

Legislation and Planning

3.1. Introduction	81	3.4. Relevant South Australian Strategic Planning Framework	88
3.1.1. Project Background and Legislative Context	81	3.4.1. South Australia Strategic Plan	88
3.1.2. The Assessment Process and Decision Making	81	3.4.2. Strategic Infrastructure Plan for South Australia	89
3.1.3. Methodology and Assumptions	82	3.4.3. Eyre and Western Region Plan	90
3.2. Relevant Federal Government Legislation	83	3.4.4. State Natural Resource Management Plan South Australia 2012-2017	91
3.2.1. Aboriginal and Torres Strait Islander Heritage Protection Act 1984	83	3.4.5. The Eyre Peninsula Natural Resources Management Plan	91
3.2.2. Historic Shipwrecks Act 1976	83	3.4.6. 'Tackling Climate Change, SA's Greenhouse Strategy 2007 – 2020	91
3.2.3. Native Title Act 1993	83		
3.3. Relevant South Australian Legislation	83	3.5. South Australian Codes of Practice and Guidelines	92
3.3.1. Aboriginal Heritage Act 1988	84		
3.3.2. Climate Change and Greenhouse Emissions Reduction Act 2007	84	3.6. Relevant Local Government Planning Framework	94
3.3.3. Coastal Protection Act 1972	84	3.6.1. Council Development Plans	94
3.3.4. Environment Protection Act 1993	84	3.6.2. Whyalla (City) Development Plan	94
3.3.5. Fisheries Management Act 2007	85	3.6.3. Land Not Within a Council Area (Coastal Waters) Development Plan	94
3.3.6. Harbours and Navigation Act 1993	85		
3.3.7. Highways Act 1926	85	3.7. Summary of Likely Approvals/ Permit Requirements	99
3.3.8. Heritage Places Act 1993	85		
3.3.9. Local Government Act 1999	86		
3.3.10. Marine Parks Act 2007	86		
3.3.11. Maritime Services (Access) Act 2000	86		
3.3.12. National Parks and Wildlife Act 1972	87		
3.3.13. Native Title (South Australia) Act 1994	87		
3.3.14. Native Vegetation Act 1991	87		
3.3.15. Natural Resources Management Act 2004	87		
3.3.16. Railways (Operations and Access) Act 1997	88		
3.3.17. Road Traffic Act 1961	88		

3. LEGISLATION AND PLANNING

3.1. Introduction

This Chapter forms the planning and environmental legislation and policy reporting requirements for the Port Bonython Bulk Commodities Export Facility (BCEF). It identifies the relevant Federal, State, and local legislative requirements and identifies the likely planning and environmental approval requirements for the Project. It provides an overview of relevant legislation, codes of practice, guidelines, management plans/policies to which the Project will be required to adhere to, or have close regard to, during detailed design, construction, operation and decommissioning. A review of the Project against local and regional strategic and statutory planning instruments is also provided.

3.1.1. Project Background and Legislative Context

In May 2008 the South Australian Government released an Expression of Interest (EOI) to the private sector for the development of an Iron Ore Port Facility at Port Bonython in order to assist the South Australian mining sector to access overseas markets in a cost effective and environmentally appropriate manner. Following a comprehensive assessment of the EOI submissions, Spencer Gulf Port Link (SGPL) was selected to progress the port development.

On 1 March 2012, the Minister for Planning made a declaration in the Government Gazette for the 'Port Bonython Bulk Export Port Facility' proposal to be assessed as a 'Major Development' under the provisions of Section 46 of the *Development Act 1993*. The Development Assessment Commission (DAC) determined that an Environmental Impact Statement (EIS) is required (as set out in Section 46B of the *Development Act 1993*) to assist the Government in assessing the environmental, social and economic issues of the proposal.

In May 2012, the Department of Sustainability, Environment, Water, Population and Communities (SEWPaC) determined that the Project is a 'controlled action' under Section 75 and Section 87 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The Project requires assessment and approval by the Minister for Sustainability, Environment, Water, Population and Communities before proceeding.

Appendix A, Terms of Reference provides a comprehensive list of issues addressed in this EIS. These have been cross referenced to the relevant supporting technical chapters in **Appendix B, Terms of Reference Checklist**.

3.1.2. The Assessment Process and Decision Making

The following outlines the assessment process and decision making for declared 'major development' projects, requiring the preparation of an EIS. The BCEF is subject to this legislated process. **Figure 1.9a in Chapter 1, Project Introduction** provides an illustration of this assessment process, highlighting that this Project is currently at the preparation of EIS stage.

The assessment process commences when the Minister of Planning makes a declaration that the proposal is of major environmental, social or economic importance. The proponent lodges a development application to give enough information for the Development Assessment Commission (DAC) to identify key issues associated with the proposed development. When this information is made available, the South Australian Department of Planning, Transport and Infrastructure (DPTI) then prepares a preliminary description of significant issues and draft Guidelines, with input from relevant Government agencies. These guidelines set out the issues to be addressed by the proponent. The DAC addresses the criteria outlined in regulations, consults with the relevant authorities and reports to the Minister on the recommended level of assessment and content of the Guidelines. In this instance, DAC has determined that an Environmental Impact Statement (EIS) is required.

The proponent (Spencer Gulf Port Link (SGPL)) prepares the EIS addressing all relevant issues identified in the Guidelines. Once finalised the EIS is released for comment to the general public and all relevant bodies and agencies for a minimum period of six weeks. During this time the EIS is advertised in local and State newspapers and meetings are held to inform the general public of the proposed development. The proponent is then required to respond to any submissions. At this stage a supplementary EIS document is often prepared in response to the matters raised during the public notification phase.

In response, the Minister prepares an Assessment Report, which is made publically available. The proponent then makes any final revisions to the EIS and the application is forwarded for decision-making by the Governor. A separate decision is made by the Australian Government Minister under the EPBC Act.

3.1.2.1. The Environment Protection and Biodiversity Conservation Act 1999

The *Environment Protection and Biodiversity Conservation Act 1999* seeks to protect the environment, particularly matters of national environmental significance. It streamlines national environmental assessment and approval processes, protects Australian biodiversity and integrates management of important natural and cultural places.

The Act requires a proponent to refer a proposed action to the Australian Government for assessment of impacts against matters of national environmental significance if the proponent believes such matters will be significantly affected. The eight matters of national environmental significance protected under the Act are:

- » World heritage properties
- » National heritage places
- » Wetlands of international importance (listed under the RAMSAR Convention)
- » Listed threatened species and ecological communities
- » Migratory species protected under international agreements
- » Commonwealth marine areas
- » The Great Barrier Reef Marine Park
- » Nuclear actions (including uranium mines).

Nationally threatened species and ecological communities are listed under the EPBC Act as extinct in the wild, critically endangered, endangered or vulnerable. Under the EPBC Act, a person must not take an action that has, will have, or is likely to have a significant impact on any Matters of National Environmental Significance (MNES) without approval from the Australian Government Environment Minister (the Minister).

In May 2012, SEWPaC determined that the Project was a 'controlled action' under Section 75 and Section 87 of the EPBC Act. The relevant controlling actions are:

- » Listed threatened species and communities
- » Listed migratory species
- » Commonwealth marine areas.

Specifically, further information was requested by SEWPaC on the following matters:

- » Impacts to Southern Right Whales (*Eubaleana Australis*)
- » Impacts to Slender-billed Thornbill (*Acanthiza iredalei iredalei*).

The Project therefore requires assessment and approval by the Minister before it can proceed. A report has been prepared and submitted to the Minister for consideration of the matters requested.

3.1.2.2. The Development Act 1993

The *Development Act 1993* provides for planning and regulation of development in South Australia. The purpose of this Act is to regulate the use and management of land and buildings, and the design and construction of buildings and to make provision for the maintenance and conservation of land and buildings where appropriate. This Act and associated regulations sets out the procedures by which different forms of development are assessed in South Australia.

The South Australian Minister for Planning declared the proposal for a deep sea port facility for Port Bonython a Major Development, pursuant to Section 46 of South Australia's *Development Act 1993*. The subsequent environmental assessment process is to be administered by South Australia's DPTI and a final decision approved by the Governor of South Australia. The proposal may be approved, approved with conditions attached, approved in part or rejected. Some matters of detail may be reserved for a later decision (a secondary consent). There are no appeal rights for the proponent against the Governor's decision.

3.1.3. Methodology and Assumptions

3.1.3.1. Methodology

Assessment of the planning and environmental legislation and policies included:

- » A review of the Federal and South Australian legislative and policy framework directly relative to planning, approval, construction, operation and decommissioning of the Project and to the management of land use and development within the study area. This is not an exhaustive list of all legislative, rather that which directly influences the design, construction or operation of the Project
- » A review of Project's consistency with existing national, state, regional and local planning frameworks
- » Identification of Federal, South Australian and local approvals likely to be required for the Project.

3.1.3.2. Assumptions and Technical Limitations

Specific assumptions and technical limitations for this report are:

- » Although this EIS Chapter identifies likely approvals for the construction and operation of the Project, the recommendations are based on the interpretation of publicly available materials and the information provided specifically for the purpose of the preparation of the EIS
- » This EIS Chapter does not provide a legal opinion on the applicability of specific legislation and the triggering of associated approvals.

3.2. Relevant Federal Government Legislation

The following provides an overview of relevant Federal Government legislation, including:

- » *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*
- » *Environment Protection and Biodiversity Conservation Act 1999*
- » *Historic Shipwrecks Act 1976*
- » *National Greenhouse and Energy Reporting Act 2007*
- » *Native Title Act 1993*
- » *Navigation Act 1912.*

3.2.1. Aboriginal and Torres Strait Islander Heritage Protection Act 1984

The *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* provides for the preservation and protection from injury or desecration of significant areas and objects in Australia and its waters, being areas and objects that are of particular significance to Aboriginals or Torres Strait Islanders in accordance with culture and tradition. It enables the Australian Government to respond to requests by an Aboriginal or Torres Strait Islander person (or a person representing an Aboriginal or Torres Strait Islander person) to protect traditionally important areas and objects that are under threat, if it appears that relevant state or territory laws have not provided effective protection.

3.2.1.1. Relevance and/or Project Consistency

If the Project is considered to potentially affect an area of significance to Aboriginals or Torres Strait Islanders, the Act allows for the Minister to make an urgent declaration to protect the area for 30 days, with an extension for up to an additional 30 days. Cultural heritage is addressed in further detail in **Chapter 11, Cultural Heritage**.

3.2.2. Historic Shipwrecks Act 1976

The *Historic Shipwrecks Act 1976* protects historic wrecks and associated relics that are more than 75 years old and in Commonwealth waters, extending from below the low water mark to the edge of the continental shelf. The Act aims to ensure that historic shipwrecks are protected for their heritage values and maintained for recreational, scientific and educational purposes. It also seeks to control actions which may result in damage, interference, removal or destruction of an historic shipwreck or associated relic.

South Australia also has a complimentary Act (*Historic Shipwrecks Act 1993*), which protects historic shipwrecks in State waters, such as bays, harbours and rivers.

3.2.2.1. Relevance and/or Project Consistency

The Project seeks to comply with all relevant provisions outlined in the *Shipwrecks Act 1976*. The construction and operational components of the Project seeks to avoid disturbance to historic wrecks and associated relics and associated zones. This is addressed in further detail in **Chapter 11, Cultural Heritage**.

3.2.3. Native Title Act 1993

The function of the *Native Title Act 1993* includes establishing a framework through which native title can be recognised, in addition to providing protection for native title rights. Proposed activities or developments that may affect native title are classed as 'future acts' under the Act. The *Native Title Act 1993* provides for the determination of native title claims, the treatment of future acts, and the requirement for consultation and/or notification of relevant native title claimants where future acts are involved. Under the Act, any past grants of freehold or certain leasehold interests are recognised as having extinguished native title if they occurred prior to certain dates. The *Native Title Act 1993* operates in conjunction with associated state legislation, such as the *Native Title (South Australia) Act 1994*.

3.2.3.1. Relevance and/or Project Consistency

The BCEF is contained within the area defined by the Barngarla Native Title Claim SC96/4, SAD6011/98 which is currently before the Federal Court of Australia. Three other Native Title Claim groups have been identified as having a heritage interest in the area, but the Project is not included in these Native Title Claims. This is addressed in further detail in **Chapter 11, Cultural Heritage**.

3.3. Relevant South Australian Legislation

The following provides an overview of relevant South Australian legislation, including:

- » *Aboriginal Heritage Act 1988*
- » *Coastal Protection Act 1972*
- » *Environment Protection Act 1993*
- » *Fisheries Management Act 2007*
- » *Heritage Places Act 1993*
- » *Marine Parks Act 2007*
- » *National Parks and Wildlife Act 1972*
- » *Native Title (South Australia) Act 1994*
- » *Native Vegetation Act 1991*
- » *Natural Resources Management Act 2004*
- » *Petroleum Products Regulation Act 1995*
- » *Railways (Operations and Access) Act 1997*
- » *Zero Waste SA Act 2004.*

3.3.1. Aboriginal Heritage Act 1988

This Act provides protection from damage, disturbance and interference for all Aboriginal sites within South Australia. An Aboriginal site is defined by Section Three of the Act as being an area of land that is of significance according to Aboriginal tradition or is of significance according to Aboriginal archaeology, anthropology or history.

3.3.1.1. Relevance and/or Project Consistency

If the Project affects significant Aboriginal sites it will be necessary to seek permission to damage or destroy the site, or sites, from the Minister for State Aboriginal Affairs under Section 23 of the Aboriginal Heritage Act 1988. All efforts to avoid impacts to Aboriginal sites will be made. Cultural heritage is addressed in further detail **Chapter 11, Cultural Heritage**.

3.3.2. Climate Change and Greenhouse Emissions Reduction Act 2007

The *Climate Change and Greenhouse Emissions Reduction Act 2007* provides for measures to address climate change with a view to assisting to achieve a sustainable future for South Australia to:

- » Set targets to achieve a reduction in greenhouse gas emissions within the State;
- » to promote the use of renewable sources of energy
- » Promote business and community understanding about issues surrounding climate change
- » Facilitate the early development of policies and programs to address climate change.

The key objectives of the Act are to assist in the achievement of ecologically sustainable development in the State by addressing issues associated with climate change and to promote commitment to action within the State to address climate change.

3.3.2.1. Relevance and/or Project Consistency

The assessment of opportunities for reducing greenhouse gas emissions and increasing proportion of renewable energy generated and consumed for construction and operational components of the Project will be consistent with all relevant provisions outlined in the *Climate Change and Greenhouse Emissions Reduction Act 2007*. This is addressed in further detail in **Chapter 12, Climate Change and Greenhouse Gases**.

3.3.3. Coastal Protection Act 1972

The *Coastal Protection Act 1972* makes provision for the conservation and protection of the beaches and coast of this State; and for other purposes.

The purpose of this act is to provide for the management of the key coastal issues of:

- » Development in the coastal zone
- » Hazards - coastal flooding and erosion
- » Protection works
- » Conservation of coast and marine habitats, including coastal wetlands, rivers and estuaries
- » Heritage and landscape
- » Access to the coast
- » Standards applying to new development with regard to coastal flooding and erosion and associated protection works
- » Acid sulphate soil development guidelines and risk assessment criteria.

3.3.3.1. Relevance and/or Project Consistency

The Project will have regard for all relevant provisions outlined in the *Coastal Protection Act 1972* and the policies issued by the Coast Protection Board as the official body chartered by the proclamation of the Act. This is addressed in further detail in a number of the technical chapters within this EIS, including **Chapter 14, Marine Ecology** and **Chapter 12, Climate Change and Greenhouse Gases**.

3.3.4. Environment Protection Act 1993

The main objectives of this Act are to promote principles of ecologically sustainable development and to ensure that measures are taken to protect, restore and enhance the quality of the environment. It imposes a general environmental duty that a person must not intentionally or recklessly undertake an activity that pollutes, or might pollute the environment. A number of policies have been established under Section 28 of the Act. An Environment Protection Policy:

- » Has the force of a standard imposed by Parliament
- » May impose mandatory provisions with penalties
- » Is developed for a specific area, e.g. waste, water, air, noise.

Table 3.3a provides a description/purpose of Environment Protection Policy directly relevant to this EIS under this Act.

3.3.4.1. Relevance and/or Project Consistency

The Project involves activities of environmental significance as prescribed by Schedule One of the *Environment Protection Act 1993*. Authorisation and ongoing licensing for these activities will be required from the EPA. Construction and operation of the proposed BCEF must demonstrate compliance with the Environmental Protection Authority requirements to avoid potential penalties as outlined in the Act.

All reasonable and practicable measures will be taken to protect, restore and enhance the quality of the environment having regard to the principles of ecologically sustainable development as prescribed in the Act.

Table 3.3a: Description/purpose of Environmental Protection Policies under the Environmental Protection Act (EP Act)

Environmental Protection Policy	Description/Purpose
<i>Environment Protection (Air Quality) Policy 1994</i>	Air pollution from industrial (i.e. non-residential) sources is regulated under this policy through the setting of maximum pollution levels for various types of air pollutants including particulate matter, heavy metals, oxides of nitrogen and sulphur and carbon monoxide. The Project will comply with air quality criteria specified in Schedule One of the Policy. Refer to Chapter 8, Air Quality for further information.
<i>Environment Protection (Noise) Policy 2007</i>	The Project will be required to meet the noise criteria as defined in Division One of the Noise Policy. Refer to Chapter 5, Noise and Vibration for further information on compliance.
<i>Environment Protection (Waste to Resources) Policy 2010</i>	This policy regulates the disposal of chemicals and compounds likely to cause harm to the environment if not disposed of correctly. Refer to Chapter 17, Risk and Hazard Management for further information.
<i>Environment Protection (Water Quality) Policy 2003</i>	This policy aims to improve the quality of water and water usage through legislated standards and guidelines and also makes special provision for protection of water quality in water protection areas. The Project will comply with water quality criteria specified in the policy. It will also comply with general obligations to avoid the discharge of pollutants to receiving waters. Refer to Chapter 4, Water Resources for further information.

3.3.5. Fisheries Management Act 2007

The *Fisheries Management Act 2007* provides for the conservation and management of the aquatic resources of South Australia, the management of fisheries and aquatic reserves, the regulation of fishing and the processing of aquatic resources, the protection of aquatic habitats, aquatic mammals and aquatic resources and the control of exotic aquatic organisms and disease in aquatic resources; and for other purposes.

3.3.5.1. Relevance and/or Project Consistency

Section 77 of the *Fisheries Management Act 2007* states that a person must not engage in an operation involving or resulting in interference with aquatic animals of any waters forming part of an aquatic reserve, except as authorised by the regulations or a permit issued by the Minister. The Project seeks to avoid and minimise potential impacts on the marine environment, particularly protected species and the nearby aquaculture facilities. This is addressed in further detail in **Chapter 14, Marine Ecology**.

3.3.6. Harbours and Navigation Act 1993

The *Harbours and Navigation Act 1993* provides for the administration, development and management of harbors to provide for safe navigation in South Australian waters. The Act deals with the determination of length of vessels; restricted areas and restrictions on the use of certain waters; activities in relation to wharves other than in harbours; harbours and ports management; crewing for commercial vessels and fishing vessels; certificates of competency; hiring of vessels; and registration, certificates of survey, loadline certificates and Australian Builders Plates.

3.3.6.1. Relevance and/or Project Consistency

The operation of the proposed port development will comply with the relevant regulations set out in the *Navigation Act 1912*.

The project will also require either a declaration as a ‘port’ or the port operator would be required to enter into a port operating agreement with the Minister for transport” If declared a port the project may require an amend to the Harbours and Navigation Act to include the port and specifying any particular controls applying within the declared port boundary and operational areas for restricted vessels.

3.3.7. Highways Act 1926

The Highways Act 1926 controls the construction and maintenance of South Australian highways.

3.3.7.1. Relevance and/or Project Consistency

Where works occurs on public roads (i.e. crossing Port Bonython Road), SGPL will need approval from DTPI.

3.3.8. Heritage Places Act 1993

The main function of this Act is to provide for the identification, recording and conservation of non-aboriginal places and objects of heritage significance and to establish the South Australia Heritage Council. Under the *Heritage Places Act 1993*, a person must not, without a permit from the SA Heritage Council disturb a State Heritage Place or a heritage object.

3.3.8.1. Relevance and/or Project Consistency

The Project will seek to avoid and minimise the impacts on known heritage items within and surrounding the study area including the Point Lowly Lighthouse complex which is a State Heritage Place. This is addressed in further detail in **Chapter 11, Cultural Heritage**.

3.3.9. Local Government Act 1999

The *Local Government Act 1999* seeks to promote an appropriate system of local government that is accountable to the local community and contributes to ensuring the appropriate services and facilities are provided to that community

3.3.9.1. Relevance and/or Project Consistency

Relevant local laws and regulations will need to be addressed and adopted in regard to the construction and future operation stages of the Project. For example, approval will be required from Whyalla Council to alter or remove services related to a public road.

3.3.10. Marine Parks Act 2007

The *Marine Parks Act 2007* provides for a system of marine parks for South Australia. The purpose of this Act is to protect and conserve marine biological diversity and marine habitats by declaring and providing for the management of a comprehensive, adequate and representative system of marine parks and to assist in:

- » The maintenance of ecological processes in the marine environment
- » The adaptation to the impacts of climate change in the marine environment
- » Protecting and conserving features of natural or cultural heritage significance
- » Allowing ecologically sustainable development and use of marine environments
- » Providing opportunities for public appreciation, education, understanding and enjoyment of marine environments.

3.3.10.1. Relevance and/or Project Consistency

Section 37 of the *Marine Parks Act 2007* states that there is a general duty of care for a person to take all reasonable measures to prevent or minimise harm to a marine park through his or her actions or activities. The Project area is located within the Upper Spencer Gulf Marine Park, managed by the *Gulf Marine Park Management Plan 2012*. The ship loading facility extends out into water that is zoned by the management plan as a General Managed Use Zone (GMUZ-2). The GMUZ-2 zoning will be managed to provide protection for habitats and biodiversity within the Marine Park, while allowing ecologically sustainable development and use.

Overlaying this zone in the area of the ship loading facility is a Special Purpose Area (harbour activities), SPA-3. The SPA-3 provides for *activities undertaken by or on behalf of the Minister responsible for the administration of the Harbours and Navigation Act 1993, or a port operator, for the purposes of maintaining or improving a harbor or port*. The Sanctuary Zone, SZ-5 is located to the west of the proposed ship loading facility. This zone protects a known Giant Australian Cuttlefish aggregation area. SZ-5 is overlain with a special purpose area, SPA-5, allowing for activities for significant economic development.

The Project's compliance with the relevant provisions outlined in this Act is addressed in further detail in **Chapter 14, Marine Ecology** and **Chapter 13, Coastal Processes and Water Quality**.

An allocation (or extension) of a special purpose area overlay encompassing the project area that allows for the port construction and operation will allow for compliance with the Marine Parks Act. Alternatively, the proponent may seek for the port area to be excised from the marine parks boundary. A decision made by the Department for Environment, Water and Natural Resources (DEWNR) allows port areas to be excised from marine parks allowing harbour and shipping activities within designated harbours to continue without impost. Such amendments will be sought from, and carried out by the Minister.

3.3.11. Maritime Services (Access) Act 2000

The Maritime Services (Access) Act 2000 outlines the regulatory framework for access to South Australian ports and maritime services on fair commercial terms to provide for price regulation of essential maritime services.

The main objectives of the Act are to:

- » Provide access to maritime services on fair commercial terms
- » Facilitate competitive markets in the provision of maritime services through the promotion of the economically efficient use and operation of, and investment in, those services
- » Protect the interests of users of essential maritime services by ensuring that regulated prices are fair and reasonable having regard to the level of competition in, and efficiency of, the regulated industry
- » Ensure that disputes about access are subject to an appropriate dispute resolution process.

Relevance and/or project consistency

The project will result in access and use of port facilities for multiple users. The project will be required to comply with the Maritime Services (Access) Act 2000 and ensure that the port facility operations are undertaken in fair commercial terms.

3.3.12. National Parks and Wildlife Act 1972

This Act establishes conservation parks as well as other types of parks. The Act protects all native animals throughout the State with some exceptions, but native plants are only protected within State reserves. Protected plants and animals are listed as either: Endangered; Vulnerable; or Rare.

3.3.12.1. Relevance and/or Project Consistency

In South Australia, the *National Parks and Wildlife Act 1972* (NPW Act) protects biodiversity at a State level. There is only one species likely to be found in the study area that is listed as vulnerable under this Act. A permit is likely to be required to remove or damage native plants which will be cleared during the construction phase. This is addressed in further detail in **Chapter 7, Terrestrial Ecology**.

3.3.13. Native Title (South Australia) Act 1994

The *Native Title (South Australia) Act 1994* recognises and protects native title in South Australia. The expression **native title** means the communal, group or individual rights and interests of Aboriginal peoples in relation to land or waters where:

- » The rights and interests are possessed under the traditional laws acknowledged, and the traditional customs observed, by the Aboriginal peoples
- » The Aboriginal peoples, by those laws and customs, have a connection with the land or waters
- » The rights and interests are recognised by the common law
- » The rights and interests have not been extinguished or have revived.

3.3.13.1. Relevance and/or Project Consistency

The development site is contained within the area defined by the Barnjarla Native Title Claim SC96/4, SAD6011/98 which is currently before the Federal Court of Australia. This is addressed in further detail in **Chapter 11, Cultural Heritage**.

3.3.14. Native Vegetation Act 1991

The *Native Vegetation Act 1991* provides a framework to regulate vegetation clearing where it is necessary for the State's economic development. The objective is for the conservation, protection and enhancement of the native vegetation of the State and, in particular, remnant native vegetation in order to prevent further reduction of biological diversity and degradation of the land and its soil, loss of quantity and quality of native vegetation in the State, and loss of critical habitat.

3.3.14.1. Relevance and/or Project Consistency

Under the NV Act, any clearance of native vegetation, other than vegetation covered under exemptions, requires specific, written approval from the Native Vegetation Council (NVC). The Act does not permit clearing of a "substantially intact stratum" of native vegetation, except under specific circumstances and where a Significant Environmental Benefit (SEB) is available and agreed. The Regulations to the Act detail the circumstances under which areas of vegetation may be cleared following approval by NVC. A SEB will be sought for the Project, as discussed in **Chapter 7, Terrestrial Ecology**.

3.3.15. Natural Resources Management Act 2004

The *Natural Resources Management Act 2004* promotes sustainable and integrated management of the State's natural resources and makes provision for their protection. This is achieved primarily through the development of regional Natural Resource Management Plans.

The objective of this Act is to assist in the achievement of ecologically sustainable development in the State by establishing an integrated scheme to promote the use and management of natural resources.

The Act lists soil, water, native flora and fauna, geological features and ecosystems as natural resources that require protection and, where necessary, rehabilitation to restore ecological function. The Act requires that these natural resources are managed within the principles of ecologically sustainable development.

3.3.15.1. Relevance and/or Project Consistency

The Project site area is contained within the Eyre Peninsula Natural Resource Management Region. The Eyre Peninsula region covers a significant area of South Australia (80,000km² / 8 million Ha) and includes part of the upper Spencer Gulf, the City of Whyalla, stretches across the southern boundaries of the Gawler Ranges, past Ceduna to the edge of the Nullarbor Plain and south to the fishing hub of Port Lincoln. In accordance with this Act, a licence or permit may be required if the Project interferes with natural resources including surface water, ground water, terrestrial ecology or marine environment.

3.3.16. Railways (Operations and Access) Act 1997

The *Railways (Operations and Access) Act 1997* provides for the operation of railways and access to railway services on fair commercial terms. The objectives of this Act are:

- » To promote a system of rail transport in South Australia that is efficient and responsive to the needs of industry and the public
- » To provide for the operation of railways
- » To facilitate competitive markets in the provision of railway services through the promotion of the economically efficient use and operation of, and investment in, those services
- » To promote the efficient allocation of resources in the rail transport segment of the transport industry
- » To provide access to railway services on fair commercial terms and on a non-discriminatory basis.

3.3.16.1. Relevance and/or Project Consistency

The railway activities associated with the operation of the BCEF will need to comply with the provisions outlined in this Act. In particular, written consent will be required to construct and operate the railway spur associated with the Project.

3.3.17. Road Traffic Act 1961

The *Road Traffic Act 1961* provides for the safe operation of roads, road related areas, and traffic control devices. The Act applies to all drivers, riders, passengers, and pedestrians on roads, and provides for enforcement by authorised officers. In addition to general enforcement of road laws, the Act addresses road closures and the use of oversized or over mass vehicles.

3.3.17.1. Relevance and/or Project Consistency

On-road activities required as part of the Project will require compliance with the Road Traffic Act. The use of vehicles which exceed the standard size, mass, and loading requirements will require an exemption.

3.4. Relevant South Australian Strategic Planning Framework

The following provides a review of the Project's consistency with the State planning framework, including:

- » *South Australia Strategic Plan*
- » *Strategic Infrastructure Plan for South Australia*
- » *Eyre and Western Region Plan*
- » *State Natural Resource Management Plan South Australia 2012-2017*
- » *The Eyre Peninsula Natural Resources Management Plan*

3.4.1. South Australia Strategic Plan

The *South Australia Strategic Plan* is the overarching policy document influencing the direction of South Australia. It focusses on six integrated objectives including:

1. Growing prosperity
2. Improving wellbeing
3. Attaining sustainability
4. Fostering creativity
5. Building communities
6. Expanding opportunity.

3.4.1.1. Relevance and/or Project Consistency

The Plan identifies a number of objectives/targets of particular relevance to the Project within the 'Our Prosperity' and 'Our Environment' categories. These targets are outlined in **Table 3.4a**.

Table 3.4a: South Australia Strategic Plan – Relevant objectives/targets

Relevant Strategic Plan Target	Relevance and/or Project Consistency
Our Prosperity	
35. Economic growth: Exceed the national economic growth rate over the period to 2020.	The Project will assist with economic growth in the region by creating revenue and providing local employment opportunities.
36. Labour productivity: Exceed Australia's average labour productivity growth rate through to 2020.	The Project will improve labour productivity by creating additional local employment opportunities.
42. Minerals production and processing: Increase the value of minerals production and processing to \$10 billion by 2020.	The Project facilitates and improves the efficiency of the bulk commodities trade in South Australia by providing an avenue for iron ore to be transported to market.
46. Regional population levels: Increase regional populations, outside of Greater Adelaide, by 20 000 to 320 000 or more by 2020.	Additional local employment opportunities associated with the Project will assist in South Australia's target to increase regional populations, outside of Greater Adelaide, by 20, 000 to 320, 000 or more by 2020.
47. Jobs: Increase employment by 2% each year from 2010 to 2016.	The project will provide additional local employment opportunities, which will help to meet South Australia's target to increase employment by 2% each year from 2010 to 2016.
49. Unemployment: Maintain equal or lower than the Australian average through to 2020.	The Project will provide additional local employment opportunities, which will help to meet South Australia's target to maintain equal or lower than the Australian average through to 2020.
Our Environment	
59. Greenhouse gas emissions reduction: Achieve the Kyoto target by limiting the state's greenhouse gas emissions to 108% of 1990 levels during 2008-2012, as a first step towards reducing emissions by 60% (to 40% of 1990 levels) by 2050.	The Project will contribute greenhouse gas emissions to the state's total, but will seek to minimise and mitigate this impact. Transporting iron ore via ship to market from the Upper Spencer Gulf is the most efficient transportation method in comparison to other available options. This is discussed in further detail in Chapter 12, Climate Change and Sustainability .
69. Lose no species: Lose no native species as a result of human impacts.	The Project is not expected to result in the loss of any native species.
70. Sustainable land management: By 2020, achieve a 25% increase in the protection of agricultural cropping land from soil erosion and a 25% improvement in the condition of pastoral land.	The Project is not located on agricultural cropping land.
71. Marine biodiversity: Maintain the health and diversity of South Australia's unique marine environments.	The Project has been designed and managed to minimise the impact on the health and diversity of South Australia's unique marine environment. This is discussed in further detail in Chapter 14, Marine Ecology .

3.4.2. Strategic Infrastructure Plan for South Australia

The *Strategic Infrastructure Plan for South Australia* provides an overarching state framework for the planning and delivery of infrastructure by all government and private sector infrastructure providers. Strategic priorities for the period between 2005-06 and 2014-15 are identified for 14 infrastructure sectors. This plan closely aligns with the objectives and targets outline in the South Australia Strategic

Plan. It covers all aspects of the state's infrastructure – physical built assets, delivery of infrastructure for social services and natural heritage.

3.4.2.1. Relevance and/or Project Consistency

The Plan identifies a number of strategic priorities of particular relevance to the Project within the 'Transport' and 'Natural Assets' categories. These strategic priorities are outlined in **Table 3.4b**.

Table 3.4b: Strategic Infrastructure Plan for South Australia – Relevant Strategic Priorities

Relevant Strategic Infrastructure Plan – Strategic Priorities	Relevance and/or Project Consistency
Road Transport	
Improve the State’s competitiveness through efficient freight transport networks and improved international links.	The Project is proposed to improve the efficiency of the iron ore transportation network in South Australia. This will improve international links and export opportunities by allowing for transportation of iron ore by rail, rather than road, to the port.
Minimise the impact of freight vehicle movement on the community and environment by appropriately locating and protecting freight routes.	Iron ore will be transported to site via the existing rail network, avoiding placing additional pressure on the road freight network. It does not interfere with any existing freight routes.
Marine Transport Assets	
Facilitate the redevelopment of the State’s export and import harbours to ensure the most efficient access to international markets.	The Project proposes a new port facility to improve the efficiency of exporting materials to the international markets.
Ensure any changes in land use on or near ports and harbours do not preclude current or future transport and harbour activities.	Vessel traffic from the port will utilise existing shipping lanes, and does not interfere with the activities of any other nearby ports e.g. Port Pirie or Whyalla. Nor does construction or operation of the port interfere with transportation to and from surrounding land uses (e.g. Santos facility, Cultana Army Base). Recreational boats will be excluded from the area immediately adjacent to the jetty, but will still have access to nearby coastal waters and will not be obstructed from using the existing Point Lowly boat ramp.
Rail Transport Network	
Encourage the shift to rail transport for passenger and freight movements where justified by environmental, economic or social imperatives.	The Project encourages the efficient use of rail infrastructure for freight transportation.
Natural Assets	
Implement the Living Coast Strategy to ensure the sustainable management of the state’s coastal assets.	The Project will be appropriately located, designed and managed to minimise adverse impacts on South Australia’s coastal assets. There will be some minor disturbance of the shore during construction, but once operational, the Project is not expected to result in any long term changes to the coastal profile or use of the area. The Project is situated in an area already developed for industrial purposes, the proposed location is appropriate for the proposed use and consistent with surrounding land uses.

3.4.3. Eyre and Western Region Plan

The *Eyre and Western Region Plan* (DPTI, 2012a) is a volume of the South Australian Planning Strategy. It identifies the planning priorities, principles and policies necessary to achieve community and economic targets outlined by the South Australian Government for this region.

The Plan fosters strategic growth aligned to the region’s unique and valued natural, built and cultural qualities. It supports activities that benefit the local and regional economy, provide local employment, attract residents and workers, and build vibrant, diverse communities. It recognises the region’s variations in geographical features, economic strengths and community aspirations, and aims to capitalise on the opportunities each presents to ensure a prosperous future for generations of South Australians.

The *Eyre and Western Region Plan* aims to:

- » Balance the social, economic and environmental demands of the region
- » Maximise the region’s competitive advantages in renewable energy, mining, tourism and aquaculture
- » Support the development of alternative water and energy supplies
- » Manage natural resources and protect vulnerable environments and species
- » Accommodate the region’s anticipated population growth
- » Enable communities to develop in an orderly manner to support industrial, commercial and residential demands and support healthy and vibrant communities
- » Cultivate the unique built and natural heritage, culture and values of the region
- » Manage and facilitate existing and planned infrastructure to maximise economic development and job growth.

3.4.3.1. Relevance and/or Project Consistency

The Plan identifies a number of principles and policies of particular relevance to the Project within the 'Environment and Sustainability' and 'Economic Development' categories. These principles and policies are outlined in **Table 3.4c**.

3.4.4. State Natural Resource Management Plan South Australia 2012-2017

This plan establishes the direction for South Australia in its management of natural resources for the next five years and beyond. It provides the framework for regional Natural Resource Management (NRM) boards working with State Government agencies to develop regional plans and programs, and to engage everyone involved in natural resource management from land managers, Aboriginal people and marine resource users to community groups, industry and local government.

The Vision, Goals and Guiding Targets set a strategic state-wide direction for natural resource management; actions are planned for and delivered at the regional level through regional NRM plans and at a state level through NRM agency plans.

3.4.4.1. Relevance and/or Project Consistency

The subject site is located within the Eyre Peninsula region; therefore the Project is subject to the *Eyre Peninsula Natural Resources Management Plan* (discussed in **Section 3.4.5**).

3.4.5. The Eyre Peninsula Natural Resources Management Plan

This Plan provides leadership, encourages community action, and fosters partnerships between organisation for the use and management of natural resources. It is a guide for government agencies, industry, non-government organisations, local councils, volunteer groups, landholder and other stakeholders to ensure that the natural resources of Eyre Peninsula are managed within the principles of ecologically sustainable development.

Under the *Natural Resources Management Act 2004*, the board is required to develop and implement a NRM plan for its region. This plan links with a range of policies, strategies and plans including State NRM Plan and State Strategic Plan

The plan also outlines how these targets will be achieved and evaluated. The targets are aimed at achieving the following goals:

- » Healthy and productive natural resources and natural systems
- » Using and managing natural resources within environmental constraints
- » Progressive and vibrant communities and industries valuing our natural resources and actively participating in their management
- » Effective partnerships based on sound knowledge driving natural resource management.

3.4.5.1. Relevance and/or Project Consistency

The Plan identifies a number of management goals of particular relevance to the Project. These goals relate to retaining, protecting, and managing healthy and productive natural resources and systems; using and managing natural resources within environmental constraints; improving the community's awareness and understanding of effective natural resource management; protecting Aboriginal cultural heritage values; forming and maintaining effective partnerships based on sound knowledge driving natural resource management; The Project is generally consistent with the goals as it seeks to improve the efficiency of exporting natural resources whilst minimising the impact on environmental and social values.

The Project seeks to comply with these relevant management provisions outlined in this plan.

3.4.6. 'Tackling Climate Change, SA's Greenhouse Strategy 2007 – 2020

Tackling Climate Change: South Australia's Greenhouse Strategy 2007-2020 is South Australia's long-term response to climate change and was developed after significant consultation with industry, community, academia, local councils and government.

It outlines the case for action, the wider international context and three essential strategy requirements, which are:

- » The need to reduce our greenhouse gas emissions
- » The need to adapt to climate change
- » The need to innovate.

The strategy sets out specific goals and targets for South Australia, recommended ways to achieve them and key action areas.

This is discussed in further detail in **Chapter 12, Climate Change Greenhouse Gases**.

3.5. South Australian Codes of Practice and Guidelines

In addition to this principle legislation, there are a number of guidelines and codes of practice that are relevant to this Project:

- » EPA Code of Practice for Stormwater Pollution Prevention for the Building and Construction Industry
- » EPA Code of Practice for Vessel and Facility Management (Marine and Inland Waters)
- » EPA Guideline: Abrasive Blasting (2003)
- » EPA Guideline: Pressure Water Blasting Activity (2003)
- » EPA Guideline: Bunding and Spill Management (2007)
- » EPA Guideline: Disposal of Used Hydrocarbon Absorbent Materials (2004)
- » EPA Guideline: Disposal of Soaps and Detergents
- » EPA Guideline: Dredging and Earthworks Drainage (2008)
- » EPA Guideline: Environmental Management of On-site Remediation (2006)
- » EPA Guideline: Stormwater Management for Washbays (2004)
- » EPA Guideline: Site Contamination-Acid Sulphate Soil Materials (2007)
- » EPA Guideline: Assessment and Remediation of Groundwater Contamination (2009)
- » EPA Guideline: Site Contamination-Determination of background concentrations (2008)
- » EPA Guideline: Guidelines for site contamination audit system (2009)
- » EPA Guideline: Site contamination-How to determine actual of potential harm to water that is not trivial resulting from site contamination (2008)
- » EPA Handbook for Pollution Avoidance on Commercial and Residential Building Sites (2004)
- » DTEI Environmental Management Plan Guidelines for Construction-Road, Bridge and Marine Facilities
- » ANZECC 2000
- » Eyre Peninsula Coastal Action Plan and Conservation Priority Study (Caton et al, 2011).

These codes of practice/guidelines are explored in further detail where relevant, within the individual technical chapters of this EIS.

Table 3.4c: Eyre and Western Region Plan (DPTI, 2012a) – Relevant Principles and Policies

Relevant Eyre and Western Region Plan Principles and Policies	Relevance and/or Project Consistency
Environment and Sustainability	
Recognise, protect and restore the region's environmental assets	<p>The Project seeks to appropriately manage and protect the quality and function of</p> <ul style="list-style-type: none"> » water-dependent ecosystems; » coastal, estuarine and marine environments; » Biodiversity; and » Scenic landscapes.
Protect people, property and the environment from exposure to hazards	<p>The Project is located, designed and managed to avoid unacceptable risks from hazards such as;</p> <ul style="list-style-type: none"> » Flooding; » Erosion; » Disturbance of acid sulfate soils; » Bushfires; » Salinity; » Landslides; » water, air and noise pollution; and » Site contamination. <p>This is discussed in further detail in Chapter 17 , Risk and Hazard Management.</p>
Increase the capacity of the region to adapt and become resilient to the impacts of climate change	<p>The Project will be designed to be resilient to the impacts of climate change. This is discussed in further detail in Chapter 12, Climate Change and Greenhouse Gases.</p>
Economic Development	
Protect and build on the region's strategic infrastructure	<p>The Project will protect existing strategic infrastructure and will build new strategic infrastructure of national and State economic benefit. The Project is designed to improve the efficiency and capacity of iron ore international exports.</p>
Protect and strengthen the economic potential of the region's primary production land	<p>The Project avoids impacts to primary production land.</p>
Strengthen the economic potential of the region's mineral and energy resources	<p>The Project's primary objective is to strengthen the economic potential of South Australia's resources by providing an efficient and cost effective international bulk export facility.</p>

3.6. Relevant Local Government Planning Framework

The following provides a review of the Project's consistency with the local government planning framework.

3.6.1. Council Development Plans

In South Australia, Development Plans have been defined for each council area and for areas described as land not within a council area, under the provisions of the *Development Act 1993*. Development Plans identify the desired character for different parts of the council area, as well as the types of development preferred, and the criteria against which development applications will be assessed.

The plans cover a range of environmental, social, cultural and economic matters and provide a local policy framework for development, as well as the detail for assessment of individual development applications. Each Development Plan contains objectives and principles of development control for the council area. Development Plans with designated zones such as residential, industrial and environmental protection include specific objectives and principles of development control for each zone.

3.6.1.1. Relevance and/or Project Consistency

The proposed development area is located in the Whyalla Council area and in areas described as Land Not Within a Council Area. The Development Plans relevant to the proposed Project include:

- » Whyalla (City)
- » Land Not Within a Council Area (Coastal Waters).

An assessment of the Project relevant/consistency is provided in **Section 3.6.2** and **Section 3.6.3**.

3.6.2. Whyalla (City) Development Plan

The Development Plan for Whyalla (City) was consolidated in 16 June 2011. The Development Plan contains the rules that set out what can be done on any piece of land within the City of Whyalla and the detailed criteria against which development applications will be assessed.

The onshore components of the Project (which includes the rail spur, bulk storage facility and conveyors) traverses four zones and also the area designated as "no zones". The development plan zone map can be found in **Figure 3.6a**. These zones are:

- » Coastal Conservation Zone
- » Special Industry Zone
- » Special Industry (Hydrocarbons) Zone.

The general intent for each of these zones are:

- » Coastal Conservation Zone: This zone provides for the conservation of coastal features and scenic quality, whilst enabling appropriate public access and ensuring that development is not subject to coastal hazards. Development within this zone is intended to be subservient to the conservation of the coastal environment in order to ensure that the fragile coastal environment is protected and biodiversity maintained
- » Special Industry Zone: This zone is intended to accommodate large scale manufacturing industry which uses various chemical reactive processes and having special siting requirements
- » Special Industry (Hydrocarbons) Zone: This zone is intended to accommodate chemical industry requiring hydrocarbon feedstock, of State and regional significance which may have special siting requirements including the necessity for large areas of land to accommodate effluent disposal and hazard zones.

3.6.2.1. Relevance and/or Project Consistency

Consideration of the relevant elements of the Project in regard to the objectives for these zones is summarised in **Table 3.6a**.

3.6.3. Land Not Within a Council Area (Coastal Waters) Development Plan

The Land Not Within a Council Area (Coastal Waters) Development Plan (consolidated 31 March 2011) provides policy direction for the area of coastal waters bounded by the State borders with Western Australia and Victoria, the high water mark along the whole of the South Australian coast and the line three nautical miles seaward of the low water mark. The area includes both the Spencer Gulf and the Gulf St Vincent, the off-shore islands and the land three nautical miles seaward of the low water mark around the off-shore islands.

3.6.3.1. Relevance and/or Project Consistency

Consideration of the offshore elements of the Project (jetty and loading wharf and the associated conveyor belt infrastructure to be located on the jetty) in regard to the relevant objectives for the Development Plan is summarised in **Table 3.6b**.

Table 3.6a: Project relevance and consistency with zone objectives

Objectives	Relevance and/or Project Consistency
Coastal Conservation Zone	
To enhance and conserve the natural features of the coast including visual amenity, landforms, fauna and flora.	The onshore conveyor belt infrastructure will traverse this zone linking the bulk storage facility to the loading jetty and wharf. It will be located such that it avoids areas that contain ecologically-significant vegetation/communities and it will be designed such that it is fully enclosed (preventing any spillages and minimising dust).
Low-intensity recreational and tourist accommodation located where environmental impacts on the coast will be minimal.	The Project has no direct impact on existing tourist accommodation, however there may be an indirect impact as a tourism facility could no longer be located on the subject site and amenity for recreational pursuits may be impacted.
Development that contributes to the desired character of the zone.	Through appropriate design and location of the conveyor belt infrastructure, the development can be subservient to the conservation of the coastal environment and ensure that significant environmental and amenity outcomes sought for the stretch of coastline can be protected.
Special Industry Zone	
A zone to accommodate large scale manufacturing industry using various chemical reactive processes, and having special siting requirements, due to large areas of land needed for treatment of effluent and evaporative waste disposal.	The proposed rail spur through this zone has been located with regard to the siting of existing and known future large-scale industry premises to ensure that the function and operation of such industries is not detrimentally impacted by the rail operations.
Industry designed and located so as to practically eliminate impacts upon the terrestrial and marine environment of the locality.	The design and location of the proposed rail spur will aim to eliminate or minimise any impacts upon the environmental conditions within the zone.
Special Industry (Hydrocarbons) Zone	
A zone to accommodate chemical industry requiring hydrocarbon feedstock, of State and regional significance which may have special siting requirements including the necessity for large areas of land to accommodate effluent disposal and hazard zones.	Whilst the proposed Port Bonython BCEF is not a “chemical industry requiring hydrocarbon feedstock”, the Project is within the area nominated by the Government of South Australia in June 2008 for the construction and operation of a port/harbour export facility for bulk minerals and commodities.
The development of compatible chemical industries ensuring the sharing of infrastructure and resources, and the trade of downstream products.	Port Bonython has been recognised by the Government of South Australia as a suitable location to develop a deep water bulk commodities export facility based on its access to deep water, proximity of rail, proximity to mineral resources and proximity to population centre of sufficient size to attract and retain staff.
Industry designed and located to minimise impacts upon the terrestrial and marine environment of Spencer Gulf and the recreational resource of the Point Lowly Peninsula.	The onshore elements of the proposed Project can be designed and located to minimise any significant impacts on the terrestrial and marine environments.

Table 3.6b: Project relevant and consistency with 'Land Not within a Council Area' zone

Objectives	Relevance and/or Project Consistency
Orderly and economic development.	The Project will provide economic development for the region, and will be developed in an orderly manner subject to the legislation outlined in previous sections and in accordance with the EIS approval conditions (if granted).
The safe and efficient movement of people and goods.	The BCEF will improve the efficiency of export logistics. Beach access will be retained once the site is operational with any minor limitations adjacent physical infrastructure. Access to coastal waters for recreational users will also be retained, except for the immediate exclusion zone around the jetty.
Manage development in coastal areas to sustain or enhance the natural coastal environment.	<p>The main impact on the marine environment will be related to construction of the jetty/wharf structure. Construction methods will be adopted to minimise the extent of disturbance and vibration, for example hollow piles will be used and the hand over hand method.</p> <p>The coastal strip is important ecologically (inshore subtidal reef, which is where the Giant Australian Cuttlefish aggregate) and for recreation. The design (location of jetty piles) and construction methodology aim to minimise as much as practical loss of or disturbance to reef communities. For further detail, refer to Chapter 14, Marine Ecology.</p>
Protect the coast from development that will adversely affect the marine and onshore coastal environment whether by pollution, erosion, damage or depletion of physical or biological resources, interference with natural coastal processes or any other means.	The jetty structure is not expected to have an impact on coastal processes or marine water quality, refer to Chapter 14, Marine Ecology .
Development which does not interfere with environmentally important features of coastal areas, including mangroves, wetlands, dune areas, stands of native vegetation, wildlife habitats and estuarine areas.	<p>Areas of ecologically significant vegetation/communities along the coast will be avoided including mangroves, wetlands or dunes.</p> <p>The coastal strip is important ecologically (inshore subtidal reef, which is where the Giant Australian Cuttlefish aggregate) and for recreation. The design (location of jetty piles) and construction methodology will aim to minimise as much as practical loss of or disturbance to reef communities. For further detail, refer to Chapter 14, Marine Ecology.</p>
Development which does not detract from or reduce the value of sites of ecological, economic, heritage, cultural, scientific, environmental or educational importance.	Sites of ecological, economic, heritage, cultural, scientific, environmental or educational importance are identified in this EIS and the design and location of the BCEF will ensure that it minimises the adverse impacts on such sites.

Objectives	Relevance and/or Project Consistency
<p>Preserve areas of high landscape and amenity value including stands of vegetation, exposed cliffs, headlands, islands and hill tops, and areas which form an attractive background to urban and tourist developments, accepting that wind farms and ancillary development may need to be located within such areas and that the visual impact of the development will need to be managed.</p>	<p>A visual impact assessment has been undertaken (refer to Chapter 9, Visual Amenity), which concludes that the jetty and surrounding buildings will largely blend into the surrounding environment when viewed from publically accessible viewpoints. Because of the low vegetation of the surrounding area, some elements of the Project will still have a localised visual impact. Measures to reduce this impact will include use of topography, use of appropriate colours for infrastructure and buildings and use of low-spill lighting.</p>
<p>Development which maintains or enhances public access to coastal areas in keeping with objectives for protection of the environment, heritage and amenity by provision of:</p> <ul style="list-style-type: none"> (a) planned, appropriate easy to use public access to and along beaches; (b) coastal reserves and lookouts; (c) convenient and safe public boating facilities at selected locations; (d) convenient vehicular access to points near beaches and selected points of interest; and (e) adequate car parking. 	<p>The jetty will be above ground crossing the coast, thus enabling continued public access along this section of the Upper Spencer Gulf coastal area. The existing coastal road (Cuttlefish Drive) will remain open to the public. There may be restricted access during construction.</p>
<p>Development only undertaken on land which is not subject to, or can be appropriately protected from, coastal hazards such as:</p> <ul style="list-style-type: none"> (a) inundation by storm tides or combined storm tides and stormwater; (b) coastal erosion; or (c) sand drift. 	<p>The design and location of the various onshore and offshore elements of the Port Bonython BCEF will address the effects of coastal hazards on the jetty and other infrastructure. Refer to Chapter 12, Climate Change and Greenhouse Gases for further information.</p>
<p>Development located and designed to allow for changes in sea level due to natural subsidence and probable climate change during the first 100 years of the development. This change to be based on the historic and currently observed rate of sea level rise for South Australia with an allowance for the nationally agreed most-likely predicted additional rise due to global climate change.</p>	<p>Detailed design of the jetty and wharves will consider an allowance for sea level rise in accordance with current guidance provided by the Coastal Board i.e. allow for sea level rise of 0.8m by 2100.</p>
<p>Development which will not require, now or in the future, public expenditure on protection of the development or the environment.</p>	<p>SGPL will provide ongoing management of marine infrastructure provided by the Project, which include the jetty and wharves. The Operational Management Plan for the Project (refer to Chapter 19, Environmental Management Plan) provides further information on operational controls which will be implemented by SGPL.</p>
<p>The protection of the physical and economic resources of the coast from inappropriate development.</p>	<p>The State Government have determined that Point Lowly is an appropriate place to locate a bulk commodities facility.</p>

3.7. Summary of Likely Approvals/Permit Requirements

The following provides an overview of the approvals and permits that may be required for the Project. The primary Project approvals are those required pursuant to the *Development Act 1993* and the *Environment Protection and Biodiversity Conservation Act 1999*. The Project will also require subsequent approvals before the construction or operational phases of the Project may commence. This Section provides an overview of permit/approvals that may be required for the Project. Approvals and permits required will be largely dependent on the final agreed construction and operational methodology and agreements with relevant Federal and State agencies. This should not be considered a comprehensive list and does not provide a legal opinion on the applicability of specific legislation and the triggering of associated approvals.

Table 3.7a provides an overall summary of approvals that may be required for the construction and operation of the Project (following approval under the *Development Act 1993* and the *EPBC Act 1999*) and highlights the relevant administering/regulatory agency for each.

Table 3.7a: Summary of possible approvals and legislative requirements

Relevant Legislation	Approvals and Legislative Requirements	Administering/ Regulatory Agency
Primary Project Approval		
<i>Aboriginal and Torres Strait Islander Heritage Protection Act 1984</i>	<p>Permission will be required to access, search or excavate land of aboriginal significance including damaging, disturbing or interfering with an aboriginal object or remains. The Project will also require the approval of a heritage management plan, established through negotiations and agreement with all relevant aboriginal parties and regulatory agencies.</p> <p>The construction and operational phase of the Project will need to comply with the general duty of care provision outlined in the Act.</p>	Department of Sustainability, Environment, Water, Population and Communities
<i>Native Title Act 1993</i>	<p>The Project area lies within the Barngarla native title claim application area (NNTT No SC96/4, Federal Court No SG6011/98) however a detailed assessment of the Projects impact on Native Title Claimants is yet to occur. BCEF will use the mechanisms in the Native Title Act to address the extent, if any to which native title rights are affected by the Project.</p> <p>Developing a dialogue and consultation with Barngarla is a priority for SGPL, but until such consultation occurs, assessment of any impact on Native Title will be incomplete.</p>	Commonwealth Attorney-General National Native Title Tribunal
<i>Navigation Act 1912</i>	Authority approval will be required for transporting bulk materials through Australian waters by shipping vessels.	Department of Infrastructure and Transport
Other South Australian Approvals and Legislative Requirements		
<i>Aboriginal Heritage Act 1988</i>	<p>Permission will be required to access, search or excavate land of aboriginal significance including damaging, disturbing or interfering with an aboriginal object or remains. The Project will also require the preparation and approval of a heritage management plan, established through negotiations and agreement with all relevant aboriginal parties and regulatory agencies.</p> <p>An application will need to be made to the Minister under Section 12 and Section 23 of the Aboriginal Heritage Act 1988.</p> <p>The construction and operational phase of the Project will also be required to comply with the general duty of care provision outlined in the Act.</p>	Aboriginal Affairs and Reconciliation Division of the South Australian Department of Premier and Cabinet
<i>Climate Change and Greenhouse Emissions Reduction Act 2007</i>	The proponent may enter into an agreement with the State or be conditioned to meet specified thresholds/targets relating to greenhouse emissions.	Department of Environment and Natural Resources

Relevant Legislation	Approvals and Legislative Requirements	Administering/ Regulatory Agency
Other South Australian Approvals and Legislative Requirements		
<i>Coastal Protection Act 1972</i>	The Project requires referral to the Coastal Protection Board for assessment for undertaking works on the coastline	Department of Environment and Natural Resources
<i>Environment Protection Act 1993</i>	The Project will require an environmental authorisation in the form of a licence under the EP Act. The licence will likely be granted subject to particular construction and operational conditions aimed at minimising environmental impacts. Authorisation for and ongoing licensing of these activities will be required from the EPA.	Environmental Protection Authority (South Australia)
<i>Harbors and Navigation Act 1993</i>	The project will require either a declaration as a 'port' or the port operator would be required to enter into a port operating agreement with the Minister for transport" If declared a port the project may require an amend to the Harbors and Navigation Act to include the port and specifying any particular controls applying within the declared port boundary and operational areas for restricted vessels	Minister for transport
<i>Highways Act 1993</i>	Permission will be required to undertake works on South Australian public roads i.e. Port Bonython Road.	Department of Transport, Planning and Infrastructure
<i>National Parks and Wildlife Act 1972</i>	A permit may be required to remove or damage native plants or interfere with protected animals.	Department of Environment, Water and Natural Resources

Relevant Legislation	Approvals and Legislative Requirements	Administering/ Regulatory Agency
Other South Australian Approvals and Legislative Requirements		
<i>Native Title (South Australia) Act 1994</i>	<p>The Project area lies within the Barngarla native title claim application area (NNTT No SC96/4, Federal Court No SG6011/98) however a detailed assessment of the Projects impact on Native Title Claimants is yet to occur. BCEF will use the mechanisms in the Native Title Act to address the extent, if any to which native title rights are affected by the Project.</p> <p>Developing a dialogue and consultation with Barngarla is a priority for SGPL, but until such consultation occurs, assessment of any impact on Native Title will be incomplete</p>	Attorney-General, linked through National Native Title Tribunal
<i>Native Vegetation Act 1991</i>	Approval from the Native Vegetation Council is not required for the clearance of native vegetation, as the clearance is proposed under Regulation 5(1)(c) - Development subject to Section 48 – <i>Development Act 1993</i> (as the proposed Project has been declared to be of such social, economic or environmental importance requiring an EIS) Instead, the Council is provided the opportunity to make comment on the proposed development, which is then taken into account by the Minister administering the Development Act.	Department of Environment, Water and Natural Resources
<i>Natural Resources Management Act 2004</i>	A licence or permit may be required if the Project interferes with natural resources including surface water, ground water, terrestrial ecology or marine environment. For example, if the Project interferes with particular plant or animal species.	Department of Environment, Water and Natural Resources
<i>Railways (Operations and Access) Act 1997</i>	Written consent is required to construct and operate the railway spur associated with the Project.	Department for Transport, Energy and Infrastructure