structures will be visible from certain surrounding areas, given the industrial nature of the BIP, they are unlikely to be visually intrusive and would integrate into the surrounding industrial landscape. Further, as the structures are temporary and will be dismantled and removed upon completion of works, any visual impact will be limited to the duration of the works.

'(h) the building design and finishes are sympathetic and complementary to the built form, the streetscape and the public domain in the vicinity,'

The proposed structures on the Site are temporary and will be removed upon completion of remediation works. The structures required for the remediation works will integrate with the surrounding industrial development and screening will be provided in the form of earth mounds to minimise visual impact upon surrounding public spaces and residential development.

Once the proposed remediation works are completed, the CPWE site may be redeveloped. However, this would be subject to a separate assessment and approvals process.

'(i) the design and operation of the development will protect the visual and aural amenity of adjoining non-industrial uses,'

The potential impacts of the proposal on the visual and aural amenity of adjoining non-industrial uses are discussed in detail in **Sections 8.2** and **8.3** of this EA. Given the temporary nature of the proposal, the location of the CPWE within an established industrial park and the distance of the Site to the nearest residential development, together with the implementation of the mitigation measures identified in this EA, the proposal is not expected to have a significant adverse impact on the visual and aural amenity of surrounding non-industrial uses.

'(j) any noise generated from the operation of the development is minimised,'

All feasible measures have been taken in designing the layout of the Site to minimise noise generated by the remediation works. Noise is discussed in detail in **Section 8.2** of this EA. It is concluded that, with the implementation of mitigation measures, the proposed remediation works will remain compliant with existing noise limits set for the BIP under Orica's existing EPL (No. 2148).

'(k) any risk to human health, property or the natural environment arising from the operation of the development is minimised, and'

A Preliminary Hazard Analysis (PHA) and Human Health Impact Assessment (HHIA) were undertaken as part of this EA and are detailed in **Sections 8.8** and **8.9**. These reports concluded that, with appropriate mitigation and management measures, the proposal does not pose a significant risk to human health, property or the natural environment. The proposal will provide benefits to the surrounding environment through the remediation of existing contamination thereby reducing the potential for migration of contaminants to surrounding areas. The proposal will therefore ultimately result in a net benefit in this respect.

'(l) the provisions of State Environmental Planning Policy No 55—Remediation of Land will be complied with in relation to the land.'

The provisions of SEPP 55 are considered in detail in relation to this proposal in **Section 5.3.3** of this EA. The proposed remediation works will be undertaken in accordance with the requirements of SEPP 55.

Clause 22

Clause 22 requires Council to consider the greenhouse effect, global warming, air and water pollution and energy efficiency in relation to projects in excess of $250,000 in value. The proposal has a value of more than $250,000 and therefore this clause is applicable.

Clause 22 states that:

'The Council, before granting consent to any development that the Council is satisfied is in excess of $250,000 in value (excluding land costs) or is the type to give rise to significant soil, air, or water pollution, is to have regard to a study or studies addressing the following matters:

(a) in relation to global warming:

(i) possible measures which could be incorporated within the development to reduce the consumption of non-renewable forms of energy and the production of greenhouse gases which contribute to the greenhouse effect,

(ii) whether any measures incorporated in the development designed to improve energy efficiency, to reduce the emission of greenhouse gases, or to respond to global warming are considered appropriate and adequate, and

(iii) measures that have been taken to alleviate any possible adverse effects on the development as a result of climate change due to the greenhouse effect,'

The proposal is for remediation works which will involve the excavation and treatment of contaminated soil at the CPWE site. The proposed works are temporary and will take place over a period of approximately 18 months. The proposal will not result in a significant direct contribution to global warming, however as plant and equipment on the Site will require the use of fossil fuels, an indirect contribution is inevitable. All practicable measures have been taken to ensure that the plant and equipment required for the proposed works will operate as efficiently as possible in order to minimise these indirect impacts. Given the temporary nature of the proposal and the overall environmental benefits of remediating existing contamination on the CPWE site these indirect impacts are considered to be acceptable. See **Section 11.3** of the EA for further details.

'(b) in relation to air pollution:

(i) the expected composition and quantity of all gaseous emissions or liquid discharges (apart from uncontaminated stormwater run-off) from the proposed development which possibly may be emitted from any part of the premises or any plant or equipment present on the premises and, in the case of liquid discharges or contaminated stormwater run-off, the expected frequency, composition and quantity of any discharges to the stormwater system,

(ii) the anticipated future air emissions or liquid discharges (apart from uncontaminated stormwater run-off) from the proposed development, including all premises, plant or equipment involved and, in the case of liquid discharges or contaminated stormwater run-off, the expected frequency, composition and quantity of any discharges to the stormwater system,

(iii) the details of all pollution control equipment to be used as a result of the development,

(iv) the details of the all measures to be used to ameliorate or control gaseous emissions, and

(v) calculation of the cumulative ground level concentrations of air pollutants released from the proposed development,'

Appendix E to this report comprises an air quality assessment undertaken in respect of the proposal, detailing the expected composition and quantity of gaseous emissions resulting from the proposal, the details of pollution control equipment to be used as well as measures to ameliorate these emissions and an assessment of the cumulative impact of the proposal in terms of air quality in the local area. These results are summarised in **Section 8.1** of this EA.

'(c) in relation to energy efficiency and energy conservation:

(i) details of the total energy requirements of the development, and

> *(ii) any measures which minimise energy requirements of the proposed development, including building design, construction methods, materials, solar orientation, plant and equipment technology, space heating, cooling and lighting systems, and landscaping,'*

Given the nature of the proposal and the purpose and use of temporary structures only, building design, solar orientation and landscaping are not considered to be key issues for minimising energy requirements of the proposed project. Efforts will be made in the carrying out of the remediation works to maximise energy efficiency through the regular and effective maintenance of vehicles and plant and the conservative use of fuels and energy.

> *'(d) in relation to soil and groundwater contamination:*
>
> *(i) details of methods to be used to minimise the opportunities for polluting incidents to occur, and*
>
> *(ii) operating practices and technology to be employed to overcome the effect of such incidents,'*

Details of management and mitigation measures to be used on site for further prevention of soil and groundwater contamination are provided in **Sections 8.6 and 8.7** of this EA.

> *'(e) details of the facilities and programs to be provided within the development to promote waste minimisation and recycling practices.'*

The proposal comprises the remediation of contaminated material (sand, ash and peat) through excavation and treatment on site. The project will therefore produce treated soil which will be used for the reinstatement of the CPWE area upon completion of the works. Waste products encountered in the CPWE such as scrap metal, timber and other wastes will be recycled where possible or disposed to an appropriate waste facility following validation, and treatment as necessary.

Clause 28
Clause 28 deals with the excavation and filling of land.

Clause 28 states that:

> *'(1) The consent of the Council is required for the excavation or filling (exceeding 0.5m in depth) of any land, except for landscaping works or similar works of a minor nature.*
>
> *(2) When considering an application for consent required by subclause (1), the Council shall have particular regard to:*
>
> *(a) the likely disruption of, or detrimental effect on, existing drainage patterns and soil stability in their locality, and*
>
> *(b) the effect of the proposed works on the likely future use or redevelopment of the land.'*

The proposal involves the excavation of contaminated material from the CPWE area (within the lined cell and potentially the landscaping material surrounding the liner) to a depth of approximately 3 to 4 m below ground level. Measures will be taken to ensure that the proposed excavation does not disrupt soil stability in the locality and support measures (such as sheet piling) will be used where required to stabilise excavation works at site boundaries. The proposed excavation is not anticipated to encroach upon the groundwater table (as it is greater than 4 m below the base of the liner) and, as the CPWE site will be reinstated upon completion, will not significantly affect drainage patterns in the surrounding area.

The CPWE site will be backfilled and levelled upon completion of remediation works to allow for future reuse. Future redevelopment of the site would be subject to a separate assessment and approvals process.

Clause 30

Clause 30 relates to Tree Preservation Orders (TPO) and states that a TPO applies to the land to which Botany LEP 1995 applies, including the Site. The clearing of vegetation as a result of the proposal will be in accordance with the requirements of the TPO.

Clause 38

Clause 38 is concerned with water, wastewater and stormwater systems and states:

> *'The Council must not grant consent to the carrying out of development on land or subdivision of land to which this plan applies for any purpose unless it is satisfied that adequate provision has been made for the disposal of stormwater from the land it is proposed to develop.'*

The existing stormwater systems on the Site will be retained and supplemented with additional erosion and sediment control measures to ensure that sediment laden runoff does not leave the Site. A WTP will form part of the proposal and potentially contaminated water from the proposal will be directed to this facility for treatment. Details are provided in **Section 4** of this EA.

5.1.2 Development Control Plans

There are three Development Control Plans (DCPs) that are relevant to the proposed remediation works.

Development Control Plan No. 30 – Botany/Randwick Industrial Area Land Use Safety

The purpose of DCP No. 30 – Botany/Randwick Industrial Area is to:

> *'…ensure that the risks associated with the industrial activities are located in the Banksmeadow area and the transportation of dangerous goods (along routes identified by Planning NSW) are addressed in the planning and development assessment process.'*

The objectives of DCP No. 30 are:

> *'1. To ensure that hazard risks identified within the Botany / Randwick Industrial Area Land Use Safety Study are addressed within the development assessment process.*
>
> *2. To ensure the community is informed about cumulative risk associated with industrial activity and dangerous goods along routes identified by Planning NSW.*
>
> *3. To require special assessment of certain development in areas defined as 'No Residential Intensification', 'Consultation Region' or land adjacent to or within the vicinity of 'Dangerous Goods Routes' within the Botany / Randwick Industrial Area Land Use Safety Study.*
>
> *4. To provide a planning approach that can respond to different circumstances arising from changed operations within the Botany/Randwick industrial area.'*

The Site is located within the vicinity of Denison Street (located to the east of the Site), which is identified as a 'Dangerous Goods Route' and is within the Botany/Randwick Industrial area. Therefore DCP No. 30 is applicable to the proposal.

Section 7.2 of DCP No. 30 relates to development on sites adjacent to/or within the vicinity of routes defined as a Dangerous Goods Route and states that:

> *'Council before granting consent to development applications for 'residential intensification', 'sensitive use intensification', and development that will result in increased traffic volumes or access points onto the designated Dangerous Goods Routes must:-*
>
> - *consider a transport risk assessment report. The contents and outcomes of a transport risk assessment report are to be in general accordance with the principles outlined in the Hazardous Industry Advisory Paper Nº 6: Guidelines for Hazard Analysis (Planning NSW, 1992), Hazardous Industry Advisory Paper Nº 4: Risk Criteria for Land Use Safety Planning (Planning NSW, 1992) and draft Route Selection Guidelines (Planning NSW, 1995).*
> - *receive development concurrence for the application from Planning NSW in accordance with Clause 5.11 of Council's Notification of Development Applications - Development Control Plan No.24.'*

The DCP goes on to state that any other applications for development adjacent to/or within the vicinity of routes designated as Dangerous Goods Routes will be assessed under the relevant Council planning instruments and controls.

The primary access route to the Site will be via the main entry gate to BIP on Denison Street (Gate 3) and the secondary access route will be via the Wight Street gate located at the northern end of the BIP (refer to **Figure 8**). As the main access point for the Site will be via Denison Street, the Wight Street access will only be used where necessary.

Primary access routes to the CPWE would be:

- Inbound - along General Holmes Drive, then Foreshore Road, Beauchamp Road, and then Denison Street accessing the BIP through Gate 3; and
- Outbound – exit via Gate 3, along Denison Street, Wentworth Avenue, and then Southern Cross Drive.

Denison Street is identified as a designated Dangerous Goods Route, however the proposal will not result in additional access points on Denison Road, nor a significant increase in traffic along this road. Further, public roads will not be used for the transportation of soil from the CPWE. **Section 8.5** of this EA deals with traffic in detail and concludes that the proposal will not result in a significant increase in traffic on the local road network.

DCP No. 30 also states that development proposals within the Banksmeadow Industrial Precinct that will result in an increase in traffic on, or increase in access points onto, designated dangerous goods routes are to be considered against the provisions set out in Council's DCP No. 33 – Industrial Development. This is addressed below.

Development Control Plan No. 33 - Industrial Development

DCP No. 33 – Industrial Development applies to industrial development within a number of zones in the CoBB including the 4(a) Industrial zone. The main objectives of DCP 33 are:

> *'O1 To implement the objectives of the Botany Local Environmental Plan 1995.*
>
> *O2 To provide a document for the assessment of development applications for commercial and industrial developments.*

O3 To allow Council to guide the nature, scale and quality of development in the industrial areas.

O4 To improve the environmental and aesthetic amenity of industrial areas for those who visit and/or work in the areas.

O5 To encourage the development of cleaner, well-landscaped industrial zoned areas with well maintained industrial/commercial buildings and sites.

O6 To minimise the impact of industrial development on residential areas.

O7 To ensure that development incorporates safe, effective and convenient provision for servicing, parking, pedestrian and vehicular access and movements.

O8 To encourage energy efficiency and energy conservation in all forms of development.

O9 To ensure that the effects of development upon drainage, water quality and stormwater management are considered.

O10 To provide guidelines on the rehabilitation and control of use of known or possible contaminated sites.

O11 To promote the adoption of waste minimisation and recycling principles and practices in the planning and development of the local government area.

O12 To encourage ecologically sustainable development.'

The proposal involves the remediation of contaminated land in accordance with the requirements of Orica's EPL (No. 2148) applying to the CPWE. The proposed works will ultimately result in improvements to the environmental quality and the general amenity of the surrounding area through the remediation of existing contamination. Potential impacts to the environmental and aesthetic amenity of the area, specifically related to noise, air quality and visual impact will be temporary and can be effectively managed through the mitigation measures recommended by this EA such that the impacts upon surrounding land uses are maintained within acceptable limits.

The design and layout of the Site allows for sufficient on-site parking during works, as well as adequate loading, unloading and manoeuvring areas on-site for heavy vehicles which will be utilised on the Site. Efforts will be made during the carrying out of the works to ensure that energy efficiency is maximised and waste is minimised through reuse of materials wherever possible.

The proposed works have been planned and designed to minimise the potential for ground and surface water to be contaminated by mixing with contaminated materials. The proposal also incorporates a WTP where potentially contaminated water captured on the Site will be directed and treated. As such, the impacts of the proposal on water quality are expected to be minimal.

The CPWE will be backfilled and rehabilitated upon completion of the remediation works to allow for the future redevelopment of the land for an appropriate, productive use which would be subject to a separate assessment and approvals process.

The remediation of the CPWE area to a standard suitable for industrial purposes is considered to be consistent with the principles of ecologically sustainable development and the proposal is therefore considered to be in accordance with the objectives of DCP No. 33.

Design Quality Principles and Precinct Controls
Section 2.0 of DCP No. 33 relates to design quality principles and precinct controls. Those aspects relevant to the proposal are addressed in **Table 5-1** below.

Table 5-1: Relevant Principles and Controls – DCP 33

Principle/Control	Comment	Compliance
P1 The contribution of Industrial/Commercial land use activity at the Local, Regional and State levels.		
Development contributes to the employment levels within the Region/Local area.	Wherever possible, Orica will encourage the sourcing of local employment for the proposed works.	✓
P4 The efficient design, operation and function of industrial/commercial land uses.		
All Site operations and equipment associated with a development are to be contained wholly within the Site.	All operations and equipment used for the works will be contained within the Site.	✓
Building design and Site layout shall allow for an efficient and safe system for manoeuvring, loading and unloading, and parking of vehicles.	The layout of the Site includes internal haul roads, loading, unloading and manoeuvring areas designed specifically to accommodate the heavy vehicles which will be used on the Site.	✓
Development shall provide an adequate level of off street parking to address the parking demands generated by the subject use.	The BIP provides adequate on-site parking to accommodate employee vehicles and heavy vehicles which will be accessing the Site during works.	✓
Developments are designed and managed to minimise the impacts on other industrial or commercial uses and to protect the amenity of residential areas.	The operations and equipment associated with the proposed remediation works will be largely contained within buildings, thus minimising noise and visual impact upon surrounding development. A PHA and HHIA have been undertaken in respect of the proposal to ensure that risks to other BIP operators and the surrounding locality are managed and minimised. The potential impacts of the proposal on surrounding land uses are discussed in detail in Section 8.4 of this EA. These impacts will be temporary and environmental safeguards and mitigation measures are identified in order to minimise these impacts.	✓

Principle/Control	Comment	Compliance
P5 The need for a compatible and workable relationship between industrial and non-industrial uses.		
Developments are to have a buffer zone where the Site adjoins a residential land use in order to protect residential amenity	The nearest residential development is located some 300 m to the east of the Site, across Denison Street. The CPWE area will be reinstated with a landscaped mound along the Corish Circle boundary to preserve residential amenity.	✓
Noise generation and air quality levels generated from the functions and operations of a development including associated vehicles are not to adversely impact on the amenity of non-industrial uses and residential areas.	An acoustic assessment and an air quality assessment have been undertaken in respect of the proposal and are included as **Appendix E** and **F** to this EA. These reports conclude that, with the implementation of appropriate mitigation measures as described in this EA, the proposal will not have a significant adverse impact upon the amenity of surrounding non-industrial uses or nearby residential areas.	✓
Local road networks within the City are not to be adversely effected as a result of the operations of an industrial or commercial use.	Traffic generated as a result of the proposed works will be largely internal to the Site with temporary increases on local roads expected to be less than 1 percent of existing traffic flows. Further details on traffic are provided in Section 8.5 of this EA.	✓
Developments are to protect the visual and environmental amenity of adjoining residential land uses.	Potential visual and other environmental impacts resulting from the proposal will be temporary only. Upon completion of works, the CPWE site will be reinstated with a landscaped mound along the Corish Circle boundary to preserve residential amenity.	✓
P6 The promotion of developments that are sustainable and encourage the protection of the environment.		

Principle/Control	Comment	Compliance
Developments are to demonstrate the principles of environmental sustainability throughout all phases of development, including stormwater design, waste disposal, energy efficiency and water conservation.	The primary purpose of the proposal is to remediate contaminated land in accordance with the requirements of Orica's EPL No. 2148, applying to the CPWE. This will also allow the land to be returned to an appropriate and productive use. The proposal has been designed to minimise the generation of contaminated water and will reuse materials (largely treated soil) on the Site to the extent practicable. Every effort will be made in the carrying out of the works to maximise energy efficiency and water conservation.	✓
Developments are to minimise risks to human health and the off-site environment.	A HHIA has been prepared for the proposal and indicates that the works do not pose a significant risk to human health. The removal of the contaminants existing on the BIP will result in a reduction in potential risks to human health and the off-site environment in the longer term by preventing potential exposure to contaminants and the migration of contaminants to surrounding land.	✓
Development's design, construction and operations are energy efficient and assist in the reduction of green house gas emissions and in the conservation of non renewable resources.	Every effort will be made in the carrying out of the development to minimise the energy needs of the works. Measures include the regular maintenance of vehicles, plant and equipment, the reuse of waste materials and waste water on the Site and the efficient treatment of soil on the Site.	✓
Developments are to be a safe and comfortable environment for workers and residents of the City.	The proposed works will be subject to strict controls with regard to worker safety. An OHSP will be prepared in respect of the proposed operations, covering issues such as PPE and decontamination to minimise the risk to workers. Further safeguards detailed in **Section 8.8** and **Appendix D** of this EA and reinforced in the Statement of Commitments contained in **Section 9** of this EA, will be implemented to ensure that environmental impacts upon the surrounding area are managed and minimised.	✓

Banksmeadow Industrial Precinct

Under DCP No. 33, the Site is located within the Banksmeadow Industrial Precinct. The DCP identifies the substantial plant and structures associated with the BIP as dominating the character of this precinct.

DCP No. 33 acknowledges that as residential land uses surround this precinct, the key issues for development in this area are visual impact, hazard, risk and environmental conflict. Conflict arising between residential land uses and industrial land uses is an identified issue in this precinct. DCP No. 33 also specifies that heavy industry is encouraged to be located within the Banksmeadow and Botany Precincts.

The objectives of the Banksmeadow Industrial Precinct are:

> *'O1 To encourage the development and use of the Port-Feeder Road accessing sites to the north of McPherson Street within the Precinct.*
>
> *O2 To encourage the use of Foreshore Drive for industrial traffic.*
>
> *O3 To promote access to the railway corridor for the transport of goods.*
>
> *O4 To encourage the office component of industrial development to front the road or any adjoining residential area.*
>
> *O5 To ensure that industrial uses are compatible with adjoining established residential areas.*
>
> *O6 To allow for the widening of roads within the Precinct to allow for improved traffic access and manoeuverability.*
>
> *O7 To ensure that any risk to human health, property or the natural environment arising from the operation of the development is minimised and addressed.*
>
> *O8 To ensure that existing pipelines are identified and protected during the development process.'*

The nearest residential development is located some 300 m to the east of the Site, across Denison Street. The proposed remediation works will take place over a period of approximately 18 months. The potential impacts of the proposal upon residential amenity are therefore temporary. Further, given the location of the works within the existing BIP, the proposal is considered to be generally compatible with surrounding land use.

A landscaped embankment currently exists along the eastern boundary of the CPWE adjacent to Corish Circle. The CPWE area will be reinstated with a landscaped mound along this boundary to preserve residential amenity. The potential environmental impacts of the proposal and recommended mitigation and management measures are discussed in detail in **Section 8** of this EA.

Further, a HHIA has been prepared for the proposal and indicates that the works do not pose a significant risk to human health. The remediation of the contaminants existing at the CPWE will result in a reduction in risk to human health and the off-site environment in the longer term by preventing potential exposure to contaminants and the potential migration of contaminants to surrounding land.

The proposal will not require the widening of roads within the Precinct as traffic associated with the proposal will be largely internal to the BIP. The Site is well serviced by the existing road network and the proposal is not expected to impact adversely upon access, traffic and manoeuvrability in the local area.

The location of underground services, including pipelines, in the vicinity of the Site are well known and will be given due consideration in the carrying out of the works.

Based upon the above, the proposal is considered to be in accordance with the objectives of the Banksmeadow Industrial Precinct.

Table 5-2 summarises the compliance of the proposal with the relevant controls of DCP No. 33 for the Banksmeadow Industrial Precinct.

Table 5-2: Compliance with Controls for Banksmeadow Industrial Precinct – DCP No. 33

Controls	Comment	Compliance
C2 The transport of hazardous substances should be directed away from residential areas and a Traffic Route Study showing the proposed traffic route of such transport, should accompany the development application.	The proposed development does not require the transportation of hazardous substances off-site.	✓
C6 Development is not to adversely impact on the surrounding established residential areas through noise, traffic, pollution and risk.	An acoustic assessment and an air quality assessment have been undertaken in respect of the proposal and are included as **Appendix E and F** to this EA. These reports conclude that, with the implementation of appropriate mitigation measures as described in this EA, the proposal will not have a significant adverse impact upon the amenity of surrounding non-industrial uses or nearby residential areas. Traffic generated as a result of the proposed works will be largely internal to the Site with a temporary increase on local roads during peak construction expected to be less than 1 percent of existing traffic flows. Further details on traffic are provided in **Section 8.5** of this EA. A HHIA has been prepared for the proposal and indicates that the works do not pose a significant risk to human health. The removal of the contaminants existing at the CPWE will result in a reduction in risks to human health and the off-site environment in the longer term by preventing potential exposure to contaminants and the potential migration of contaminants to surrounding land. The potential impacts associated with the proposal are temporary and can be effectively managed through mitigation measures, as described in this EA, to ensure that the effect upon surrounding residential areas is minimised.	✓

Controls	Comment	Compliance
C9 All applications are to address the risk issues outlined in (4) below (related to risk assessment).	A HHIA has been prepared for the proposal and indicates that the works do not pose a significant risk to human health. The remediation of the contaminants existing at the CPWE site will result in a reduction in risks to human health and the off-site environment in the longer term by preventing potential exposure to contaminants and the potential migration of contaminants to surrounding land. A PHA and HHIA have been undertaken in respect of the proposal to ensure that risks to other BIP operators and the surrounding locality are managed and minimised. Hazard and risk is discussed in detail in **Section 8.8** of this EA.	✓

Section 3.0 of DCP No. 33 provides general design elements that need to be considered for all industrial development within the CoBB. The elements are broadly defined into the following categories:

- Sustainable Development Design
- Building Form and Character
- Environmental Amenity

Table 5-3 summarises how the proposal complies with the design elements set out in Section 3.0 of DCP No. 33.

Table 5-3: Compliance with design elements of Section 3 DCP No. 33

Design Element	Controls	Comment	Compliance
A2 Stormwater Disposal and Drainage Design	C1 Any stormwater drainage system submitted shall be in accordance with Guidelines for the Design of Stormwater Drainage System Within the City of Botany Bay.	The existing stormwater systems on the Site will be retained and supplemented with additional erosion and sediment control measures to ensure that sediment laden runoff does not leave the Site. Details are provided in **Sections 8.6 and 8.7** of this EA.	✓

Design Element	Controls	Comment	Compliance
A3 Site Contamination	C1 Site contamination assessment and site remediation is undertaken in accordance with Council's Development Control Plan No. 34 - Contaminated Land.	The proposal involves the remediation of contaminated land in accordance with the requirements of Orica's EPL (No. 2148) applying to the CPWE site. The provisions of DCP No. 34 are considered in relation to the proposal later in this EA.	✓

Section B, Part 3 of DCP No. 33 sets controls in relation to the issues of building form and character. As the proposal comprises remediation works which do not include any permanent structures on the Site, the issues of building form and character are not considered relevant and are therefore not considered further in this EA.

Section C, Part 3 of DCP No. 33 deals with environmental amenity in relation to industrial development. As the proposal does not involve the construction of permanent structures or the permanent redevelopment of the Site, many of the controls in this section are not relevant. **Table 5-4** discusses the relevant controls set out under Section C, Part 3 of DCP No. 33 in relation to the proposal.

Table 5-4: Relevant Controls – Section C, Part 3 of DCP No. 33

Element	Controls	Comment	Compliance
C4 Residential / Non-Residential Interface	C1 Site lighting for building security and staff safety must be directed so as to not cause annoyance to neighbours or glare to passing motorists.	The works involve 24 hour operation of the DTD Plant and FSB operations. Minor external lighting of the area surrounding the DTD Plant will be required. Such lighting will be designed and implemented to avoid annoyance of neighbours.	✓
	C2 Where significant amounts of traffic are likely to be generated which could affect residential areas or residential zoned land, schedules of vehicle movements and their routes must be provided and may be regulated in conditions of consent.	The proposal will not generate significant traffic on the local road network. The level of traffic generated is temporary and is not expected to affect surrounding residential areas.	✓
	C4 New development is to be designed so that noise-producing activity is remote from the interface boundary.	The layout of plant at the Site has been designed to maximise noise attenuation for the nearest residential receivers. Further details of noise and mitigation measures are provided in **Section 8.2** of the EA.	✓

Element	Controls	Comment	Compliance
C5 Noise and Hours of Operation	C1 All applications for noise generating uses are to be accompanied by documentation from a qualified acoustic engineer certifying that the acoustic standards can be met.	A noise assessment has been undertaken in respect of the proposal and is included as **Appendix F** to this EA. The noise assessment anticipates that the noise limits set by Orica's existing EPL (No. 2148) applying to the CPWE will be met during the proposed remediation works.	✓
	C3 The emission of noise from any new development is to comply with the NSW EPA Industrial Noise Policy and Council's adopted Noise Criteria.	The noise limits set for the Site by the existing EPL (No. 2148) are anticipated to be met during the remediation works. Further details are provided in **Section 8.2** of this report.	✓
	C6 Hours of operation for the use of a site will be restricted by Council if it is at all likely that the use will cause an impact on any adjoining or adjacent residential development.	The proposed works are not expected to cause adverse impacts upon nearby residential development in terms of noise.	✓
C7 Environmental Protection	C1 Industrial developments likely to emit air pollutants (including odour) shall demonstrate that best practicable means of control of air pollutants (and odour) will be applied to the proposed development. The applicant shall outline the type, quantity and quality air pollutants that are likely to be emitted, the collection and treatment proposed prior to discharge and methods to be employed to minimise fugitive emissions.	An air quality assessment has been undertaken in respect of the proposal and is included as **Appendix E** to this EA. This report identifies the type, quantity and quality of air pollutants that are likely to be emitted and proposed mitigation measures to control these. The report concludes that, with the implementation of appropriate mitigation measures as described in this EA, the proposal will not have a significant adverse impact upon air quality in the local area.	✓

Element	Controls	Comment	Compliance
	C2 The discharge of any matter whether solid, liquid, or gaseous onto the Site, neighbouring land, public place or into any road, drain, pipeline or water course or into the air during demolition, excavation, construction or subsequent occupation of the property is required to conform to the Protection of the Environment Operations Act 1997, or a pollution control approval issued by the Environmental Protection Authority for Scheduled Premises.	The proposed works will be carried out in accordance with this Act.	✓
	C3 A Trade Waste Agreement shall be obtained from Sydney Water prior to commencement of works for any use where wastewater is likely to be generated (in addition to toilet facilities). A Permission to Discharge Trade Wastewater shall be obtained from Sydney Water and a copy provided to Council prior to issuing of the Construction Certificate.	The proposal incorporates a WTP where potentially contaminated water captured on the Site will be directed and treated. Orica would ensure that any discharge to sewer is subject to a Trade Waste Agreement with Sydney Water.	✓
	C4 Any proposed building, construction or demolition works requires a Soil and Water Management Plan on the methods to be employed to minimise soil disturbance and soil migration from the Site. The Plan is to be lodged with Council as part of the Development Application information.	A Soil and Water Management Plan will be prepared for the works in accordance with the RAP included as **Appendix D** to this EA.	✓
	C5 An acoustical assessment will be required in accordance with the provisions of General Design Element C5-Noise and Hours of Operation of this Development Control Plan.	An acoustic assessment has been undertaken in respect of the proposal and is included as **Appendix F** to this EA.	✓

Development Control Plan No. 34 – Contaminated Land

DCP No. 34 – Contaminated Land applies to all land within the CoBB and sets out Council's procedures in relation to the management of contaminated land.

The objectives of this Plan are to:

> *'(a) Implement Clause 29 (Contaminated Land) of the Botany Local Environmental Plan 1995 and any subsequent and relevant planning instruments;*
>
> *Ensure that changes of land use will not increase the risk to health or the environment;*
>
> *Avoid inappropriate restrictions on landuse; and*
>
> *(d) Provide information to support decision making and to inform the community'.*

The nature of contamination on the site has been the subject of a number of studies such that the details are well understood. The purpose of this EA is to gain approval for the remediation of the CPWE in accordance with the requirements of Orica's EPL (No. 2148).

The potential impacts of the proposal in relation to issues such as air quality, noise, hazard, risk and traffic are assessed in detail in this EA. Management measures are recommended to ensure that potential impacts are minimised.

The provisions of the DCP are largely related to the assessment of rezoning and development applications. As the proposal does not include rezoning or redevelopment of the land, these provisions are of little relevance to the assessment and are not considered further in this EA.

5.2 Regional Matters

There are no Regional Environmental Plans (REPs) of relevance to the Site.

5.3 State Matters

There are three SEPPs of particular relevance to the proposal.

5.3.1 SEPP 2005 (Major Projects)

SEPP 2005 was gazetted on 25 May 2005 and together with Part 3A of the EP&A Act supersedes all previous provisions related to former 'State significant development' in planning instruments, directions and declarations.

The primary aim of SEPP 2005 is:

> *'…to identify development of economic, social or environmental significance to the State or regions of the State so as to provide a consistent and comprehensive assessment and decision making process for that development.'*

Schedule 1 of SEPP 2005 identifies classes of development which are classified as major projects. This includes development for the purpose of the remediation of contaminated land being:

> *'Development for the purpose of remediation of land on:*
>
> *(a) premises subject to a notice requiring prescribed remedial action to be undertaken under section 35 or section 36 of the Environmentally Hazardous Chemicals Act 1985 (as continued in force by the Contaminated Land Management Act 1997), or*
>
> *(b) land declared as a remediation site under Division 3 of Part 3 of the Contaminated Land Management Act 1997.'*

The application of the 2005 SEPP is discussed in more detail in **Section 1.5** of the EA.

5.3.2 State Environmental Planning Policy 33 - Hazardous and Offensive Development

The aims of SEPP 33 include the amendment of definitions of hazardous and offensive industries used in environmental planning instruments and to require development consent for hazardous and offensive development.

The document, "Applying SEPP 33 – Hazardous and Offensive Development Application Guidelines" was prepared by the Department of Urban Affairs and Planning (DUAP, now DoP) in 1994 to provide assistance primarily to councils (but also to industry, consultants and other government agencies) in implementing SEPP 33. The Guidelines recommend a 'risk screening' method for determining whether a proposal is hazardous and provide guidance on assessing potentially offensive development proposals. The screening process considers the class and volume of waste materials to be stored on the Site and the distance of the storage area to the nearest Site boundary.

A PHA has been prepared as part of this EA to assess the hazards and risks associated with the proposed works.

The PHA undertaken in respect of the proposal is included as **Appendix G** to this EA and summarised in **Section 8.8**.

5.3.3 State Environmental Planning Policy 55 – Remediation of Land

SEPP 55 aims to provide a Statewide planning approach to the remediation of contaminated land, and in particular, promotes the remediation of contaminated land for the purpose of reducing risk of harm to human health or any other aspect of the environment.

Clause 7 provides for consideration of contamination and remediation in determining development applications. It states:

> *'(1) A consent authority must not consent to the carrying out of any development on land unless:*
>
> > *(a) it has considered whether the land is contaminated, and*
> >
> > *(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
> >
> > *c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.'*

The CPWE is a licensed waste cell therefore, the contamination within the CPWE is already known. The landscaping material surrounding the CPWE has also been investigated and some contamination was found to exist. The objective of this proposal is to remediate this contamination.

Clause 8 of SEPP 55 provides that, despite the provisions of another environmental planning instrument, remediation work can be carried out in accordance with the provisions of the policy. Therefore, under the provisions of SEPP 55, the proposed remediation works are permissible.

SEPP 55 identifies two categories of remediation works – Category 1 works, which require development consent, and Category 2 works, which do not require consent.

The proposed remediation works do not require approval under Part 4 of the EP&A Act as they have been declared by the Minister for Planning to be a 'Major Project', eligible for assessment under Part 3A of the Act. The proposed works are therefore not considered to be Category 1 or Category 2 works under SEPP 55.

Clause 17 of SEPP 55 is concerned with guidelines and notices applying to all remediation work. It states:

> *'(1) All remediation work must, in addition to complying with any requirement under the Act or any other law, be carried out in accordance with:*
>
> > *(a) the contaminated land planning guidelines, and*
> >
> > *(b) the guidelines (if any) in force under the Contaminated Land Management Act 1997, and*
> >
> > *(c) in the case of a category 1 remediation work—a plan of remediation, as approved by the consent authority, prepared in accordance with the contaminated land planning guidelines.*
>
> *(2) A notice of completion of remediation work on any land must be given to the council for the local government area in which the land is situated (or, if the land is within the unincorporated area, to the Western Lands Commissioner).*
>
> *(3) The notice is to be given within 30 days after the completion of the work.*
>
> *(4) A copy of the notice must also be given within the same period to the consent authority, if consent was required for the remediation work and the consent authority is not one of the authorities referred to in subclause (2).'*

The contaminated land planning guidelines are discussed in relation to the proposal in **Section 5.3.4** below. Prior notice of commencement of works will be provided to DoP and CoBB Council in accordance with clause 16 of SEPP 55. Notice of completion of works will be provided to DoP and CoBB Council within 30 days of completion of works in accordance with Clause 17 (2), (3) and (4) of SEPP 55.

5.3.4 Managing Land Contamination – Planning Guidelines State Environmental Planning Policy No. 55 – Remediation of Land

In association with SEPP 55 the State Government has issued planning guidelines for managing contaminated land which aim to establish 'best practice' for managing land contamination through the planning and development control process.

The guidelines include details on the decision making process in relation to contaminated land, a suggested policy approach for planning authorities and suggested approaches to prevent contamination and reduce the environmental impact of remediation activities.

The guidelines state that the environmental impact of remediation work should be assessed as with any other development proposal, however the consequences of not carrying out the remediation also need to be considered and weighed up against these environmental impacts. In this regard, an assessment of how the proposal will contribute to a net improvement in environmental quality, reduce health risks or promote the economic use and development of the land must be undertaken. The guidelines also state that there must be substantial planning justification for the refusal of an application for remediation.

The proposed works will result in the remediation of existing contamination, thus improving environmental quality, reducing risk to human health and enabling the CPWE site to be redeveloped for an appropriate and productive use. The potential environmental impacts of the works are assessed in detail in **Section 8** of this EA. The EA concludes that with the implementation of appropriate mitigation and management measures on the Site, the potential impacts to the environment as a result of the proposed remediation works are less than those posed by not undertaking the proposed remediation of the CPWE site.

5.4 State Legislation

5.4.1 Environmental Planning and Assessment Act 1979

The EP&A Act and the EP&A Regulation provide the framework for environmental planning in NSW and include provisions to ensure that proposals which have the potential to impact the environment are subject to detailed assessment, and provide opportunity for public involvement.

As outlined in **Section 1.4** of this EA, approval is required for the proposed project under Part 3A of the EP&A Act, and the proposed project has been declared a ‘Major Project’ under the Act. The Minister for Planning is the approval authority for the proposed remediation works.

Under Part 3A, a proponent can seek a project approval or a concept approval. In accordance with the provisions of Part 3A of the EP&A Act, Orica is seeking project approval for the proposed remediation works at the CPWE.

5.4.2 Protection of the Environment Operations Act 1997

The *Protection of the Environment Operations Act 1997* (POEO Act) prohibits any person from causing pollution of waters, or air and provides penalties for air, water and noise pollution offences.

Section 48 of the POEO Act requires a person to obtain an EPL from the DEC before carrying out any of the premises based activities described in Schedule 1 of that Act.

Schedule 1 includes the following activity:

> *Contaminated soil treatment works for on-site or off-site treatment (including, in either case, incineration or storage of contaminated soil but excluding excavation for treatment at another site) that:*
>
> *(1) handle more than 1,000 cubic metres per year of contaminated soil not originating from the site on which the works are located; or*
>
> *(2) handle contaminated soil originating exclusively from the site on which the works are located; and*
>
> *(a) incinerate more than 1,000 cubic metres per year of contaminated soil, or*
>
> *(b) treat otherwise than by incineration and store more than 30,000 cubic metres of contaminated soil, or*
>
> *(c) disturb more than an aggregate area of 3 hectares of contaminated soil.*

The remediation works will require an EPL under the POEO Act because the proposal involves the treatment of more than 30,000 m^3 of contaminated material.

The CPWE is already subject to the provisions of an existing EPL issued under the POEO Act (No. 2148). Condition No. E3 of the licence requires the remediation of the CPWE and associated impacted materials in accordance with a set timetable. The proposed remediation works will be undertaken in accordance with the Conditions E1, E2 and E3 of the licence.

Subject to discussion with DEC, licensing of the remediation works may be by way of a variation to the Orica's existing EPL (No. 2148) under Section 58 of the POEO Act.

5.4.3 HCB Waste Management Plan/Environmentally Hazardous Chemicals Act 1985

The CPWE is regulated by the DEC under the provisions of the national *HCB Waste Management Plan* (ANZECC 1996) and the DEC CCO of the EHC Act in relation to SCW (2004) and polychlorinated biphenyls (1997) (PCBs).

Under Division 5, Part 3 of the EHC Act the EPA can make a CCO in relation to an environmentally hazardous chemical or a declared chemical waste.

The *Guidelines for the NSW Site Auditor's Scheme* published by the DEC (2006) state that:

- *'CCOs set out requirements for manufacturing, keeping, using, processing, storing, selling, transporting or disposing of chemicals and declared chemical wastes. Where a site involves chemicals or chemical wastes that are subject to a CCO, the site auditor should be satisfied that any proposed management strategy complies with the requirements set down in the relevant CCO. For example, certain chemicals occurring above prescribed concentrations are prohibited from being disposed of at any landfill.*
- *There is a program of national management plans for Schedule X wastes (ANZECC 1994b). The program includes wastes associated with HCB (hexachlorobenzene) (ANZECC 1996b), PCBs (polychlorinated biphenyls) (ANZECC 1996c), and OCPs (organochlorine pesticides) (management plan proposed). The national management plans set timelines for the destruction and disposal of Schedule X wastes. The relevant authorities implement regulatory aspects of the plans. Site auditors should be aware that CCOs either have been or will be revised by the EPA as part of implementing the national management plans.'*

Potential contaminants of concern within the CPWE material which are listed under the SCW CCO are HCB, 1,2,4 trichlorobenzene, 1,2,4,5 tetrachlorobenzene and pentachlorobenzene (PER). The SCW CCO prohibits the manufacturing, processing, keeping, conveying, using, selling or disposing of SCW, or any act related to any such act, unless it is otherwise permitted by, and carried out in accordance with the conditions of the SCW CCO. The SCW CCO requires a licence for various activities.

The CCO for PCBs sets controls on activities including the generation, processing, storing, conveying and disposing of PCB material or PCB wastes, depending upon the PCB concentration. The processing of PCB waste by an approved process is permitted under the authority of, and according to the conditions of, a licence from DEC.

Prior to the enactment of the CLM Act (discussed in **Section 5.4.4**), the DEC regulated contaminated sites by way of orders under sections 35 and 36 of the EHC Act. The transitional arrangements for the commencement of the CLM Act repealed the EHC Act in certain respects but preserved the operation of those orders.

The CPWE forms part of land that is affected by Section 35 Notice No. 450 issued under the EHC Act, for 16 – 20 Beauchamp Road, Matraville, New South Wales. This notice states the following:

> *'The occupier must obtain the written approval of the EPA if works are to be carried out at the Premises for the purpose of:*
>
> *(a) covering, dispersing or reducing the contamination of the premises; or*
>
> *(b) restoring or rehabilitating the Premises; or*
>
> *(c) removing or disposing of any soil, sand, rock, water, or any other solid or liquid material of any kind from the premises.'*

The concentrations of chlorinated contaminants in the CPWE is such that the contents of the CPWE are considered to be SCW under the SCW CCO (DEC, 2004), HCB waste under the HCB Waste Management Plan (ANZECC, 1996). The CCO for PCBs (NSW EPA, 1997) also needs to be considered given that the concentration at which PCBs have been identified in the CPWE material is greater than the 2 mg/kg threshold for PCB wastes. However, PCB concentrations are below the threshold for scheduled PCB waste. Therefore the CPWE material is classified as non-scheduled PCB waste.

The proposed DTD technology will be reviewed and a licence sought from DEC under the provisions of the EHC Act.

5.4.4 Contaminated Land Management Act 1997

The CLM Act is the primary Act under which contaminated land is regulated by the DEC.

Parts 2 and 3 of the CLM Act set out the functions and powers of the EPA (now part of the DEC) in relation to contaminated land and specify that the DEC is able to declare investigation areas and remediation sites and order the appropriate person to investigate or remediate them.

The CLM Act also sets out requirements for site audits. The Act requires a site audit to be undertaken by an accredited site auditor under certain circumstances such as where a voluntary investigation proposal or voluntary remediation proposal has been agreed with the DEC or where required under SEPP 55.

Currently, SEPP 55 does not require a mandatory site audit at any stage of the planning process for remediation work, and the CPWE site is not subject to a voluntary investigation and voluntary remediation proposal. Therefore a site audit under the CLM Act is not required at this time. However, subject and prior to the project proceeding, Orica has made a commitment to engage an independent, DEC accredited site auditor (Contaminated Land Auditor) in respect of the proposed works.

5.4.5 National Parks and Wildlife Act 1974

The *National Parks and Wildlife Act 1974* (NP&W Act) governs the establishment, preservation and management of national parks, historic sites and certain other areas, and the protection of certain fauna, native plants and Aboriginal relics.

The NP&W Act is relevant to the protection of Aboriginal artefacts and the protection of native flora and fauna. Section 86 of the NP&W Act identifies offences relating to Aboriginal objects, including disturbing land to discover an artefact. Section 87(1) of the NP&W Act provides for the issue of a permit to remove any artefacts, while section 90 (2) of the NP&W Act requires consent from the Director-General of DEC to knowingly destroy, deface or damage an Aboriginal object or Aboriginal place.

The CPWE site has been excavated previously and is highly disturbed therefore it is considered unlikely that the proposed remediation works will have a significant impact on recorded Aboriginal sites. Once the proposal is approved under Part 3A of the EP&A Act, it would be exempt from the need for a section 87 permit or section 90 consent.

5.4.6 Threatened Species Conservation Act 1995

The *Threatened Species Conservation Act 1995* (TSC Act) provides for the conservation of threatened species, populations and ecological communities of animals and plants. This is achieved by the following:

- conserving biological diversity and promoting ecologically sustainable development;
- preventing extinction and promoting the recovery of threatened species, populations and ecological communities;
- protecting critical habitat of threatened species, populations and ecological communities;
- eliminating or managing certain processes that threaten the survival or evolutionary development of threatened species, populations and ecological communities; and
- encouraging the conservation of threatened species, populations and ecological communities by the adoption of measures involving co-operative management.

The TSC Act provides a framework to ensure that the impact of any action affecting threatened species is assessed. Schedule 1 of the TSC Act lists endangered species, populations and ecological communities, Schedule 2 lists vulnerable species and Schedule 3 lists key threatening processes. Part 3 of the TSC Act defines critical habitat.

The proposal does not require the removal of native vegetation and the Site does not contain habitat for threatened species, populations or ecological communities of animals or plants. The impact of the proposal on threatened species, populations and ecological communities of animals and plants is discussed in detail in **Section 8.10** of this EA. The assessment concludes that no threatened species are expected to be adversely affected as a result of the proposed remediation works.

5.4.7 Native Vegetation Act 2003

The *Native Vegetation Act 2003* (NV Act) was assented to on 11 December 2003 and the accompanying regulations commenced on 1 December 2005.

The *NV Act* establishes the following objectives:

(a) *'to provide for, encourage and promote the management of native vegetation on a regional basis in the social, economic and environmental interests of the State, and*

(b) *to prevent broadscale clearing unless it improves or maintains environmental outcomes, and*

(c) *to protect native vegetation of high conservation value having regard to its contribution to such matters as water quality, biodiversity, or the prevention of salinity or land degradation, and*

(d) *to improve the condition of existing native vegetation, particularly where it has high conservation value, and*

(e) *to encourage the revegetation of land, the rehabilitation of land, with appropriate native vegetation,*

in accordance with the principles of ecologically sustainable development.'

The proposed Site does not contain vegetation which would trigger a requirement for approval under the NV Act. This Act has therefore not been considered further

5.4.8 Heritage Act 1977

The purpose of the *Heritage Act 1977* (Heritage Act) is to protect and conserve non-Aboriginal cultural heritage, including scheduled heritage items, sites and relics. The Heritage Act is administered by the NSW Heritage Office.

The Heritage Act makes provision for a place, building, work, relic, moveable object, precinct, or land to be listed on the State Heritage Register. If an item is subject of an interim listing, or is listed on the State Heritage Register, a person must obtain approval under Part 4 Division 1 Subdivision 3 of the Heritage Act for the following works or activities:

- demolition of the building or work;
- damaging or despoiling the place, precinct or land, or any part thereof;
- moving, damaging or destroying the relic or moveable object;
- excavating any land for the purpose of exposing or moving the relic;
- carrying out any development in relation to the land on which the building, work or relic is situated, the land that comprises the place, or land within the precinct;
- altering the building, work, relic or moveable object;
- displaying any notice or advertisement on the place, building, work, relic, moveable object or land, or in the precinct; and
- damaging or destroying any tree or other vegetation on or removing any tree or other vegetation from the place, precinct or land.

There are no known items of heritage significance under the Heritage Act on the Site. Therefore, this Act has not been considered further.

Nevertheless, as the project falls under Part 3A of the EP&A Act, once the proposal is approved under Part 3A, it is exempt from any requirements for approvals required under Part 4 of the Heritage Act.

5.5 Commonwealth Matters

5.5.1 Environment Protection and Biodiversity Conservation Act, 1999

The Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) requires the approval of the Commonwealth Minister for the Environment and Water

Resources for actions that may have a significant impact on matters of National Environmental Significance (NES). Approval from the Commonwealth is in addition to any approvals under NSW legislation.

As of 1 January 2004 the EPBC Act also provides for the identification, conservation and protection of places of national heritage significance and provides for the management of Commonwealth heritage places and establishes the Australian Heritage Council.

5.5.2 Matters of National Environmental Significance

The EPBC Act lists seven matters of NES which must be addressed when assessing the impacts of a proposal. A search of the EPBC Protected Matters database has been undertaken in respect of the proposal. A summary of how the proposal may impact on matters of NES is provided below:

World Heritage Properties: There are no world heritage properties proximate to the proposed project, or that would potentially be affected by the proposal.

National Heritage Places: There are no National heritage properties proximate to the proposed project, or that would potentially be affected by the proposal.

Wetlands of International Importance: The proposal is not expected to have an impact on a Ramsar Wetland.

Commonwealth-listed Threatened Species: The proposal will not impact upon threatened species listed under Commonwealth legislation.

Commonwealth-listed Migratory Species: The proposal is not expected to have an impact on listed migratory species.

Nuclear Action: The proposal would not involve nuclear action as defined under the EPBC Act 1999.

Commonwealth Marine Areas: There are no Commonwealth marine areas proximate to the proposed project that would potentially be affected by the proposal.

Commonwealth Land: The proposed Site is not Commonwealth land, nor would Commonwealth land likely be affected by the proposal.

Given that the proposal would not have a significant impact on matters of NES, the requirements of the EPBC Act are not triggered and approval from the Commonwealth Minister for the Environment and Water Resources is not required.