

## 6.1 Scope

A number of statutory planning controls need to be addressed for the Activity (which is defined below) and other components of the BGC Project. This chapter reviews the Commonwealth and State legislation and local planning controls to determine what approvals would be required to allow the BGC Project to proceed.

The BGC Project is an extensive project with many inter-related components, including the Activity itself, as well as other elements that have been or will be separately approved and constructed to achieve the requirements of the NCUA.

While this EIS is required only in respect of the Activity (as defined), it does consider the potential cumulative impacts of the overall BGC Project, including potential construction impacts for all those components yet to be constructed, and the potential impacts associated with the full operation of the BGC Project from groundwater extraction, through transfer, treatment and reuse/discharge.

### 6.1.1 Summary of Approvals Required

For the purposes of Part 5 of the EP&A Act, the activity for which approvals will be sought, supported by the assessment in this EIS ('the Activity'), comprises the following elements:

- the extraction of groundwater from the wells installed in the three containment lines—primary containment area, secondary containment area and DNAPL containment line;
- transfer of groundwater via pipelines to the GTP;
- construction and operation of the GTP;
- transfer of treated water via pipelines to users on the BIP or to Bunnerong Canal, and of waste water to sewer; and
- installation of a discharge point into Bunnerong Canal.

The Activity is required to be assessed pursuant to Part 5 of the EP&A Act through SEPP 55 – Remediation of Land (as amended). The environmental impact of the BGC Project (which includes the Activity) has been assessed in accordance with NSW legislation. The requirements of the EPBC Act are also considered.

Based on this, **Table 6.1** presents a summary of the approvals, licences and permits required for the construction and operation of the works that form the Activity and are assessed in this EIS.

**Table 6.1 Summary of approvals required for the Activity**

<b>Authority</b>	<b>Relevant Legislation</b>	<b>Approval</b>
NSW Department of Environment and Conservation	<i>Protection of the Environment Operations Act 1997</i>	Variation to the existing Environment Protection Licence (ref. 2148) issued to Orica under the POEO Act 1997.
WorkCover Authority and NSW Environment Protection Authority	<i>Dangerous Goods Act, 1975</i>	Variation to the existing Dangerous Goods Licence for the storage of dangerous goods on GTP site
NSW Department of Infrastructure Planning and Natural Resources (Former DLWC)	<i>Water Act 1912</i>	License to undertake groundwater extraction from installed extraction wells on the PCA and SCA containment lines and the DNAPL containment area
NSW Maritime Authority	<i>Rivers and Foreshores Improvement Act 1948</i> <i>Maritime Services Act 1935</i> <i>Management of Waters and Waterside Lands Regulation</i>	Part 3A Permit to undertake the construction works within 40 m of the mean high water mark of Botany Bay (for the works on the discharge point into Bunnerong Canal)  Approvals to construct discharge point into waters vested in the NSW Maritime Authority.
Sydney Ports Corporation	–	Approval to discharge treated water into Bunnerong Canal
Sydney Water Corporation	<i>Sydney Water Act 1994</i>	Variation to the existing Industrial Trade Waste Consent (No. 489) issued to the BIP under the Sydney Water Act 1994
NSW Fisheries	<i>Fisheries Management Act 1994</i>	Permit from the Minister of Primary Industries to address the potential for impact on seagrasses and mangroves

### 6.1.2 Summary of Other Approvals

**Table 6.2** presents a summary of the other approvals obtained or required for all the other elements of the BGC Project. While not formally part of the Activity, the cumulative impacts of using these elements for the operation of the GTP are assessed in this EIS.

**Table 6.2 Summary of other approvals obtained or to be obtained**

Description	Assessment	Approvals
Installation of two groundwater wells in Southlands Block 2	Installed as part of bioremediation field trials Addressed in Statement of Environmental Effects dated 16/8/02 as amended 9/10/02	Bore Licence from DIPNR under the <i>Water Act 1912</i>
Primary pipeline from Southlands Block 2 to the BIP	Phase 2 EIAD Rev 0 dated 8/4/04	Department of Lands to cross Springvale Drain
		Part 3A Permit from DIPNR for works within 40 m of Springvale Drain under the <i>Rivers and Foreshores Improvement Act 1948</i>
		RailCorp
		EnergyAustralia Council of the City of Botany Bay for Nant Street crossing
Refurbishment and operation of SSU on the BIP	Phase 2 EIAD Rev 0 dated 8/4/04	Variation to Environment Protection Licence (ref. 2148) from EPA under the POEO Act
		Trade Waste Service Agreement with Sydney Water under <i>Sydney Water Act 1994</i>
Installation of groundwater wells on Foreshore Road	Phase 4 EIAD Rev 2 dated 24/8/04	RTA consent under Section 138 of the <i>Roads Act 1993</i>
		Bore licences from DIPNR under the <i>Water Act 1921</i>
Secondary pipeline from Foreshore Road to Southlands	Phase 4 EIAD Rev 2 dated 24/8/04	Roads and Traffic Authority (Foreshore Road/ Botany Road) under section 138 of the <i>Roads Act 1993</i> .
		Part 3A Permit from DIPNR for works within 40 m of Springvale Drain under the <i>Rivers and Foreshores Improvement Act 1948</i>
		Council of the City of Botany Bay (Footpaths of Botany Road and Foreshore Road and McPherson Street and its footpaths)

Description	Assessment	Approvals
		Council of the City of Botany Bay /Department of Lands (Botany Golf Course) Sydney Water (SWSOOS)
Drilling works and installation of a transformer (to provide power to the SCA wells) on NSW Maritime Authority Land, to the south of Foreshore Road	Addressed in two Reviews of Environmental Factors (REFs) submitted to NSW Maritime Authority (previously Waterways Authority) (dated 19/8/04)	NSW Maritime Authority under section 13T of <i>Maritime Services Act 1935</i> and clause 66 of <i>Management of Waters and Waterside Lands Regulation</i> . Part 3A Permit from NSW Maritime Authority for works within 40 metres of mean high water mark of Botany Bay under the <i>Rivers and Foreshores Improvement Act 1948</i> Tree removal permit from the Council of the City of Botany Bay under the Botany Bay Local Environmental Plan 1995
Cleaning and relining of the existing pipeline to be used for treated water discharge to Bunnerong Canal	Review of Environmental Factors to be completed	Access agreements to be entered into with landowners
Installation of 10 other groundwater wells on PCA	Review of Environmental Factors to be completed	Bore Licence from DIPNR under the <i>Water Act 1912</i>
Installation of DNAPL groundwater wells on BIP western boundary	Review of Environmental Factors to be completed	Bore licence from DIPNR under the <i>Water Act 1912</i>
Installation of DNAPL pipeline	Review of Environmental Factors to be completed	Approval from BIP parties and RailCorp

## 6.2 Commonwealth Matters

The objects of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), listed in Section 3 of the Act, have the purpose of protecting the environment, promoting sustainable development, recognising Indigenous heritage and conserving biodiversity through the provision of a rigorous assessment and approvals process. The EPBC Act recognises an appropriate role for the Commonwealth in relation to the environment by focusing Commonwealth involvement on matters of national environmental significance.

The EPBC Act defines an 'action' as:

*“(1) Subject to this Subdivision, action includes:*

- (a) a project; and*
- (b) a development; and*
- (c) an undertaking; and*
- (d) an activity or series of activities; and*
- (e) an alteration of any of the things mentioned in paragraph (a), (b), (c) or (d).”*

Part 3 of the EPBC Act provides that an action that “*has, will have or is likely to have a significant impact on a matter of national environmental significance*” may not be undertaken without prior approval from the Commonwealth Minister for the Environment and Heritage, as provided for under the provisions of Part 9 of the EPBC Act.

The EPBC Act identifies matters of national environmental significance as:

- World Heritage properties;
- National Heritage places;
- Wetlands of International Significance (including Ramsar wetlands);
- Listed threatened species and communities;
- Listed Migratory Species protected under international agreements;
- Nuclear Actions; and
- Commonwealth Marine Areas.

The Administrative Guidelines for the EPBC Act set out the criteria intended to assist in determining whether an action requires approval. In particular, the Guidelines contain criteria for determining whether a proposed action is likely to have a “significant impact” on a matter of national environmental significance.

A search was conducted on the Environment Australia database relating to the EPBC Act, to determine the proximity of matters of national environmental significance to the Project Area. The search of the database revealed that the Project Area is within the catchment of the Towra Point Nature Reserve, which is listed as a Ramsar wetland of international importance.

The BGC Project (including the Activity) will not result in any change to the hydrological regime or to the physico-chemical status of the wetland. Given the distance from the Project Area to the Towra Point Nature Reserve (approximately 10 km), the likelihood of any impacts on the wetland is considered negligible, particularly since the reserve is located on the opposite side of Botany Bay to the Project Area.

Penrhyn Estuary, although not a listed wetland, provides important feeding and roosting habitat for non-migratory and migratory shorebirds listed under the TSC and EPBC Acts. A total of 24 nationally listed threatened and migratory species (including bird species protected under the China-Australia Migratory

Birds Agreement (CAMBA) and the Japan-Australia Migratory Birds Agreement (JAMBA) international agreements) were recorded on the database as potentially occurring in the general area of the BGC Project.

The flora and fauna impact assessment, as presented in **Chapter 20**, included an assessment of potential impacts on these listed threatened and migratory species and their habitats. This concluded that the BGC Project would not have a significant impact on these species.

In addition to matters of national environmental significance, section 26 of the EPBC Act provides that actions that may have a significant impact on Commonwealth land must also be referred to the Commonwealth Minister for the Environment and Heritage. There is no Commonwealth land located on or within the vicinity of the Project Area. The closest Commonwealth land is Sydney Airport, and it will not be affected. It can therefore be concluded that the BGC Project would not have a significant impact on a listed matter of national environmental significance or on Commonwealth land, and therefore the BGC Project and the Activity do not require approval under the EPBC Act.

## 6.3 NSW Matters

### 6.3.1 Legislation

#### ***Environmental Planning and Assessment Act 1979***

The *Environmental Planning and Assessment Act 1979* (EP&A Act) is the primary legislative document governing the assessment of proposals within NSW. The EP&A Act contains two parts under which proposals can be assessed: Part 4 and Part 5.

Part 4 provides for the assessment of development that requires development consent. Development requiring consent is divided into two broad categories; namely, state significant development (as declared by the Minister or an Environmental Planning Instrument) and local development.

Part 5 of the Act has the effect that, except in the case of exempt and complying development, development that is permissible without development consent is to be assessed under Part 5 of the EP&A Act.

The amendment to SEPP 55, (as summarised below and presented in full in **Appendix B**) specifically states under Clause 21(a) that “*any development or activity carried out for the purpose of complying with a clean-up notice may be carried out without development consent*”.

Therefore, the various elements of the BGC Project must be assessed under Part 5 of the EP&A Act, since this Part provides for the assessment of proposals that do not require development consent.

Under Part 5 of the EP&A Act, section 111 notes a duty for environmental impacts to be considered by the relevant determining authority or authorities. Part 5 provides details of the environmental considerations that are to be taken into account in the assessment of a proposal, which is referred to as an ‘activity’ in Part 5.

This EIS has been prepared to assess the potential environmental impacts of the defined Activity, as well as the cumulative impact of the operation of the whole BGC Project. Section 112 of the Act requires an environmental impact statement for an activity which is likely to significantly affect the environment or threatened species, populations or ecological communities or their habitats.

There are a number of determining authorities for various aspects of the Activity. These determining authorities comprise all of the public authorities whose approval is required, as listed in **Table 6.1**.

### ***Protection of the Environment Operations Act 1997***

The *Protection of the Environment Operations Act 1997* (POEO Act) is the primary piece of legislation regulating pollution control and waste disposal in NSW. The POEO Act is administered by the EPA (as part of DEC).

Orica's existing operations on parts of the Project Area are regulated by the EPA under an existing Environmental Protection Licence (EPL), reference 2148, for a number of scheduled activities:

- Chemical Storage Facilities;
- Waste Activities;
- Chemical Industries or Works; and
- Waste Facilities (Hazardous, Industrial, Group A or Group B wastes processing).

The BGC Project is required as a result of an NCUA, relating to the containment and cleanup of contaminated groundwater, issued by the EPA under Section 91 of the POEO Act.

Section 48 of the POEO Act prohibits the carrying out of scheduled activities except as authorised by a licence under that Act. The GTP component of the BGC Project constitutes 'scheduled activities' under the provisions of Schedule 1 of the POEO Act, because it constitutes a Waste Facility.

The existing EPL for the Orica site provides for the carrying out of activities as detailed in **Table 6.3**, below.

**Table 6.3 Summary details of Orica's existing EPL 2148**

<b>Fee Based Activity</b>	<b>Scale</b>
Other Chemical Processing (24)	> 25000 tonnes produced per annum
Chemical Storage – Other Chemical Storage (25)	> 5000 – 100,000 kL of active storage
Hazardous, Industrial or Group A Waste Generation or Storage (73)	> 500 tonnes produced per annum
Hazardous, Industrial or Group A or B Waste Processing (75)	0 – All

EPL 2148 was amended for operation of the SSU to include a licensed discharge point, an optimisation plan and waste facilities for the processing of Hazardous, Industrial, Group A or Group B wastes. The storage and processing of these wastes (contaminated ground water) is not limited by the amended licence. Condition L5.3 of the EPL provides for types of Group A wastes that may be treated and processed. Therefore, there is no need to vary the quantities or types of waste identified in the existing licence.

### ***Environmentally Hazardous Chemicals Act 1985***

The *Environmentally Hazardous Chemicals Act 1985* (EHC Act) provides for licensing of “*prescribed activities*” as defined under the Act. According to the Act, ‘prescribed activities’:

*“in relation to a chemical or any chemical waste, means the act of manufacturing, processing, keeping, distributing, conveying, using, selling or disposing of the chemical or waste or any act related to any such act”.*

The EPA may declare substances to be chemical wastes for the purposes of the Act. Examples of substances that have been so declared include dioxin contaminated waste materials, PCB (polychlorinated biphenyl) wastes and HCB waste.

Orica currently holds a license under the EHC Act for the storage and management of HCB waste on the BIP.

It is not anticipated that either the contaminated groundwater or the recovered waste EDC liquid would be declared a ‘chemical waste’ under the Act, and hence no variation of this existing licence would be required, nor is it expected that a new licence would be required.

### ***National Parks and Wildlife Act 1974***

The *National Parks and Wildlife Act 1974* (NPW Act) governs the establishment, preservation and management of national parks, historic sites and certain other areas. The NPW Act also provides part of the basis for the legal protection and management of threatened native flora and fauna and Aboriginal sites within NSW. The implementation of the Aboriginal heritage provisions of the NPW Act is the responsibility of DEC (through the NSW National Parks and Wildlife Service).

As detailed in **Chapter 20**, an assessment of the presence of flora and fauna in the vicinity of the BGC Project has been undertaken, along with a consideration of the potential impact on threatened species populations or ecological communities or their habitats. The conclusion of these assessments was that the BGC Project would not have a significant impact on flora and fauna within or in the vicinity of the Project Area.

In relation to Aboriginal sites, an Indigenous heritage assessment was undertaken to assess the potential impact of the proposal, as presented in **Chapter 21**. This assessment concluded that, as an area subject to significant historical disturbance with no evidence of Aboriginal sites within the Project Area, the proposal would not have a significant impact on Indigenous heritage.

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### ***Fisheries Management Act 1994***

Sections 204 and 205 of the *Fisheries Management Act 1994* (FM Act) provide for the protection of marine vegetation including seagrass and mangroves. Section 205 of the FM Act requires a permit from the Minister for Agriculture and Fisheries for the cutting, damage, removal or destruction of marine vegetation.

As assessed in **Chapter 20**, it is concluded that the containment of the contaminant discharges would be beneficial, although the reduction in groundwater discharge to Penrhyn Estuary and Botany Bay may result in damage to the identified seagrasses. Therefore, a permit would be obtained from the NSW Department of Fisheries, under the FM Act, to carry out the Activity.

### ***Threatened Species Conservation Act 1995***

The TSC Act specifies requirements for a Species Impact Statement (SIS) in relation to a development or activity that is likely to significantly affect threatened species, populations or ecological communities or their habitats. Planning aspects of the TSC Act are implemented through the EP&A Act. Section 5A of the EP&A Act sets out an Eight Part Test to determine whether there is likely to be a significant effect and whether a SIS is required.

As discussed in **Chapter 20**, an Eight Part Test has been carried out, which concluded that the BGC Project is not likely to significantly affect threatened species populations or ecological communities listed under the TSC Act, or their habitats, and therefore a SIS would not be required.

### ***Heritage Act 1977***

The *Heritage Act 1977* aims to protect and preserve items of Non-Indigenous heritage significance. The Act provides for the protection of items of local, regional and state heritage significance. The Heritage Act protects any evidence of non-Indigenous settlement of NSW that is over 50 years old, regardless of the degree of significance. Heritage items protected under the Act can be listed on Commonwealth, state and local government registers.

As detailed in **Chapter 21**, review of relevant heritage inventories identified two heritage items—the main Orca administration building and a mature Ficus tree—within the vicinity of the Project Area, listed under the provision of the Botany Local Environmental Plan 1985. However, as the BGC Project would not affect these items, no approvals are required under the Heritage Act.

### ***Rivers and Foreshores Improvement Act 1948***

The *Rivers and Foreshores Improvement Act 1948* (RFI Act) provides for the protection of river and lakeside land in NSW. Anyone who excavates or removes material from “protected land” or undertakes an action likely to interfere with the flow of “protected waters” must first obtain a permit under the provisions of Part 3A of the RFI Act. Protected land “*includes land that is within 40m of the top of the bank or shore of protected waters*”.

Springvale Drain is a “river” for the purposes of the RFI Act, and a permit has been obtained in respect of the primary and secondary pipelines which cross the drain. The majority of works assessed in this EIS are to be located in areas well in excess of 40 m from any watercourse. The only construction works proposed to be located within 40 of a watercourse are the provision of discharge facilities at Bunnerong Canal. These works would therefore be subject to the provision of a Part 3A Permit from the NSW Maritime Authority, under the RFI Act.

### **Water Act 1912**

The *Water Act 1912* is currently the statute that governs the issuing of licences for the extraction of groundwater. The BGC Project involves the extraction of contaminated groundwater. Therefore, licenses would be required from DIPNR for the proposed full-scale extraction of groundwater from the three containment lines for transfer and treatment in the GTP. Installation of the extraction wells is already licensed under separate approvals from DIPNR, outside the Activity assessed in this EIS.

It should be noted that the *Water Management Act 2000*, once fully operational, will govern the issuing of water extraction licenses. The Water Management Act is currently only in force for areas where a "water sharing plan" has been prepared. It is estimated that it will be approximately one to two years before it applies to all areas of the state. Currently, there are no "water sharing plans" in place for the Project Area, and therefore the water extraction licences would be provided under the provisions of the *Water Act 1912*.

### **Dangerous Goods Act 1975**

The *Dangerous Goods Act 1975* (DG Act) provides a licensing scheme covering both the premises where substances classified as Dangerous Goods are kept, and also those who transport them. The relevant sections of the DG Act and the Dangerous Goods (General) Regulation 1999 are administered by NSW WorkCover and DEC.

Orica would be required to revise its existing Licence to Keep Dangerous Goods, issued by NSW WorkCover under the DG Act, for the storage and handling of licensable quantities of dangerous goods, as required by the BGC Project.

The DG Act does not apply to the transport of dangerous goods by road or rail. These are dealt with in the *Road and Rail Transport (Dangerous Goods) Act 1997*, which is discussed below.

### **Road and Rail Transport (Dangerous Goods) Act 1997**

The purpose of the *Road and Rail Transport (Dangerous Goods) Act 1997* is "to regulate the transport of dangerous goods by road and rail in order to promote public safety and protect property and the environment." It re-enacts in most part the Commonwealth's *Road Transport Reform (Dangerous Goods) Act 1995*.

The transport of dangerous goods involves the importing, loading, consigning, marking and placarding of goods, and driving of vehicles.

The Act provides for the appointment of a "Competent Authority" for its administration. The EPA and NSW WorkCover are the appointed Competent Authorities. The EPA's role relates to on-road and on-rail aspects of the transport of dangerous goods, while WorkCover regulates other aspects such as loading, unloading, labelling, placarding and packaging. The Activity would involve the transport of the recovered waste EDC liquid from Terminals Pty Ltd's bulk liquids storage facility at Port Botany to the GTP for treatment. Orica's existing management systems would address the on-site storage and transport of dangerous goods for the BGC Project.

### ***Soil Conservation Act 1938***

The *Soil Conservation Act 1938* (SC Act) and amendments provide, amongst other matters, for the conservation of soil and farm water resources, and for the mitigation of erosion within NSW. In relation to the SC Act, this EIS addresses issues of soil erosion, sedimentation and land degradation. These issues are covered in **Chapter 11**.

### ***Sydney Water Act 1994***

The *Sydney Water Act 1994* (SW Act) established Sydney Water Corporation, a state-owned corporation, as the provider of the supply of water and the disposal of wastewater in Sydney and other regions.

As detailed in **Chapter 5** and **Chapter 13**, the Activity would potentially involve the discharge of several effluent streams to the BIP's existing effluent treatment system for discharge to sewer. The existing discharge is licensed under a Trade Waste Service Agreement (Consent No. 489) with Sydney Water, and this agreement would be renegotiated with Sydney Water to ensure that the proposed discharges and any impact on the sewer system are acceptable.

The revised Trade Waste Service Agreement would need to be negotiated with Sydney Water after approval had been obtained for the Activity. It may need to include acceptance standards that specify the maximum levels of substances that may be present in trade waste discharged to sewer. An assessment of the volume and quality of the wastewater that would be generated by the BGC Project (including the Activity) for disposal to trade waste is presented in **Chapter 13**.

## **6.3.2 State Environmental Planning Polices**

### ***State Environmental Planning Policy (SEPP) No. 33 – Hazardous and Offensive Development***

DIPNR's *Hazardous and Offensive Development Application Guidelines* provide a guide for determining whether SEPP 33 applies to a particular proposal, through an initial screening assessment.

The results of the initial screening for the BGC Project concluded that the project is potentially hazardous, as defined by SEPP 33. The Policy requires a rigorous scrutiny of a project that has the potential to conflict with surrounding land uses, in terms of risks to people, property or the environment.

One of the key requirements of SEPP 33 is that a Preliminary Hazard Analysis (PHA) is conducted for potentially hazardous proposals, in accordance with DIPNR's Hazardous Industry Planning Advisory Paper No. 6 (HIPAP 6), *Guidelines for Hazard Analysis*. The primary purpose of the PHA is to ensure that the proposed location is appropriate for the BGC Project, in terms of the risks imposed upon surrounding land uses, and that the project incorporates the most appropriate systems to minimise risk. As part of the environmental impact assessment for the BGC Project, an initial screening exercise identified the requirements for a PHA, and this has been completed as summarised in **Chapter 23** and included in full in **Appendix I**.

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### **State Environmental Planning Policy (SEPP) No. 55 – Remediation of Land**

The object of SEPP 55 is to provide for a state-wide planning approach to the remediation of contaminated land. In particular, it aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.

SEPP 55 was recently amended by the NSW Government to alter the EP&A Act assessment process for the works, in order to comply with a direction to clean up contamination issued by a government authority. Clause 21 was inserted, stating that development consent is not required in respect of anything done for the purpose of complying with an NCUA, except as provided by Clause 21. Therefore, as the BGC Project is in response to an NCUA issued by the EPA (now DEC), only Clauses 17 and 21 of SEPP 55 apply.

Clause 21 also provides that development or activities carried out for the purpose of complying with an NCUA may be carried out without development consent, which means that they will need to be assessed under Part 5 of the EP&A Act. It also provides that, where remediation works are required, these must be carried out in accordance with Clause 17 of SEPP 55, which provides that all remediation work must be conducted in compliance with the Act and in accordance with the contaminated land guidelines and any other guidelines that may be in force under the *Contaminated Land Management Act 1997*.

## **6.4 Regional Matters**

No Regional Environmental Plans apply to the subject Project Area.

## **6.5 Local Matters**

### **6.5.1 Local Environmental Plans (LEP)**

The Activity covered by this EIS contains various components within the Project Area, an area that crosses the boundary between two local government areas (governed by the Council of the City of Botany Bay and Randwick City Council). This section discusses the Activity in the context of the relevant LEPs for these two LGAs. The proposed activities within the boundaries of the Council areas are summarised as:

#### **Council of the City of Botany Bay**

- the extraction of groundwater from the wells installed in the three containment lines;
- transfer of groundwater via pipelines to the GTP;
- construction and operation of the GTP;
- transfer of treated groundwater via pipelines; and
- discharge of water not reused to sewer.

**Randwick City Council**

- construction activities within and in the vicinity of Bunnerong Canal, as part of the treated water discharge line;
- transfer of treated groundwater via pipelines; and
- discharge of treated groundwater to Bunnerong Canal.

**Effect of SEPP 55**

Clause 21 of SEPP 55 makes it clear that the SEPP prevails over other planning instruments (including LEPs applying in Botany and Randwick) to the extent of any inconsistency between Clause 21 and the other instrument.

**Botany Bay Local Environmental Plan 1995**

Under the provisions of Botany Bay Local Environmental Plan (BLEP) 1995, the Project Area is zoned 4(a) Industrial. The primary objective of the zone is *“to ensure that development for industrial purposes is carried out in a manner which contributes to the economic and employment growth of the area and, in so doing, improves amenity and does not affect adversely the environment or give rise to unacceptable levels of risk in the area”*.

The secondary objectives of BLEP 1995 are:

- a) to encourage development which does not affect adversely the efficient operation of the local and regional road system;*
- b) to improve the environmental quality of the local government area by ensuring that industries conform to strict environmental and hazard reduction guidelines;*
- c) to provide for retail and non-residential development which provides direct services to the industrial activities and their workforce; and*
- d) to encourage energy efficiency and energy conservation in all forms of development permissible within the zone.*

The GTP, transfer pipelines and extraction wells are not specifically listed as permissible uses within the Industrial 4(a) zone. However, the zone includes “identified land uses” as permissible uses. BLEP 1995 defines an ‘identified land use’ as:

*“a land use that is not specified as being allowed in the Table to clause 10 but which is consistent with the objectives of the particular zone and any relevant State Environmental Planning Policy and regional environmental plan and which, in the opinion of the Council, is suitable due to the circumstances of the site and is identified in a development control plan”*.

The Activity, including specifically the GTP, transfer pipelines and water extraction works, is consistent with the objectives of the Industrial 4(a) zone. In particular, it will improve the amenity of the local environment and will minimise the existing levels of environmental risk in the area posed by the existing contaminated ground water plume that is moving toward Botany Bay. Additionally, it will improve the

environmental quality of the local government area by enabling the treatment of contaminated groundwater in accordance with environmental and hazard reduction guidelines, as dictated by the provisions of the NCUA issued by the EPA. The Activity is suitable for the land on which the Project Area is located and, due to the presence of contaminants in the groundwater, the Activity itself is a suitable use of the land due to the circumstances of the land on which the Project Area is located. The Activity is consistent with the purposes and objectives of the Development Control Plan No 33 – Industrial Development (improving the environmental amenity of the industrial areas) and Development Control Plan No 34 – Contaminated Land (reducing risk to the environment). The Activity is also a type of land use identified in Development Control Plan No 34 – Contaminated Land, being remediation works. It is therefore considered that the Activity constitutes an ‘identified land use’ and therefore is permissible on the subject Project Area.

Although development consent would be required for that use under the BLEP 1995, that requirement for consent is inconsistent with Clause 21 of SEPP 55, which provides that development consent is not required for the BGC Project. As discussed above, SEPP 55 prevails and no development consent is required.

### ***Randwick Local Environmental Plan 1998***

Under the provision of Randwick Local Environmental Plan (RLEP) 1998, the proposed discharge works are to be located on lands zoned 4(a) Industrial.

The objectives of the zone are:

- (a) *to accommodate both traditional and modern forms of industrial, warehousing and like development outside areas used or zoned for residential or business purposes and so encourage economic and employment growth, and*
- (b) *to ensure industrial development creates areas which are pleasant to work in, safe and efficient in terms of transportation, land utilisation and service distribution, and*
- (c) *to encourage development of, and accommodate innovation in, industries, and*
- (d) *to enhance and improve the physical environment of the City of Randwick by minimising disturbances caused by air pollutants, water pollutants, noise pollutants and other pollutants, and*
- (e) *to enable limited retailing of bulky goods where, in the opinion of the Council, this is unlikely to detract from the role and function of land zoned for business purposes, and*
- (f) *to enable development for the purpose of retailing only where it is associated with, and ancillary to, manufacturing use of the same land or where it serves the daily convenience needs of the local workforce, and*
- (g) *to enable development for the purpose of commercial offices only where it is associated with, and ancillary to, an industrial, warehousing or like use of the same land or where it serves the daily convenience needs of the local workforce, and*
- (h) *to enable development for the purpose of community facilities, such as child care facilities, either in association with (or independently of) other permitted development so as to serve the needs of the workforce of the area.*

While the majority of these objectives do not apply to the type of work proposed for the Bunnerong Canal discharge, (d) provides for works that will result in improvement to the environment. It is considered that the Activity to clean up the groundwater in the Project Area will result in a reduction in water pollutants and thus contribute to the improvement of the environment.

Clause 15 of RLEP 1998 provides for development which is permissible or prohibited within the 4(a) Industrial zone of the Randwick LGA, within which part of the discharge pipeline is located. Clause 15(4) lists the following as prohibited development within the 4A zone:

- backpacker accommodation;
- bed and breakfast accommodation;
- boarding houses;
- business premises;
- caravan parks;
- dwellings;
- educational establishments;
- generating works;
- group homes;
- hazardous industries;
- hazardous storage establishments;
- heliports;
- hospitals;
- medical centres;
- multi-unit housing;
- offensive industries;
- offensive storage establishments;
- serviced apartments; and
- waste transfer stations, where the throughput of material exceeds 30,000 tonnes per year.

All other development is permissible within the 4(a) Industrial zone. Therefore, under the provisions of Clause 15 of RLEP, the Activity is considered permissible development.

Although development consent would be required for that use under the BLEP 1995, that requirement for consent is inconsistent with Clause 21 of SEPP 55 which provides that development consent is not required for the BCG Project. As discussed above, SEPP 55 prevails and no development consent is required.

## 6.5.2 Development Control Plans (DCP)

### *City of Botany Bay Council*

#### **Botany Bay Council Development Control Plan No. 33 – Industrial Development (February 2003)**

Much of the area where the extraction, transfer and GTP facilities are proposed is zoned 4(a) Industrial, and the Activity is therefore subject to the provisions of DCP 33 – Industrial Development. Under the provisions of DCP 33, the Project Area is located within the Banksmeadow Industrial Precinct. DCP 33 describes the nature of the Precinct as being characterised by large allotment sizes and consolidation of ownership of industrial landholdings, and being dominated by the BIP (the location of the site of the GTP). The uses are primarily chemical and petrochemical production, manufacturing, warehouses and transport.

General objectives and controls of the Banksmeadow Industrial Precinct, relevant to the Activity, and the capacity of the BGC Project to meet these, include:

- *to ensure that any risk to human health, property or the natural environment arising from the operation of the development is minimised and addressed;*
  - the proposed Activity has been driven by the need to clean up the groundwater which has been found to be contaminated. The groundwater, should it not be treated, poses a risk to human and environmental health as it makes its way toward Botany Bay, which contains ecologically sensitive areas (including Ramsar wetlands) and which is extensively used by the public for recreational purposes. An assessment of potential risks to human health has been undertaken in **Chapter 24** of this EIS.
- *to ensure that existing pipelines are identified and protected during the development process;*
  - there are several easements for existing services in the Project Area including:
    - pipelines under Botany Bay which connect the Caltex Oil Refinery at Kurnell with the Caltex terminals at Banksmeadow and Silverwater;
    - the Sydney to Newcastle fuel pipeline, which is a buried pipeline located on the southern side of the Foreshore Road reserve, connecting the Caltex terminal at Banksmeadow with Newcastle; and
    - the Sydney Airport jet fuel line, which is also a buried pipeline, connecting the Caltex terminal at Banksmeadow with Sydney Airport. The pipeline is generally located on the northern side of Foreshore Road, except for a short section near the Caltex terminal where it is located on the southern side of Foreshore Road.

No works are proposed in the vicinity of these pipelines, and where works may be undertaken in the vicinity of other pipelines (such as the refurbishment of the existing discharge line), mitigative measures would be taken to minimise risk of damage or impact to existing pipelines as a result of the construction and operation of the BGC Project.

- *Development is not to adversely impact on the surrounding established residential areas through noise, traffic, pollution and risk;*
  - the assessment of the proposed Activity within this EIS has shown that there would be no adverse impacts on surrounding residential areas, through the design of the Activity and associated proposed mitigation and management measures. The specific assessments are presented in **Chapters 16** (Traffic), **17** (Noise), **22** (Air Quality) and **23** (Risk).
- *a survey is to be lodged with the consent authority as part of the information required for the submission of a development application identifying any pipelines, easements etc affecting the development site. If the pipeline enters Council land an appropriate deed of agreement is to be executed; and*
  - as discussed in **Table 6.2** above and in **Chapter 2**, separate approvals and agreements have been obtained for the individual elements of the overall BGC Project (including pipelines on Council land). As no development application is being submitted (under the revisions to SEPP 55), and given the extent of the Project Area and the number of existing easements and pipelines, a full survey “identifying any pipelines, easements etc affecting the development site” has not been prepared. The Activity would be undertaken to avoid affecting existing pipelines, easements etc.
- *all applications are to address the risk issues outlined in DCP 33.*
  - the risk issues outlined in DCP 33 have been addressed as part of the PHA, presented in **Chapter 23**, undertaken as required by SEPP 33.

DCP 33 also contains specific design elements that dictate the ‘built form’ of components of development occurring within the Industrial zones of the Botany Bay LGA. The GTP is considered to be the only ‘built form’ proposed within the BGC Project within the Botany Bay LGA. The GTP is to be located within the boundaries of the BIP, on Orica owned land, and will not front any streets nor be in close proximity to any residential dwellings.

While some pipelines will be installed, it is considered that the ‘built form’ provisions of DCP 33 would not apply to them.

It should be noted that this DCP is designed for new industrial development, and does not provide specific details or requirements for projects of the scope or intent of the BGC Project. Similarly, it does not address the form or urban setting within which development contained within the BIP is to comply. However, the ‘General Design Elements’, as listed under DCP 33, have been incorporated in principle into the project design and the EIS, where applicable, as summarised in **Table 6.4** below.

**Table 6.4 Application of DCP 33 General Design Elements to the Activity**

General Design Elements	Application to Activity
<b>A. Sustainable Development</b>	
A1 Energy Efficiency	<b>Chapter 18</b> of the EIS considers energy and greenhouse issues associated with the GTP.
A2 Stormwater Disposal and Drainage Design	<b>Chapters 12, 13</b> and <b>14</b> of the EIS consider hydrogeology, water quality and hydrology issues associated with the GTP.
A3 Contamination	<b>Chapter 11</b> of the EIS considers potential contamination issues associated with the GTP.
A4 Acid Sulphate Soils	<b>Chapters 11</b> and <b>12</b> considers the geology and hydrogeology issues (respectively) associated with the GTP.
<b>B. Building Form and Character</b>	
B1 Land Title	<p>This section refers to development where a number of developments/uses are to be located over a number of lots, and requires amalgamation of those lots. The GTP is to be located within a single lot on Orica owned land, and not on a number of lots. Therefore, this provision does not apply to the GTP portion of the BGC Project.</p> <p>The water extraction licences are to apply to bore wells, the installation of which are subject to other approvals. These bores are located on lands owned by various parties including:</p> <ul style="list-style-type: none"> <li>• the RTA (Foreshore Road)</li> <li>• Orica (Southlands)</li> <li>• BIP companies, including Orica (BIP).</li> </ul>
B2 Floor Space Ratio (FSR)	The FSR for the 4(a) Industrial zone (as provided by the LEP) is 1:1. The site for the GTP has been identified as Lot 2, DP 1016112. This lot has an area of approximately 12,642m <sup>2</sup> . The approximate floor area of the GTP would be 1304m <sup>2</sup> . Therefore, the FSR of the GTP would be 0.1:1, thereby complying with this provision. It should be noted that the type of structures for the GTP have little enclosed area which constitutes floor space for the purpose of an FSR calculation, as it is a purpose designed industrial facility, not contained within a formal building.
B3 Site Area and Frontage	None of the works proposed would have any public street frontage.
B4 Site Layout	This provision is not applicable to the Activity, as the GTP and pipelines are to be located within the BIP and would be integrated into the existing internal layout of the site.
B5 Building Height and Overshadowing	The only component of the Activity to which this provision is applicable is the GTP, which has been designed in order to fulfil a specific function as required by the NCUA. The application of height requirements in the DCP is not relevant to the purpose and function of the BGC Project. The GTP would not cause any overshadowing of any public space or residential areas.

General Design Elements	Application to Activity
B6 Building Design and Appearance	The only component of the Activity to which this provision is applicable is the GTP, which has been designed in order to fulfil a specific function as required by the NCUA. The application of building design and appearance requirements in the DCP to the GTP is not relevant to the specific purpose and function of the proposal. The GTP would form an additional industrial structure within the existing extensive industrial structures of the BIP.
B7 Setbacks	Components of the Activity would comply with the setback provisions. They would be within the existing BIP complex, located away from the boundaries of the BIP, and would not front any public roads or areas.
B8 Mezzanine Floors	This provision only applies to the design of the GTP building. This is not applicable, as there would be no mezzanine included as a component of the GTP.
B9 Parking and Vehicular Access	<b>Chapter 16</b> of the EIS discusses the traffic impacts of the Activity, including vehicle numbers and types, access points and parking. There would be no change to the existing parking and access provisions on the BIP under the Activity.
B10 Signs	There would be no publicly visible signage associated with the Activity. The only signage to be erected would be that required during the construction phase in order to comply with the relevant safety standards.
B11 Site Facilities	This provision relates to the components of the BGC Project which form part of the Activity.  The GTP would use the existing waste, utilities, and other site facilities that are already within the BIP, as described in <b>Chapter 5</b> of the EIS.
B12 Building Construction	<b>Chapter 5</b> of the EIS contains a description of the construction process and program proposed.  Each other chapter that refers to a specific aspect of the project contains a description of the construction processes relevant to that aspect, as well as mitigation measures.
B13 Demolition	The proposed construction activities include site preparation (clearing, levelling, laying of concrete slab), and some minor demolition of the former silicates plant.
B14 Regulated Systems	<b>Chapter 5</b> of the EIS contains a description of the one regulated system that may be defined as an “air handling system”, and this would be designed in accordance with the relevant standards.
<b>C. Environmental Amenity</b>	
C1 Landscape	This provision relates to the components of the BGC Project that would be constructed within the Botany LGA as part of the Activity.  <b>Chapter 19</b> of the EIS provides an assessment of landscape and visual issues, although the ‘Landscape’ DCP provisions do not provide for the location of the proposed construction works, i.e. within the context of the BIP, located away from all boundaries of the site.

General Design Elements	Application to Activity
C2 Landscaping in Car Parks	The Activity would not involve the construction of any car parking areas, and therefore this provision of the DCP does not apply.
C3 Fences	The GTP would be located within the BIP, within the existing fencing. Therefore this provision does not apply.
C4 Residential/Non-Residential interface	The location of the Activity would be within existing industrial/commercial areas, away from any residential areas.
C5 Noise and Hours of Operation	<b>Chapter 17</b> considers the potential noise impacts of the Activity, both for construction (to be undertaken during 'standard' construction hours) and operation (to be undertaken 24 hours a day, 365 days a year). Groundwater extraction is also to be undertaken 24 hours a day, 365 days a year.
C6 Waste	<b>Chapter 15</b> considers potential waste generation, management and disposal for the Activity.
C7 Environmental Protection	This provision discusses air pollutants, odours, discharge of liquid, solid or gaseous matter, trade waste, soil and water management plans, and noise impacts. The EIS <b>Chapters 10 to 28</b> consider these issues in detail, in terms of the potential impact of the BGC Project.
C8 Risk	<b>Chapter 23</b> considers the safety and risk issues of the Activity, through discussion of the PHA prepared for the Activity.  <b>Chapter 25</b> considers the potential health risk issues of the Activity, through a human health risk assessment prepared for the Activity.

### Development Control Plan No. 34 – Contaminated Land Version 5 (February 2003)

This DCP no longer applies to the proposed Activity because, under the amendment to SEPP 55, most of SEPP 55 no longer applies and the proposal is neither a Category 1 nor Category 2 Remediation Work.

### *Randwick City Council*

There are no DCPs currently prepared for Randwick Council that would apply to the Activity.

## 6.6 Draft Development Control Plans

### *City of Botany Bay Council*

#### **Botany Bay Council Draft Development Control Plan No. 40 – Wetlands**

The Draft DCP 40 – Wetlands has been prepared and exhibited, with the close of exhibition on 13 August 2004. The Draft DCP has since been amended and Council has stated that the Draft was to be considered by Council for determination in October 2004. At the time of preparation of this EIS, the DCP was still in draft form and Council was not expected to release copies of the final DCP until it had been adopted.

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The Draft DCP aims to protect wetlands and associated vegetation, threatened species and ecological communities in a new open space zone which permits continued use of the land for existing recreation. The Draft DCP applies to the Lakes Golf Course, Eastlake Golf Course, Bonnie Doon Golf Course, Mutch Park, Astrolabe Park (and adjoining land), Mill Pond abutting Wentworth Avenue, the Sydney Water Depot and the Gardens R Us Nursery at Gardeners Road, Eastlakes, as well as other affected land described in the Draft DCP.

As the proposed Activity (as discussed in **Chapter 12**) would not affect these identified areas, it is considered unlikely that the provisions of the Draft DCP would be applicable.

### **Botany Bay Council Draft Development Control Plan No. 42 – Waste and Recycling Industrial Development**

At the time of preparation of this EIS, DCP No. 42 – Waste and Recycling Industrial Development was still in draft form. The Draft DCP is intended to be read in conjunction with DCP 33 – Industrial Development, and, once approved by Council, will contain objects and controls for the treatment and control of recycling and waste treatment plants within the Banksmeadow Industrial Precinct.

Although the DCP is still in draft form, it is considered that the proposed Activity complies with the general objects of the Draft DCP.

### ***Randwick City Council***

There are no draft DCPs currently prepared for Randwick Council that would apply to the proposed Activity.

## **6.7 Conclusion**

This EIS has been prepared in accordance with the provisions of the EP&A Act. It also takes into account other relevant Commonwealth and NSW legislation.

The Activity is required to be assessed pursuant to Part 5 of the EP&A Act through SEPP 55 Remediation of Land (as amended). The cumulative impact of the Activity, together with other aspects of the BGC Project, has also been assessed. There are a number of determining authorities whose approvals are required for the Activity and other aspects of the BGC Project.

The Activity is permissible under the BLEP 1995 and the RLEP 1998 and is consistent with the objectives of the relevant zones that apply to the Project Area. Consent is not required under the BLEP 1995 or RLEP 1998 because of the operation of Clause 21 of SEPP 55.