

# Proposed modification to existing drainage infrastructure

Part 4 Development Application Assessment Report (DA 23/12346)

November 2023





# Acknowledgement of Country

The Department of Planning and Environment acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land and show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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Proposed modification to existing drainage infrastructure (DA 23/12346)  
Assessment Report

Published: November 2023

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# 1 Introduction

This report provides an assessment of a development application (DA) to modify the existing site drainage infrastructure at a shipping container depot at 9 Bumborah Point Road, Matraville.

The DA was lodged on 1 September 2023 by ACFS Port Logistics Pty Ltd (the Applicant) pursuant to section 4.12 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and Part 3 of the *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation).

The site is located within the Port Botany Lease Area on land previously part of the former Bunnerong Power Station (Power Station).

## 1.1 The proposal

The Applicant proposes to undertake drainage infrastructure works on land legally described as Lot 21 DP 1068292, 9 Bumborah Point Road, Matraville (the site). The proposal involves:

- removal of five (5) existing stormwater pits and reconstruction of five (5) culvert riser pits; and
- construction of six (6) additional stormwater pits.

A description of the proposal and matters for consideration outlined in the Statement of Environmental Effects (SEE) are the subject of this report and will form part of the development consent if the development is approved.

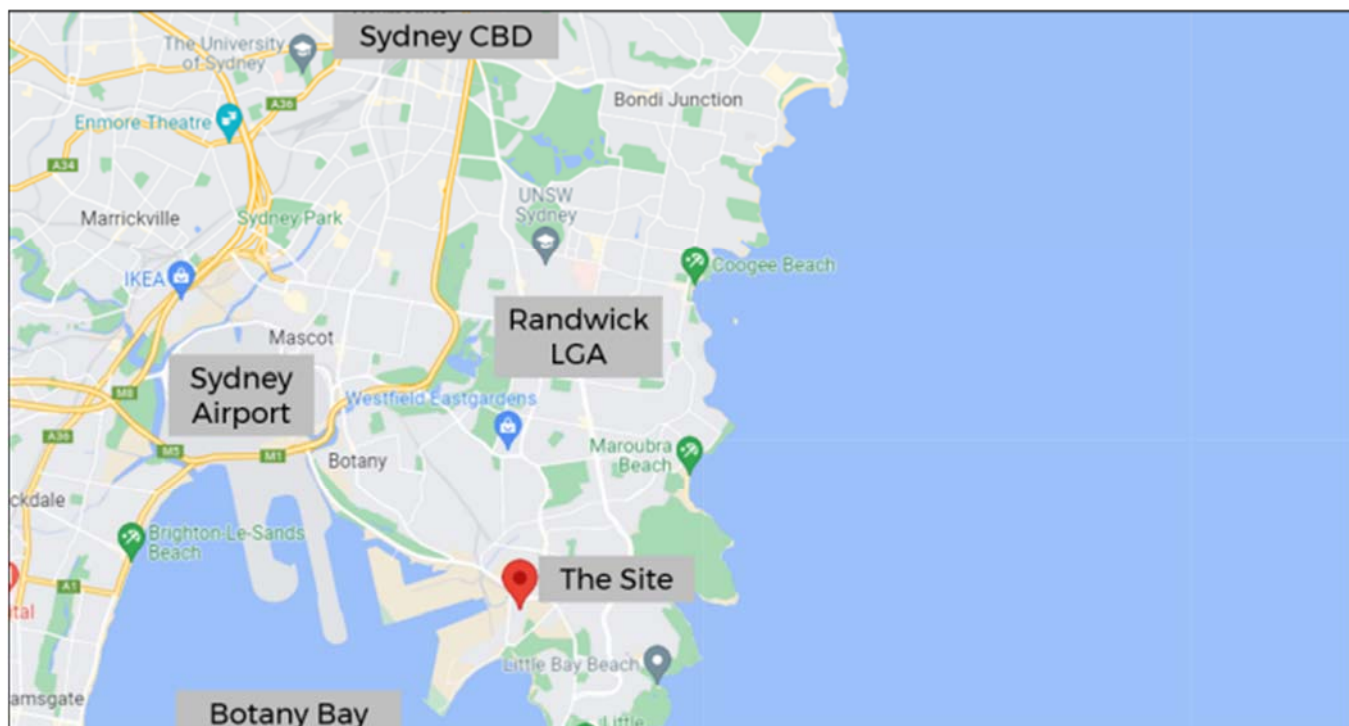
An overview of the proposed development is provided in **Section 2**.

## 1.2 Development location

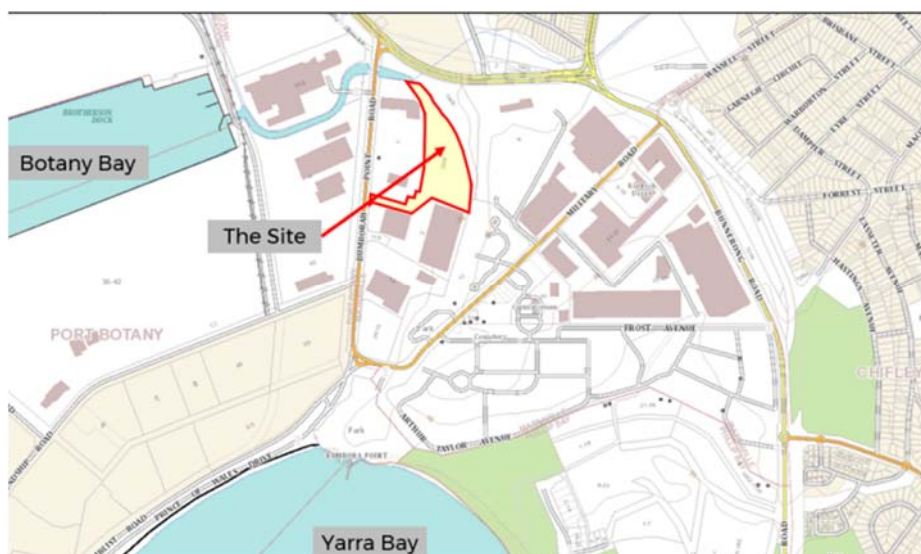
The subject site is located at 9 Bumborah Point Road, Matraville, in the Randwick City local government area (LGA) within the Sydney-Metropolitan region of NSW (see **Figure 1** and **Figure 2**).

Port Botany is the largest container port in New South Wales and handles 2.8 million twenty-foot equivalent unit (TEU) shipping containers annually. The development site is approximately 3.135 hectares in area and is located within the B8 Terminal of the Port Botany Lease Area (see **Figure 3**). The site forms part of an important logistics hub for Sydney in the southern end of the Eastern Harbour District. The site is approximately 731 metres north of Yarra Bay and 1500 metres north-east of Port Botany. Bumborah Point Road is located immediately west and provides site frontage that connects Botany Road to the north and Military Road to the south.

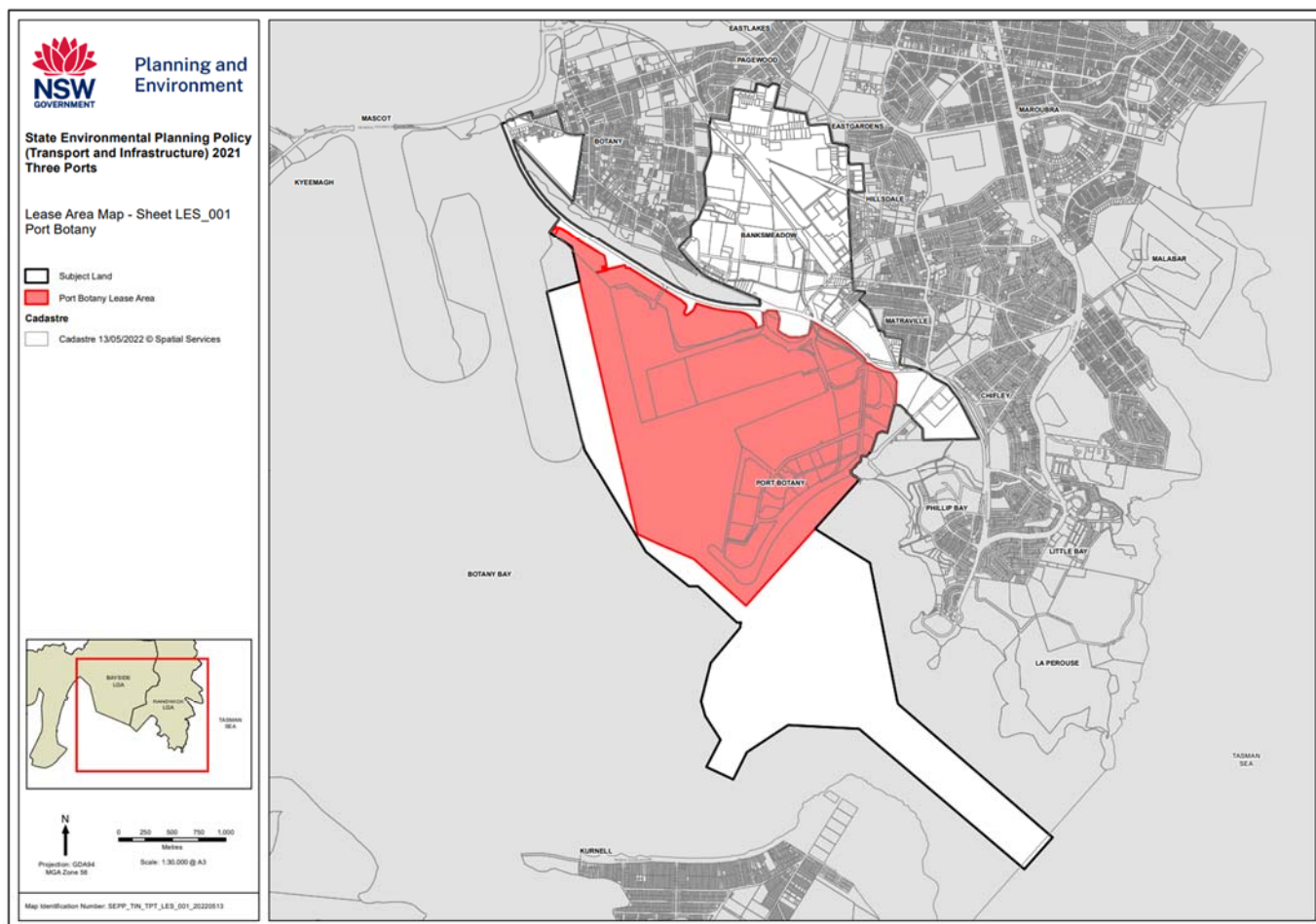
Logistics facilities generally associated with Port Botany are west and south of the site. The adjacent site to the west is an operating bus depot. The northern boundary adjoins Bunnerong Creek and the eastern boundary is shared with the former Power Station cooling canal. Land to the north and east is heavily vegetated and south east of the site is the Eastern Suburbs Memorial Park.



**Figure 1** | Regional context map (Source: SEE)



**Figure 2** | Local context map (Source: SEE)



**Figure 3 | Port Botany Lease Area Map (Source: State Environmental Planning Policy (Transport and Infrastructure) 2021)**

### 1.3 Background

The development site operates as an 24 hour logistics hub that stores shipping containers – seven high empty and five high full. The Port Botany Lessor Ministerial Holding Corporation is the landowner of the Port Botany Lease Area. NSW Port Botany Operations Pty Ltd holds the lease on land within the Port Botany Lease Area including the land forming part of this proposal.

On 17 July 2009, Tzaneros Investments was granted consent by Randwick City Council (Council) for the construction and operation of a 24 hour empty container depot. The Applicant sought and was granted approval by Council to modify the consent to enable containers to be stored across the entire site, at a maximum number of seven empty containers high or five full containers high.

The site was part of the former Bunnerong Power Station property (former Lot 103 DP805244). The power station site was remediated prior to being redeveloped for industrial use. Remediation involved removal of soil impacted by heavy metals and petroleum hydrocarbons and placement of a clean soil capping layer over the remediated land. Parts of the site impacted by asbestos were also covered by a capping layer. The remediated land comprises of containment cells with a capping layer approximately 450 millimetres of virgin excavated natural material (VENM) over a geofabric (marker) liner. Below the geofabric liner is contaminated material.

## 1.4 Related development and works

**Table 1** provides a summary of development consent and modifications determined by Council related to the development site.

**Table 1 |** Development consent history

DA Reference	Summary	Consent Date
<b>DA/858/2008</b>	Establishment and operation of a 24 hour container depot involving the storage and distribution of empty shipping containers.	17/07/2009
<b>DA/858/2008A</b>	Section 96 modification of approved development by increase in height of container stack from 5 containers to 6 containers.	01/12/2010
<b>DA/858/2008/B</b>	Section 96 modification of approved development by deletion of requirement for construction of right turn bay on Bumborah Point Road, relocation of bus stop, deletion of requirement for applicant to meet cost of no stopping zones on Bumborah Point Road, alteration to paving material on site and changes to drainage.	9/08/2012
<b>DA/858/2008/C</b>	Section 4.55 (2) modification seeking to amend condition No.2 by increasing the maximum number of stacked containers to 7 high for empty containers and 5 high for full containers, across the site.	1/11/2021

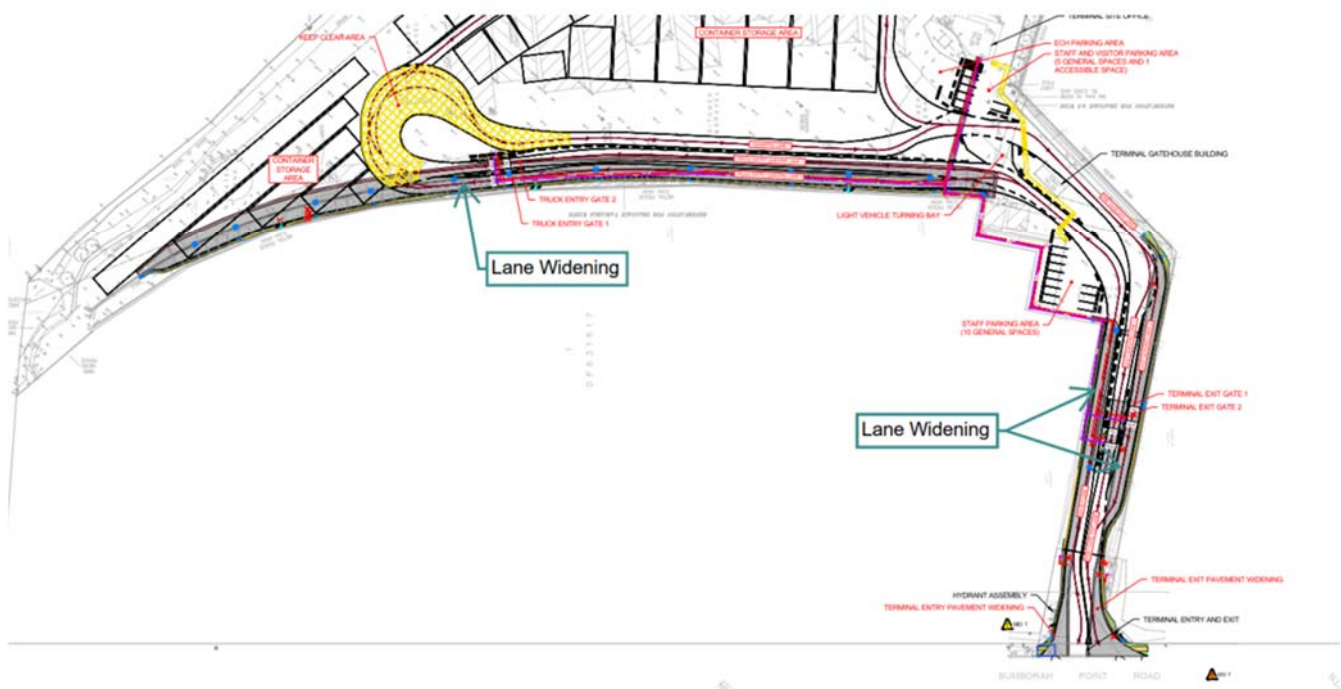
Part of the proposed development site is an active construction site where various works are occurring simultaneously as exempt development authorised by NSW Ports in accordance with *State Environmental Planning Policy (Transport and Infrastructure) 2021* (Transport and Infrastructure SEPP), including:

- new kerb and gutter including subsoil drainage; and
- widening of the entry/exit driveway that provides access from Bumborah Point Road.

## 2 Proposed development

### 2.1 Development overview

The purpose of the proposed development is to enable reconfiguration of the internal road layout to improve truck access and facilitate heavy container storage and transport within the site. The Applicant intends to realign the truck access lane closer to its western boundary on a new concrete road to accommodate heavy vehicles and container storage (see **Figure 4**). This work requires modification to existing drainage infrastructure by providing strengthened structures within the truck access road. The Applicant has cleared vegetation under exempt development provisions, where it intends to construct the new access road and stormwater pits.



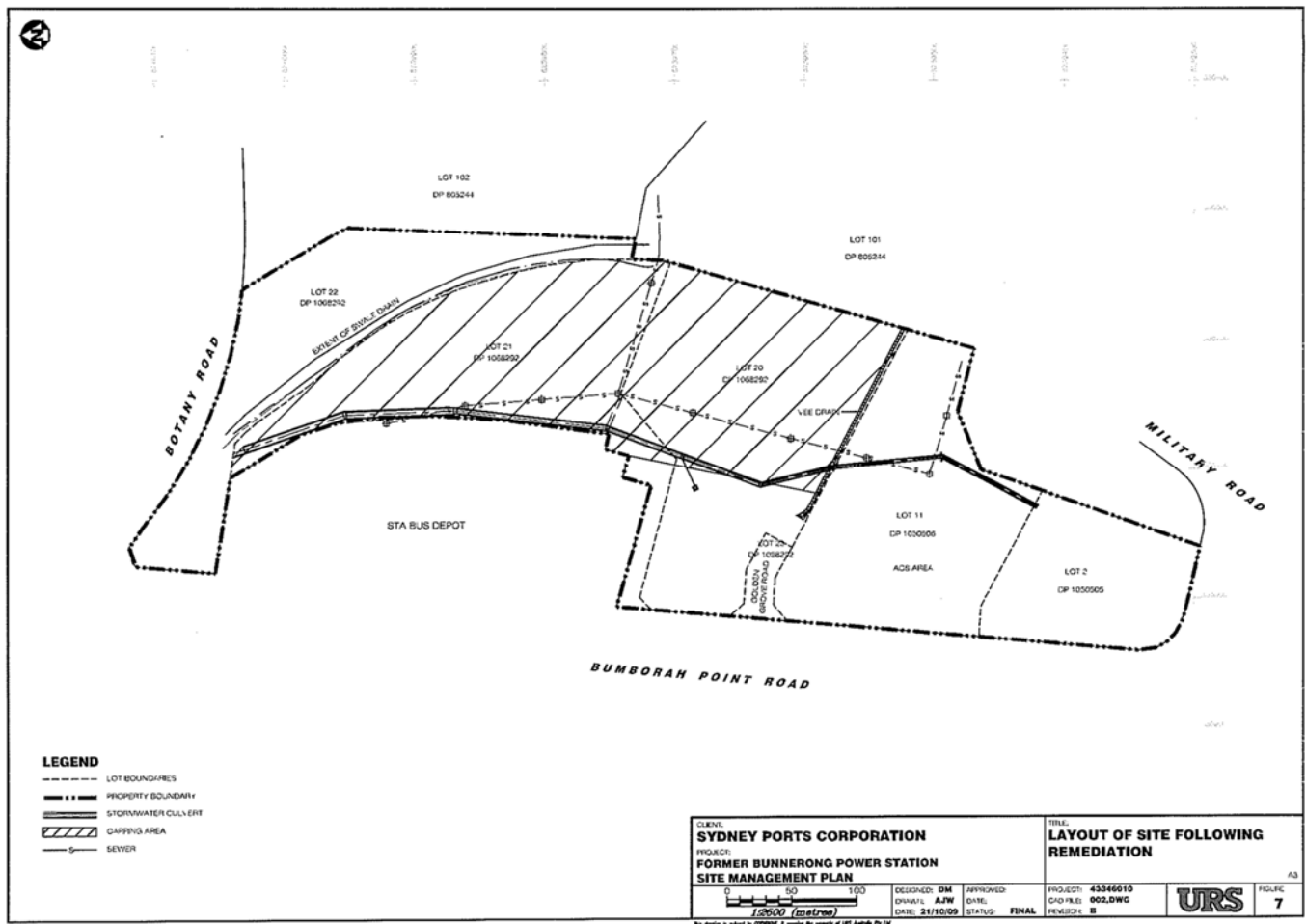
**Figure 4** | Lane Widening (Source: SEE)

### 2.2 Physical layout and design

The proposed development includes the following works:

- Removal of five existing stormwater pits and reconstruction of five culvert riser pits; and
- Construction of six additional stormwater pits.

An existing stormwater culvert within the site is located within the capped area (see **Figure 5**) and drains in a northerly direction to Bunnerong Creek from properties to the south of the site. The proposed changes to the site's drainage infrastructure by removing, replacing and providing new stormwater pits and risers would involve breaching the capping layer and disturbing potentially contaminated soil below.



**Figure 5 | Site layout** (Source: SEE)

An indicative section of the new and replacement stormwater pits is shown in **Figure 6**.

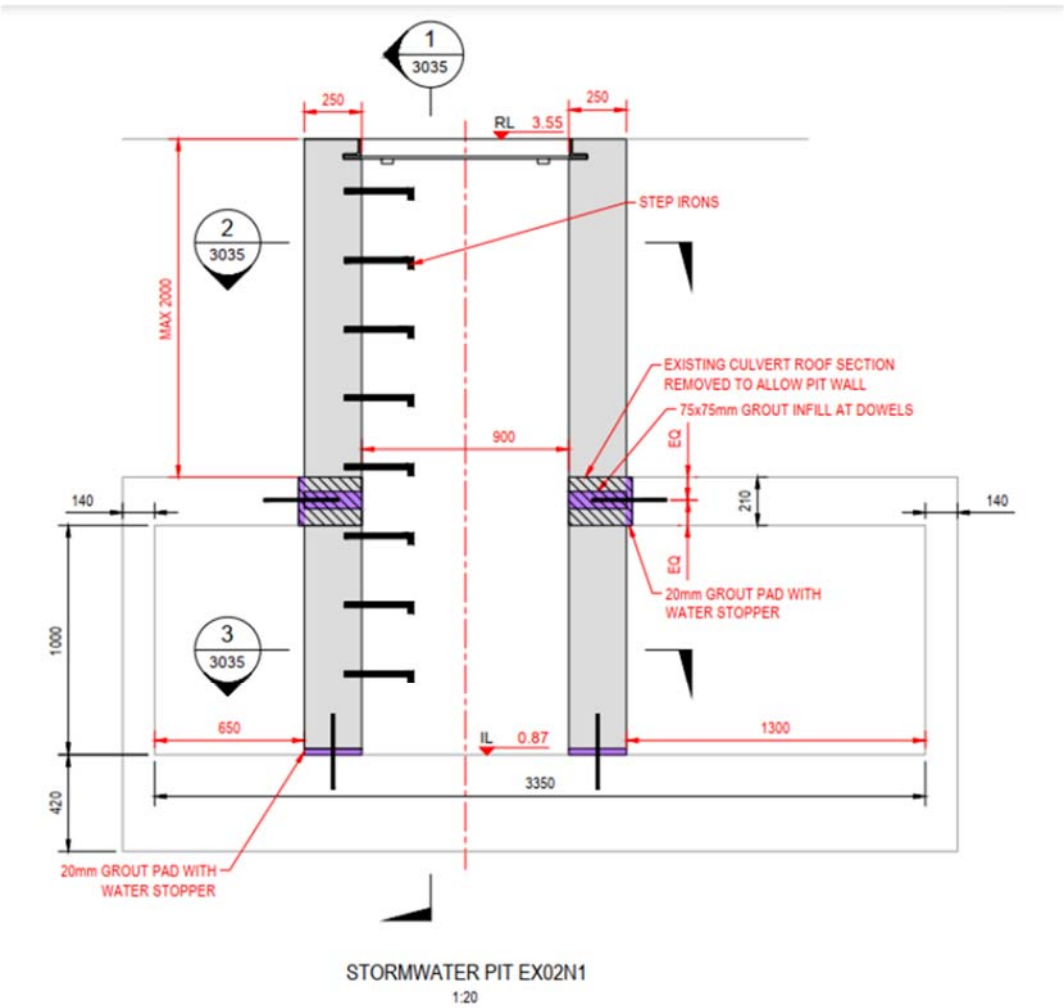


Figure 6 | Proposed Culvert Riser Pit Type 1 of 2 (Source: Drainage Design Report)

Replacement and construction of the new stormwater pits is expected to have a duration of three to six weeks and occur simultaneously with operations at the container storage facility.

## 3 Strategic context

### 3.1 Eastern City District Plan 2018

The *Eastern City District Plan 2018* (ECDP) identifies Port Botany as an international trade and transport gateway supporting the Harbour CBD and Eastern Economic Corridor.

Objective 16 of the ECDP seeks to ensure the freight and logistics network is competitive and efficient. The proposed development will enhance container capacity at Port Botany to meet the Port's container storage needs.

The Department has considered the strategic context of the proposal against the objectives of the EHCDP and is satisfied that it is consistent with these objectives.

### 3.2 NSW Freight and Ports Plan 2018-2023

The *NSW Freight and Ports Plan 2018-2023* (FPP) is a call to action for government and industry to collaborate on clear initiatives and targets to make the NSW freight task more efficient and safer.

Goal 2.2 of the FPP is to improve flow of freight through trade gateways. The Plan recognises Port Botany's role as the primary container facility in NSW and states that the NSW Government will support this goal by improving movement and utilisation of empty containers. The proposed development would enable enhanced storage and movement of empty containers at Port Botany.

The Department has considered the strategic context of the proposal against the objectives of the FPP and is satisfied that it is consistent with the objectives of the Plan.

## 4 Statutory context

### 4.1 Permissibility and assessment pathway

Details of the planning pathway under consent is sought and permissibility of the proposed development are provided in **Table 2** below.

**Table 2** | Permissibility and assessment pathway

Consideration	Description
<b>Assessment pathway</b>	<p>The development is located in the Port Botany Lease Area, as identified under the Transport and Infrastructure SEPP, and:</p> <ul style="list-style-type: none"><li>• is permissible with development consent under the Transport and Infrastructure SEPP</li><li>• has a capital investment value (CIV) of less than \$100 million; and</li><li>• is not designated development under Schedule 3 of the EP&amp;A Regulation.</li></ul> <p>Accordingly, the development does not meet the criteria for State significant development as outlined in Clause 5.27 of the Transport and Infrastructure SEPP and is subsequently classified as a Part 4 development under the EP&amp;A Act.</p>
<b>Consent authority</b>	<p>Under Clause 5.6 of the Transport and Infrastructure SEPP, the Minister for Planning and Public Spaces is the consent authority for Part 4 applications on land within the Lease Area of Port Botany.</p>
<b>Decision-maker</b>	<p><b>Director</b></p> <p>Under the Instrument of Delegation dated 9 March 2022, the functions and powers of the Minister for Planning and Public Spaces under section 4.16 of the EP&amp;A Act to determine a development application may be delegated whereby:</p> <ul style="list-style-type: none"><li>• a reportable political donation disclosure statement has not been made</li><li>• there are less than 15 public submissions in the nature of objection; and</li><li>• council has not made an objection.</li></ul> <p>The proposed modification meets the terms of this delegation. As such, the Director, Transport and Water Assessments is the delegated authority to determine the development application.</p>

Consideration	Description
<b>Permissibility</b>	<p>Although the development site was approved as a “Container Depot” under DA/858/2008 in 2009, it is no longer a land use term adopted due to the repeal of <i>State Environmental Planning Policy (Three Ports) 2008</i> (Three Ports SEPP). Upon review of Council’s assessment report for DA/858/2008/C, current use of the site is characterised as a “port facility” for the purposes of this assessment.</p> <p>Accordingly, a Port Facility is permissible with consent within the SP1 Special Activities zone pursuant to the Transport &amp; Infrastructure SEPP. The proposed drainage work is considered to be aligned with the zoning objectives as it increases the functionality and improves the site layout of the port facilities.</p> <p>The proposed development is not ‘exempt development’ as it involves breaching the existing containment cell and consequently does not meet the criteria for exempt development in Clause 5.24(3)(f) of the Transport and Infrastructure SEPP.</p>

## 4.2 Mandatory matters for consideration

### 4.2.1 Matters of consideration required by the EP&A Act

Section 4.15 of the EP&A Act sets out matters to be considered by a consent authority when determining a development application. The Department’s consideration of these matters is shown in **Table 3** below.

**Table 3** | Matters for consideration

Matter for consideration	Department’s assessment
<b>Environmental planning instruments, proposed instruments, development control plans &amp; planning agreements</b>	Appendix B
<b>EP&amp;A Regulation</b>	Appendix B
<b>Likely impacts</b>	Section 6 - Assessment
<b>Suitability of the site</b>	Section 1.3 - Project background, Section 3- Strategic Context and Section 6 - Assessment
<b>Public submissions</b>	Section 5 - Engagement & Section 6 - Assessment
<b>Public interest</b>	Section 5 - Engagement, Section 6 - Assessment & Section 7 - Evaluation

#### 4.2.2 Objects of the EP&A Act

In determining the development application, the Minister should consider whether the proposal is consistent with the relevant objects of the EP&A Act (section 1.3) including the principles of ecologically sustainable development. Consideration of those factors is described in **Appendix B**.

As a result of the analyses in **Appendix B**, the Department is satisfied that the development is consistent with the objectives of the EP&A Act and the principles of ecologically sustainable development (ESD).

# 5 Engagement

## 5.1 Exhibition of the SEE

### 5.1.1 Public exhibition of the SEE

After accepting the development application and SEE, the Department:

- publicly exhibited the proposal from 20 September 2023 until 5 October 2023 on the NSW Planning Portal;
- notified occupiers and landowners in the vicinity of the site about the public exhibition; and
- notified and invited comment from the Environment Protection Authority (EPA) and Randwick City Council.

### 5.1.2 Summary of advice received from government agencies and council

The Department received advice from the **EPA** and **Randwick Council**. The advice is provided in **Appendix A**.

The **EPA** recommended a site-specific construction environmental management plan (CEMP) be developed for contamination at the site. The CEMP must be prepared, or reviewed and approved by a certified consultant. The EPA also recommended the proposed development not result in a change of risk from any pre-existing contamination on the site, and processes outlined in *State Environmental Planning Policy (Resilience and Hazards) 2021* be followed in order to assess land suitability and any remediation required for the proposed use.

**Randwick Council** reviewed the SEE and advised that they had no concerns.

## 5.2 Request for further information

On 13 October 2023, the Department requested the Applicant provide further information (RFI) to address contamination and monitoring of construction works. The Applicant provided a response on 16 October 2023, addressing all matters raised in the RFI. The Applicant acknowledged the unexpected finds protocol (UFP) submitted with the application was incorrect and provided an updated UFP. The Applicant also provided a revised Safe Work Method Statement (SWMS) to comply with the *Work Health and Safety Regulation 2017*.

On 17 October 2023, the Department requested the Applicant provide a response to the EPA's advice. The Applicant provided a CEMP in response on 20 October 2023.

## 6 Assessment

The Department has considered the relevant matters for consideration under section 4.15 of the EP&A Act, the SEE, agency advice and additional information [provided by the Applicant in its assessment of the proposal. The Department considers the key assessment issues to be:

- contamination; and
- water quality.

### 6.1 Contamination

The Department is satisfied the construction of the stormwater infrastructure below the capping layer can be managed through commitments made by the Applicant, including a CEMP and Safe Work Method Statement (SWMS), and potential impacts are localised to the site.

The site comprises previously remediated land that has a capping layer of approximately 450 millimetres of VENM over a geofabric marker liner. Below the geofabric liner are containment cells containing contaminated material comprising of TPHs, heavy metals and asbestos.

The proposal involves excavation of existing landscape soils and sub-grade material. Approximately 38m<sup>3</sup> of potentially asbestos impacted material would require excavation below the capping layer during construction. There is a risk that excavated material from below the capping layer will contain other contaminants such as TPH and heavy metals.

The SWMS outlines potential hazards involved during construction and associated mitigation measures. As per the SWMS, potentially contaminated excavated material would be isolated from 'clean' capping material. This material would be kept in stockpiles with appropriate contamination management measures implemented immediately after stockpiling, including bunding, sediment protection, signage and dust management.

Potentially excavated contaminated material would be backfilled and compacted before the marker layer and capping are replaced. Excess material excavated from below the marker layer would be disposed off-site at an EPA licensed waste management facility.

The Department considers excavated contaminated soils is a potential risk to site users, as the site will continue to operate as a container depot throughout construction. However, the Applicant proposes to implement management measures included in the SWMS such as stockpile bunding, sediment protection and dust management measures to be put in place immediately after stockpiles are created. These measures are considered to be appropriate for the level of risk associated with the proposal.

The Applicant prepared a CEMP in response to EPA advice recommending a site-specific CEMP be prepared to minimise the risk of contamination during construction. The Department has reviewed the CEMP and supports the proposed mitigation measures and has recommended a condition for a CEMP to be approved by the Principal Certifier prior to construction commencing.

In addition, the Department has recommended conditions requiring:

- an Unexpected Contaminated Finds Protocol;
- notification to adjoining properties should asbestos be disturbed during earthworks;
- removal of asbestos be carried out by an licenced asbestos removalist in accordance with the *Work Health & Safety Act 2011* and *Work Health & Safety Regulation 2011*; and
- reinstatement of the marker layer and capping layer in accordance with the SWMS and CEMP. Further, the Applicant will be required to obtain an Occupation Certificate to confirm that the construction of the proposal has been carried out in accordance with the approved plans.

## 6.2 Water Quality/Stormwater

The Department considers that water quality and stormwater issues have been adequately considered by the Applicant and that the proposal will not worsen existing surface drainage and the construction of the new stormwater infrastructure can be managed through recommended conditions.

Along the eastern perimeter of the development site is an open stormwater channel (former power station cooling canal) that drains into Bunnerong Creek which is an open concrete lined channel that eventually discharges into Botany Bay. However, due to the grading of the site, surface water drains west into the existing stormwater inlet pits along the access road and western boundary. Surface water captured from the existing inlet pits drain into an existing Reinforced Concrete Box Culvert (RCBC) discharging into Bunnerong Creek.

The proposal will improve the quality of stormwater by the installation of Enviro Pods within the stormwater pits to capture sediment and gross pollutants before the water enters the culvert and provide additional inlet pits for surface stormwater flows.

The Department has recommended conditions requiring the installation and maintenance of soil and erosion controls in accordance with the 'Blue Book'. This includes use of measures to manage stockpiles and diverting 'clean' water flows around the construction area. The Department has also recommended conditions to address collection, discharge and connection to existing stormwater drainage to the satisfaction and approval of the Certifier (and Council if stormwater is to be discharged to Council's stormwater system or street gutter).

The Applicant proposes to assemble the new drainage pits off-site before the existing pits are replaced to ensure that the current drainage system remains functional during construction. The Department has recommended a condition for stormwater drainage structures to be designed and constructed in accordance with AS/NZS 3500.3 Plumbing and Drainage: Stormwater drainage. AS/NZS 3500.3 sets out the requirements for the materials, design, installation and testing of drainage systems and can be used to demonstrate compliance with the National Construction Code.

## 6.3 Other issues

The Department's consideration of other issues is summarised in **Table 4** below.

**Table 4** | Assessment of other issues

Issue	Findings and conclusions	Recommended conditions
<b>Biodiversity</b>	The development site is cleared of vegetation and does not contain any habitat suitable for threatened species. Therefore in accordance with section 7.7 of the <i>Biodiversity Conservation Act 2016</i> a biodiversity development assessment report is not required as the proposal is not likely to significantly affect threatened species.	N/A
<b>Flooding</b>	<p>Surface water on the site drains into the existing inlet pits and is discharged into Bunnerong Creek.</p> <p>The Applicant provided a flooding report (Appendix 9 of the SEE) to confirm the impact of the proposal on flooding on the site. The flooding report comprises a desktop study of prior stormwater and flooding studies and concluded the proposal would not worsen flood risk to the site or adjoining properties, including during 1% AEP and PMF flooding events.</p> <p>The 1% AEP flood extent predicted the site experiences localised ponding up to a depth of 0.6m in the Terminal entrance driveway low point. The proposal is intended to not increase the likelihood of ponding occurring within the development site. However, it has not been designed to reduce existing ponding that may currently occur. The proposal would not change the overall site grading, however, it is noted that the entrance driveway is being reconstructed as exempt development.</p> <p>The Flooding Report concludes the proposal would have minimal impact on existing flooding conditions for all events up to the worst-case flooding event. The Department notes the development would have a negligible impact on flooding within the site and upstream properties.</p>	

Issue	Findings and conclusions	Recommended conditions
<b>Traffic</b>	<p>The development site is accessible from Bumborah Point Road and is suitable for B-double vehicles. The road provides direct and indirect access to some NSW Ports tenant sites.</p> <p>The vehicle movements required by the proposal during construction would be negligible in comparison to the volume of vehicles currently accessing the site as a container facility.</p>	<p>Condition D6 requires all construction vehicles to be contained wholly within the site and to avoid disruption to on-street traffic.</p>
<b>Air Quality</b>	<p>The Department has recommended conditions for soil and stockpiles to be managed in accordance with the CEMP and SWMS. The erosion and sediment control plan that forms part of the CEMP must be prepared in accordance with the 'Blue Book'.</p>	<p>The recommended conditions require the Applicant to:</p> <ul style="list-style-type: none"> <li>• implement measures where practicable to minimise dust generation.</li> <li>• the implementation of erosion and sediment controls and measures to prevent vehicles tracking dirt onto the roadway.</li> </ul>

## 7 Evaluation

The Department's assessment has considered the relevant matters under section 4.15 of the EP&A Act, the objects of the EP&A Act and the principles of ecologically sustainable development. The Department has considered the merits of the development, taking into consideration strategic plans that guide development in the area, the environmental planning instruments that apply to the development and advice received from the relevant public authorities, including Council. No objections from State government agencies or Council to the development have been received and the Department has sought to address any issues raised in consultation with the EPA and the Applicant.

The Department's assessment of the development identified contamination and water quality and stormwater as the key issues for consideration. The assessment has concluded the proposed development has minimal environmental impacts which can be managed and mitigated.

Overall, the Department considers the proposal is acceptable for the following reasons:

- The development application complies with relevant statutory provisions and remains consistent with the EP&A Act (refer to Section 4);
- The proposal would improve the site's capacity as a shipping container depot within the strategically significant Port Botany; and
- Excavating potentially contaminated material risks adversely impacting the environment. However, this risk can be managed by implementing the commitments made by the Applicant and addressing the requirements of the conditions of consent.

Following on from its assessment of the proposed development, the Department considers the development is acceptable, subject to conditions of consent.

## 8 Recommendation

It is recommended that the Director, Transport and Water Assessments, as delegate of the Minister for Planning and Public Spaces:

- **considers** the findings and recommendations of this report
- **accepts and adopts** the findings and recommendations in this report as the reasons for making the decision to grant consent to the application
- **signs** the attached development consentError! Reference source not found.

Recommended by:



7/11/23

**Daniel Neely**  
Para Planner  
Transport and Water Assessments

Recommended by:



7/11/23

**Michael Young**  
Principal Planning Officer  
Transport and Water Assessments

## 9 Determination

The recommendation is **adopted**/~~not adopted~~ by:



7/11/23

**Glenn Snow**

Director

Transport and Water Assessments

# Glossary

Abbreviation	Definition
<b>CEMP</b>	Construction Environmental Management Plan
<b>CIV</b>	Capital Investment Value
<b>Council</b>	Randwick City Council
<b>DA</b>	Development Application
<b>Department</b>	Department of Planning and Environment
<b>EPA</b>	NSW Environment Protection Authority
<b>EP&amp;A Act</b>	<i>Environmental Planning and Assessment Act 1979</i>
<b>EP&amp;A Regulation</b>	Environmental Planning and Assessment Regulation 2021
<b>EPI</b>	Environmental planning instrument
<b>ESD</b>	Ecologically Sustainable Development
<b>LEP</b>	Local environmental plan
<b>LGA</b>	Local Government Area
<b>Minister</b>	Minister for Planning and Public Spaces
<b>RCBC</b>	Reinforced Concrete Box Culvert
<b>Planning Secretary</b>	Secretary of the Department of Planning and Environment
<b>SEPP</b>	State environmental planning policy
<b>SEE</b>	Statement of Environmental Effects
<b>SWMS</b>	Safe Work Method Statement
<b>TEU</b>	Twenty-foot equivalent unit
<b>UFP</b>	Unexpected Finds Protocol
<b>VENM</b>	Virgin Extracted Natural Material

# Appendices

## Appendix A – List of documents

The following supporting documents and supporting information to this assessment report can be found on the NSW Planning Portal as follows:

### **Application and Statement of Environmental Effects**

<https://www.planningportal.nsw.gov.au/daex/under-consideration/modifications-existing-drainage-infrastructure-da-2312346>

### **Submissions**

<https://www.planningportal.nsw.gov.au/daex/under-consideration/modifications-existing-drainage-infrastructure-da-2312346>

## Appendix B – Statutory considerations

### Objects of the EP&A Act

A summary of the Department's consideration of the relevant objects (found in section 1.3 of the EP&A Act) are provided in **Table 5** below.

**Table 5** | Objects of the EP&A Act and how they have been considered

Object	Consideration
<b>(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,</b>	The proposal seeks to maximise the use of the site. The proposal would not adversely impact the State's natural or other resources.
<b>(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,</b>	The Department has considered ecologically sustainable development (ESD) in its assessment of the development (see further below in Appendix B). The Department is satisfied the development can be carried out in a manner that is consistent with the principles of ESD.
<b>(c) to promote the orderly and economic use and development of land,</b>	The proposal involves the orderly and economic use of land through the improved utilisation of land within the Port Botany Lease Area
<b>(d) to promote the delivery and maintenance of affordable housing,</b>	Not applicable
<b>(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,</b>	The Department considers the proposal would not result in unacceptable environmental impacts.
<b>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),</b>	No impacts to built and cultural heritage have been identified due to the historical disturbance of the site and locality.
<b>(g) to promote good design and amenity of the built environment,</b>	The Department considers the proposal would not result in unacceptable built form impacts.
<b>(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,</b>	The proposal is not for an occupiable building.

Object	Consideration
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,	The Department referred the development to relevant government agencies and Council and invited them to comment. The Department has given due consideration to their advice.
(j) to provide increased opportunity for community participation in environmental planning and assessment.	The Department exhibited the development application and accompanying documents between 20 September and 5 October 2023, made the application publicly available on its website and notified adjacent landowners, EPA and Randwick City Council (Council). No public submissions were made and Council did not provide comment on the proposed development. EPA's advice has been considered in the Department's assessment (see Section 6.1)

**Table 6 | Matter for Consideration under Section 4.15 of the EP&A Act**

9.1.1.1 Matter	9.1.1.2 Consideration
a) The provisions of: <ul style="list-style-type: none"> <li>i) any environmental planning instrument, and</li> </ul>	The Department has considered the relevant environmental planning instruments in its assessment of the development. Details of the assessment is provided further below in <b>Appendix B</b> .
<ul style="list-style-type: none"> <li>ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and</li> </ul>	The Department has considered the relevant draft environmental planning instruments in its assessment of the development. Details of the assessment is provided further below in <b>Appendix B</b> .
<ul style="list-style-type: none"> <li>iii) any development control plan, and</li> </ul>	The Randwick Development Control Plan 2013 (RDCP) applies to all land within the Randwick LGA.
<ul style="list-style-type: none"> <li>iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and</li> </ul>	The Applicant has not entered into a planning agreement under Section 7.4 of the EP&A Act.
<ul style="list-style-type: none"> <li>iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),</li> </ul>	The Department has assessed the development in accordance with relevant matters prescribed by the EP&A Regulations the findings of which are contained in this report.

b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,	The Department has considered the likely impacts of the development in detail in <b>Section 6</b> of this report. The Department concludes that environmental impacts can be appropriately managed and mitigated through the recommended conditions of consent.
c) the suitability of the site for the development,	The development is permissible with consent and the site is suitable for the proposal as it is located on land zoned SP1 Special Uses and does not adversely impact on surrounding uses.
d) any submissions made in accordance with this Act or the regulations,	All matters raised in advice received from agencies and Council have been summarised in <b>Section 5</b> of this report and given due consideration as part of the assessment of the proposal in <b>Section 6</b> of this report.
e) the public interest.	The Department considers the proposal to be in the public interest.

## Ecologically sustainable development

The EP&A Act adopts the definition of ecologically sustainable development (ESD) found in the *Protection of the Environment Administration Act 1991*. Section 6(2) of that Act states that ESD requires the effective integration of economic and environmental considerations in decision-making processes and that ESD can be achieved through the implementation of:

- the precautionary principle.
- inter-generational equity.
- conservation of biological diversity and ecological integrity.
- improved valuation, pricing and incentive mechanisms.

The potential environmental impacts of the proposed development have been assessed and where potential impacts have been identified, mitigation measures have been recommended. As demonstrated in **Section 6** of this report, the Department considers that potential impacts to contaminated materials can be managed by the implementation of the proposed mitigation measures and is consistent with the objects of the EP&A Act and the principles of ESD.

## EP&A Regulation

Subject to any other references to compliance with the EP&A Regulation cited in this report, the requirements for Fees (Part 13, Division 3) have been complied with.

## Environmental Planning Instruments (EPIs)

To satisfy the requirements of Section 4.15(1) of the EP&A Act, the following EPIs were considered as part of the Department's assessment:

- State Environmental Planning Policy (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP)
- State Environmental Planning Policy Resilience and Hazards 2021 (Resilience and Hazards SEPP)
- Draft State Environmental Planning Policy Remediation of Land (Remediation of Land SEPP)

## Transport and Infrastructure SEPP

Although the Site was approved as a “Container Depot” under DA/858/2008 in 2009, it is no longer a land use term adopted due to the repeal of *State Environmental Planning Policy (Three Ports) 2008* the Three Ports SEPP. Upon review of Council’s assessment report for DA/858/2008/C, the current use of the Site has been characterised as a “port facility” for the purposes of this assessment.

Accordingly, a Port Facility is permissible with consent within the SP1 Special Activities zone pursuant to the Transport & Infrastructure SEPP. The proposed drainage work is considered to be aligned with the zoning objectives as it increases the functionality and improves the site layout of the port facilities.

The proposed development is not ‘exempt development’ as it involves breaching the existing containment cell and consequently does not meet the criteria for exempt development in Clause 5.24(3)(f) of the Transport and Infrastructure SEPP.

## Resilience and Hazards SEPP

Chapter 4 of the Resilience and Hazards SEPP contains the provisions of the former SEPP 55. The chapter aims to provide a State-wide approach to the remediation of contaminated land. Chapter 4 requires a consent authority to not grant consent to development unless:

- it has considered whether the land is contaminated,
- 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
- 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 Department has considered contamination in its assessment of this proposal (see **Section 6.1**). The Department considers that the implementation of the CEMP, SWMS and soil and erosion controls established in the ‘Blue Book’ appropriately minimise the risk of contamination impact.

## Draft Remediation of Land SEPP

The draft Remediation SEPP seeks to retain the key operational framework of the current SEPP 55, while also adding new provisions relating to changes in categorisation and introducing modern approaches to the management of contaminated land. The development has been assessed against SEPP 55 (see above), and the Department is satisfied the proposal would be consistent with the draft Remediation SEPP.

## **Randwick Development Control Plan 2013 (RDCP)**

Section B3 of the RDCP requires the preparation of a soil and erosion management plan for DAs involving excavation or other site disturbance. Appendix 10 of the SEE illustrates the sediment control plan to be established prior to the commencement of works.

Section D15 (7)(i) of the RDCP relating to industrial areas requires disturbance to existing drainage is minimised. The construction methodology proposed to construct new drainage structures before existing ones are replaced so as to not disturb existing drainage patterns. Section D15 (7)(ii) requires erosion/sedimentation to be minimised during construction. The Department considers that this can be complied with given the conditions of consent require soil and erosion controls to be implemented in accordance with the 'Blue Book'.

### **Other approvals**

The Applicant has not indicated that the proposal is integrated development under section 4.45 of the EP&A Act.

## Appendix C – Recommended Instrument of Consent