

# CAIRNS SHIPPING DEVELOPMENT PROJECT

## Revised Draft Environmental Impact Statement

### Chapter A4: Legislation and Approvals





# TABLE OF CONTENTS

## CHAPTER A4: LEGISLATION AND APPROVALS I

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A4.1	Introduction.....	1
A4.2	International Convention/Treaty Obligations.....	1
A4.2.1	Details.....	1
A4.2.2	Relevance to the Project.....	1
A4.3	Commonwealth Legislation.....	2
A4.3.1	Relevant Legislation.....	2
A4.3.2	Aboriginal and Torres Strait Islander Heritage Protection Act 1994.....	2
A4.3.3	Environmental Protection and Biodiversity Conservation Act 1999.....	2
A4.3.4	Historic Shipwrecks Act 1976.....	3
A4.3.5	Marine Safety (Domestic Commercial Vessel) National Law Act 2012.....	4
A4.3.6	Maritime Transport and Offshore Facilities Security Act 2003.....	4
A4.3.7	Native Title Act 1993.....	4
A4.3.8	Navigation Act 2012.....	5
A4.4	Queensland Legislation.....	6
A4.4.1	Relevant Legislation.....	6
A4.4.2	Aboriginal Cultural Heritage Act 2003.....	6
A4.4.3	Biosecurity Act 2014.....	7
A4.4.4	Building Act 1975.....	8
A4.4.5	Coastal Protection and Management Act 1995.....	8
A4.4.6	Environmental Offsets Act 2014.....	8
A4.4.7	Environmental Protection Act 1994.....	8
A4.4.8	Fisheries Act 1994.....	9
A4.4.9	Land Act 1994.....	10
A4.4.10	Marine Parks Act 2004.....	10
A4.4.11	Native Title (Queensland) Act 1993.....	11
A4.4.12	Nature Conservation Act 1992.....	11
A4.4.13	Planning Act 2016.....	12
A4.4.14	Queensland Heritage Act 1992.....	13
A4.4.15	State Development and Public Works Organisation Act 1971.....	13
A4.4.16	Sustainable Ports Development Act 2015.....	14
A4.4.17	Transport Infrastructure Act 1994.....	14
A4.4.18	Transport Operations (Marine Pollution) Act 1995.....	15
A4.4.19	Transport Operations (Marine Safety) Act 1994.....	15
A4.4.20	Transport Operations (Road Use Management) Act 1995.....	15
A4.4.21	Transport Security (Counter Terrorism) Act 2008.....	15
A4.4.22	Vegetation Management Act 1999.....	16
A4.4.23	Waste Reduction and Recycling Act 2011.....	16
A4.5	Plans and Policies.....	17
A4.5.1	Relevant Plans and Policies.....	17
A4.5.2	Australian Maritime Safety Authority Marine Orders.....	17
A4.5.3	CairnsPlan (Cairns Regional Council Planning Scheme).....	18
A4.5.4	Ports North (Cairns Port Authority) Land Use Plan.....	18
A4.5.5	EPBC Act Environmental Offsets Policy 2013.....	19

A4.5.6	<i>Environmental Protection Policies (EPP)</i> .....	19
A4.5.7	<i>Far North Queensland Regional Plan 2009-31 (FNQRP)</i> .....	20
A4.5.8	<i>Fish Habitat Policies</i> .....	21
A4.5.9	<i>Cruise Shipping Policy for the GBRMP 1999</i> .....	22
A4.5.10	<i>Maritime Safety Queensland Regulation</i> .....	22
A4.5.11	<i>National Assessment Guidelines for Dredging (2009)</i> .....	22
A4.5.12	<i>National Strategy for Ecologically Sustainable Development</i> .....	23
A4.5.13	<i>Queensland Biosecurity Strategy 2009-14</i> .....	23
A4.5.14	<i>Queensland Coastal Management Plan 2014</i> .....	23
A4.5.15	<i>Queensland Coastal Contingency Action Plan (QCCAP)</i> .....	24
A4.5.16	<i>Standards for Hydrographic Surveys within Queensland Waters</i> .....	24
A4.5.17	<i>State Development Assessment Provisions</i> .....	24
A4.5.18	<i>State Planning Policy 2016</i> .....	27
A4.5.19	<i>Transport Operations (Marine Pollution) Regulation 2008</i> .....	28
A4.6	<b>Approvals</b> .....	29
A4.6.1	<i>Commonwealth Government Approvals</i> .....	29
A4.6.2	<i>Queensland Government Approvals</i> .....	29
A4.6.3	<i>Operational Work in coastal management district (tidal works Local Government Approvals</i> .....	29
A4.6.4	<i>Approvals by Project Component</i> .....	29
A4.6.5	<i>Revocation of Portion of Trinity Inlet Fish Habitat Area</i> .....	33

**List of Tables**

Table A4-1	<i>State Development Assessment Provisions – relevant modules</i> .....	25
Table A4-2	<i>Potential approvals required for capital dredging</i> .....	30
Table A4-3	<i>Potential approvals required for the upgrades to existing wharf and land based infrastructure</i> .....	32

## A4.1 Introduction

Section 3.8 of the Terms of Reference for the Cairns Shipping Development Project requires the Commonwealth, Queensland and local government legislation, policies and the planning frameworks relevant to the project and the approvals required to be identified.

The project and its components are located in areas under the jurisdiction of the Commonwealth Government, the Queensland Government, the Cairns Regional Council, and Ports North. Approvals for various components of the project are required under the laws relevant to each jurisdiction.

## A4.2 International Convention/Treaty Obligations

### A4.2.1 Details

In addition to the requirements enacted by Commonwealth and Queensland legislation, a number of international conventions are relevant to the Great Barrier Reef (GBR), including, but not limited to:

- Convention for the Protection of the World Cultural and Natural Heritage, 1972 (the World Heritage Convention)
- Convention on Biological Diversity, 1992 (the Biodiversity Convention)
- Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1973 (CITES)
- Convention on the Conservation of Migratory Species of Wild Animals, 1979 (the Bonn Convention)
- Convention on Wetlands of International Importance Especially as Waterfowl Habitats, 1971 (the Ramsar Convention)
- International Convention for the Prevention of Pollution from Ships, 1973 (the MARPOL Convention)
- Protocol to the London Convention (previously known as the Protocol to the Convention on the Prevention of Marine Pollution by Dumping Wastes and Other Matters 1972)
- United Nations Convention on the Law of the Sea, 1982 (the Law of the Sea Convention or UNCLOS)
- United Nations Framework Convention on Climate Change, 1992 (the FCCC)
- UNESCO 2001 Convention for the Protection of the Underwater Cultural Heritage consideration.

### A4.2.2 Relevance to the Project

The project proponent recognises that the increasing level of use and development in and adjacent to the Great Barrier Reef Marine Park (GBRMP) and Great Barrier Reef World Heritage Area (GBRWHA) demands special attention and the need for strong policies to be put into place to ensure that the values of the marine park are adequately maintained. The project proponent will operate cooperatively and closely with the Great Barrier Reef Marine Park Authority (GBRMPA) and Queensland Government agencies to ensure that the relevant international conventions are at the forefront of decision making.

## A4.3 Commonwealth Legislation

### A4.3.1 Relevant Legislation

The following provides an overview of relevant Commonwealth legislation, including:

- *Aboriginal and Torres Strait Islander Heritage Protection Act 1994*
- *Environment Protection and Biodiversity Conservation Act 1999*
- *Historical Shipwrecks Act 1976*
- *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*
- *Maritime Transport and Offshore Facilities Security Act 2003*
- *Native Title Act 1993*
- *Navigation Act 2012.*

### A4.3.2 Aboriginal and Torres Strait Islander Heritage Protection Act 1994

#### A4.3.2.a Overview

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

#### A4.3.2.b Relevance to the Project

A Cultural Heritage Management Plan is required for the project. In the event that this is judged to not provide effective protection as per the Aboriginal and Torres Strait Islander Heritage Protection Act 1994, relevant steps will be taken to address the matter under all relevant legislation.

The Cultural Heritage Management Plan will also apply to the capital dredging and land placement of the dredge material at the Barron Delta DMPA site and the Tingira Street DMPA site. The proposed construction and operation of the pumped dredge material pipeline will also be subject to the terms of the Cultural Heritage Management Plan, during project works.

### A4.3.3 Environmental Protection and Biodiversity Conservation Act 1999

#### A4.3.3.a Overview

This Act seeks to protect the environment, particularly matters of national environmental significance. It streamlines national environmental assessment and approval processes, protects and manages nationally and internationally important flora, ecological communities and heritage places.

It requires a proponent to refer a proposed action to the Commonwealth Government for assessment of impacts against matters of national environmental significance (MNES) if the proponent believes such matters would be significantly affected.

The nine MNES protected under the Act are:

1. World heritage properties
2. National heritage places
3. Wetlands of international importance (listed under the Ramsar Convention)
4. Nationally threatened species and ecological communities
5. Migratory species protected under international agreements

6. Commonwealth marine areas
7. The Great Barrier Reef Marine Park
8. Nuclear actions (including uranium mines)
9. A water resource, in relation to coal seam gas development and large coal mining development.

The EPBC Act and its environment assessment process is triggered when a proposal is deemed to have a significant impact on one or more of the items listed above.

#### **A4.3.3.b Relevance to the Project**

The Cairns Shipping Development (CSD) Project (2012/6538) was referred under the Environment Protection and Biodiversity Conservation Act 1999 (the EPBC Act) to the Minister for Sustainability, Environment, Water, Population and Communities. A delegate of the Minister determined on 4 October 2012 that approval is required, as the action has the potential to have a significant impact on the following matters of National Environmental Significance (NES) and the Commonwealth environment that are protected under Part 3 of the EPBC Act:

- a) World Heritage properties (sections 12 & 15A)
- b) National Heritage places (sections 15B & 15C)
- c) Listed threatened species and communities (sections 18 & 18A)
- d) Listed migratory species (sections 20 & 20A)
- e) Commonwealth marine areas (sections 23 & 24A)
- f) Great Barrier Reef Marine Park (sections 24B & 24C)
- g) Commonwealth land (sections 26 & 27A).

On the same date, a delegate of the Minister determined that the proposed activity be assessed by an Environmental Impact Statement (EIS). The EIS Guidelines identify the issues that the Australian Government requires the proponent to address in the EIS.

#### **A4.3.4 Historic Shipwrecks Act 1976**

##### **A4.3.4.a Overview**

This Act protects historic wrecks and associated relics, more than 75 years old and in Commonwealth waters, extending from below the low water mark to the edge of the continental shelf. The Act aims to ensure that historic shipwrecks are protected for their heritage values and maintained for recreational, scientific and educational purposes. In 2009, the UNESCO 2001 Covenant for the Protection of the Underwater Cultural Heritage came into force and set a new international standard for managing underwater cultural heritage. The Historical Shipwrecks Act 1976 is currently under review with regards to the consideration of the covenant.

##### **A4.3.4.b Relevance to the Project**

The project seeks to comply with all relevant provisions outlined in the Shipwrecks Act 1976 and relevant conventions in relation to the protection of underwater cultural heritage. The construction and operational components of the project will seek to avoid disturbance to historic wrecks and associated relics and associated zones.

## **A4.3.5 Marine Safety (Domestic Commercial Vessel) National Law Act 2012**

### **A4.3.5.a Overview**

The purpose of this Act is:

- to form a part of a cooperative scheme between the Commonwealth, the States and the Northern Territory that provides a single national framework for ensuring the safe operation, design, construction and equipping of domestic commercial vessels
- to implement Australia's international obligations in relation to the safety of domestic commercial vessels
- to facilitate the development of a safety culture that will prevent, or mitigate the effects of, marine incidents
- to provide a framework for the development and application of consistent national standards relating to the operation, design, construction and equipping of domestic commercial vessels
- to enhance the efficient and orderly operation of domestic commercial vessels
- to provide an effective enforcement framework.

### **A4.3.5.b Relevance to the Project**

The project recognises that the controls and regulations around shipping in the GBR are comprehensive and specially tailored management tools to ensure that shipping through the region occurs in a highly regulated and controlled manner.

The project will be guided by Ports North regarding the requirements under this act and compliance with the requirements of Australian Maritime Safety Authority (AMSA) and its role as the National Regulator for the safety of domestic commercial vessels in Australian waters.

## **A4.3.6 Maritime Transport and Offshore Facilities Security Act 2003**

### **A4.3.6.a Overview**

The purpose of this Act is to safeguard against unlawful interference with maritime transport or offshore facilities. This Act establishes a regulatory framework centred on the development of security plans for ships, other maritime transport operations, and offshore facilities.

### **A4.3.6.b Relevance to the Project**

The project recognises that the controls and regulations around shipping in the GBRMP are comprehensive and specially tailored management tools to ensure that shipping through the region occurs in a highly regulated and controlled manner. The project will be guided by Ports North and will meet the maritime security regime as required by the Port Authority.

## **A4.3.7 Native Title Act 1993**

### **A4.3.7.a Overview**

The function of this Act includes establishing a framework through which native title can be recognised, in addition to providing protection for native title rights. Proposed activities or developments that may affect native title are classed as 'future acts' under the Act.

The Native Title Act 1993 provides for the determination of native title claims, the treatment of future acts, and the requirement for consultation and/or notification of relevant native title claimants where future acts are involved. Under the Act, any past grants of freehold or certain leasehold interests are recognised as having extinguished native title if they occurred prior to certain dates. The *Native Title Act 1993* operates in conjunction with associated state legislation, such as the *Native Title (Queensland) Act 1993* (Qld).

#### **A4.3.7.b Relevance to the Project**

At the time of preparation of this report, there has been only one native title determination in relation to native title in the Trinity Inlet area for the Mundingalbay Yidinji People. The dredging for future channel widening and new swing basin, and material transfer pipeline and placement areas will be clear of the determination area.

A native title claim for part of Trinity Inlet and the landside area of the western side of Trinity has been made by the Gimuy Walubara Yidinji People. The dredging and infrastructure works will impact this area and consequently, a Cultural Heritage Management Plan will be developed with the Gimuy Walubara Yidinji People for the works within their native title claim area.

The proposed dredge material delivery pipeline works involve constructing the pipeline on reserve land, lands lease and in or over Thomatis Creek. Native title has been extinguished in relation to freehold grants in association with the pipeline and dredge placement facility. The pipeline route and placement area are within the Cairns Regional Claim Group claim area, which has been recently registered, and will trigger relevant actions pending progress of that claim and the project.

Consequently, no native title compliance is required in relation to the construction of the pipeline conducted within the boundaries of those freehold parcels.

The proposed pipeline works are proposed to extend across reserve land, lease lands and the creek bed of Richters Creek and the mouth of Richters Creek. The construction and operation of the pipeline works affect native title rights and interests. As these areas are where native title may continue to exist, compliance will be required under the NTA's future acts regime for those parts of the pipeline works that impact on these areas.

Until the precise permits required to construct and maintain the pipeline are determined, it is not possible to definitively determine native title compliance requirements for undertaking pipeline works for the temporary 'occupation' of the Richters Creek mouth or crossing of Richters Creek.

However, it is anticipated that a development permit/authority for tidal works granted under the *Planning Act 2016* and/or the *Coastal Planning and Management Act 1995* will be likely required to undertake the pipeline works. This would be the appropriate point in the process to address native title compliance.

### **A4.3.8 Navigation Act 2012**

#### **A4.3.8.a Overview**

This Act is the primary legislative means for the Commonwealth Government to regulate international ship and seafarer safety. The purpose of this Act is:

- to promote the safety of life at sea
- to promote safe navigation
- to prevent pollution of the marine environment
- to enforce national and international standards.

#### **A4.3.8.b Relevance to the Project**

The project proponent recognises that the controls and regulations around shipping in the GBR are comprehensive and specially tailored management tools to ensure that international shipping through the region occurs in a highly regulated and controlled manner. The project will be guided by Ports North, who will inform the project on the requirements of the AMSA, the national regulator regarding internal ship safety requisites or requirements or pre-requisites.

## A4.4 Queensland Legislation

### A4.4.1 Relevant Legislation

The following provides an overview of relevant Queensland government legislation including:

- *Aboriginal Cultural Heritage Act 2003*
- *Biosecurity Act 2014*
- *Building Act 1975*
- *Coastal Protection and Management Act 1995*
- *Environmental Protection Act 1994*
- *Environmental Offsets Act 2014*
- *Fisheries Act 1994*
- *Land Act 1994*
- *Marine Parks Act 2004*
- *Native Title (Queensland) Act 1993*
- *Nature Conservation Act 1992*
- *Planning Act 2016*
- *Queensland Heritage Act 1992*
- *State Development and Public Works Organisation Act 1971*
- *Sustainable Ports Development Act 2015*
- *Transport Infrastructure Act 1994*
- *Transport Operations (Marine Pollution) Act 1995*
- *Transport Operations (Marine Safety) Act 1995*
- *Transport Operations (Road Use Management) Act 1995*
- *Transport Security (Counter Terrorism) Act 2008*
- *Vegetation Management Act 1999*
- *Waste Reduction and Recycling Act 2011.*

### A4.4.2 Aboriginal Cultural Heritage Act 2003

#### A4.4.2.a Overview

Under this Act, Aboriginal cultural heritage is protected through a duty of care which requires all persons to take reasonable and practical measures to avoid harming cultural heritage. In this regard, a duty of care guideline has been gazetted under the Act which sets out reasonable and practical measures for ensuring that the duty of care is met.

Major aspects of this Act are:

- blanket protection of areas and objects of traditional and customary significance, as well as areas of archaeological significance
- recognition of the key role of traditional owners in cultural heritage matters
- establishment of practical and flexible processes to address cultural heritage in a timely and cost efficient manner

- the replacement of cultural heritage permitting arrangements with the duty of care, the cultural heritage management planning process and other agreement based mechanisms
- increased penalties for harming Aboriginal and Torres Strait Islander cultural heritage.

In accordance with Section 87, 88 and 89 of the *Aboriginal Cultural Heritage Act* requires development of a Cultural Heritage Management Plan if:

- an EIS is required
- an environment authority is required under a different act etc.

The requirements of a Cultural Heritage Management Plan (CHMP) and the assessment process are outlined in Part 7 of the Act.

#### **A4.4.2.b Relevance to the Project**

Under section 87 of the *Aboriginal Cultural Heritage Act 2003*, a CHMP is required to be approved for the site by the Department of Environment and Heritage Protection prior to commencing any works. An approved Cultural Heritage Management Plan will also be required for any aspect of development associated with the Barron Delta DMPA and delivery pipeline and the Tingira Street DMPA. Works associated with these facilities will be required to be undertaken in accordance with the terms of the Cultural Heritage Management Plan, during project works.

#### **A4.4.3 Biosecurity Act 2014**

##### **A4.4.3.a Overview**

This Act provides comprehensive biosecurity measures to safeguard the economy, agricultural and tourism industries, environment, and way of life, from:

- pests (e.g. wild dogs and weeds)
- diseases (e.g. foot-and-mouth disease)
- contaminants (e.g. lead on grazing land).

It ensures a consistent, modern, risk-based and less prescriptive approach to biosecurity in Queensland.

##### **A4.4.3.b Relevance to the Project**

Under section 23 of the Act, all people have a 'general biosecurity obligation' (GBO). This means that everyone is responsible for managing biosecurity risks that are:

- under their control
- that they know about, or should reasonably be expected to know about.

Under the GBO, individuals and organisations whose activities pose a biosecurity risk must:

- take all reasonable and practical steps to prevent or minimise each biosecurity risk
- minimise the likelihood of causing a 'biosecurity event', and limit the consequences if such an event is caused
- prevent or minimise the harmful effects a risk could have, and not do anything that might make any harmful effects worse.

Unlike the previous *Land Protection [Pest and Stock Route Management] Act 2002* superseded by the *Biosecurity Act 2014* on 1 July 2016, the new Act classifies species as 'restricted matters' and places them in categories rather than classes. In accordance with the Act, Ports North has a responsibility to manage various plants and animals on land that it owns or manages, in accordance with the relevant category.

## **A4.4.4 Building Act 1975**

### **A4.4.4.a Overview**

This Act allows provision for assessments of developments. It calls up a set of Building Codes and Australian Standards which all buildings must comply. These codes regulate items such as structural design, fire and safety considerations.

### **A4.4.4.b Relevance to the Project**

Building and infrastructure works will require approval processes to be undertaken. Once the detailed design has been finalised, referral requirements will be identified.

## **A4.4.5 Coastal Protection and Management Act 1995**

### **A4.4.5.a Overview**

This Act provides for the protection, conservation, rehabilitation and management of the Queensland coastal zone, including its resources and biological diversity. The Act has regard to the goal, core objectives and guiding principles of the National Strategy for Ecologically Sustainable Development in the coastal zone. This is achieved through the preparation of coastal management plans, declaring control districts in the coastal zone with special development controls, management practices and integration with other relevant legislation.

### **A4.4.5.b Relevance to the Project**

The project, including the construction and operation of the delivery pipeline and pump out facility is located within a coastal management district. Capital dredging will require approval under this Act before any relevant marine works begin.

Operational work in a coastal management district including prescribed tidal works will require approval pursuant to Schedule 8, Table and Schedule 10, Part 26 of the Planning Regulation 2017.

Under Chapter 2, Part 5 of the Act an allocation of quarry material will be required prior to the issue of any approval under the Act for the removal of dredged material from state land under tidal water.

## **A4.4.6 Environmental Offsets Act 2014**

### **A4.4.6.a Overview**

This Act coordinates the delivery of environmental offsets in Queensland. Its purpose is to counterbalance the significant residual impacts of particular activities on prescribed environmental matters through environmental offsets.

### **A4.4.6.b Relevance to the Project**

A number of state plans and policies require the use of offsets where impacts on areas of high ecological significance are unavoidable. As the project proposes works (dredging and placement) requiring development permits, the project may require the implementation of an offset strategy to offset any residual ecological impacts in the dredging, pipeline access route, and placement areas.

## **A4.4.7 Environmental Protection Act 1994**

### **A4.4.7.a Overview**

This Act (the EP Act), in particular Section 36 and 37, creates a general duty for all people, companies and government bodies to take all reasonable and practicable steps to avoid harm to the environment. The EP Act outlines the scope and content for preparing environmental protection policies to protect Queensland's environment.

The Act also provides for the regulation and approval of prescribed Environmentally Relevant Activities (ERAs) that have potential to cause environmental harm. An Environmental Authority issued under the Act is required, and the operator of an ERA is required to be a 'Suitable Operator' for the conduct of the activity that is subject of the development approval issued under the applicable Planning Act.

#### **A4.4.7.b Relevance to the Project**

The following regulations and policies existing under the Environmental Protection Act 1994 and are relevant to the project:

- Environmental Protection Regulation 2008
- Environmental Protection (Air) Policy 2008
- Environmental Protection (Noise) Policy 2008
- Environmental Protection (Water) Policy 2009
- Environmental Protection (Waste Management) Policy 2000
- Environmental Protection (Waste Management) Regulation 2000.

The Act provides for the regulation and approval of prescribed ERAs that have potential to cause environmental harm. Environmental Authorities under the Act are required for the operator of an ERA that has development approval. Development permits and Environmental Authorities to carry out the following main ERAs are likely to be required:

- ERA 16 – Extractive and Screening Activities (Dredging)
- ERA 8 – Chemical Storage.

These will be obtained by approved contractors prior to the commencement of works.

In the event that works for the upgrade of the wharf involves the removal of soil on a site that is listed on the environmental management register / contaminated land register (EMR/CLR), a permit for the removal and disposal of contaminated soils will be required under the Act.

#### **A4.4.8 Fisheries Act 1994**

##### **A4.4.8.a Overview**

This Act provides a framework for the management, use, development and protection of fisheries resources and fish habitats, the management of aquaculture activities and helping to prevent shark attacks. The purpose of the Act is to manage the use, conservation and enhancement of the community's fisheries resources and fish habitats in a way that seeks to apply balance and promote the principles of ecologically sustainable development.

Through various Fish Habitat Management Operational Policies declared under the *Fisheries Act 1994*, the Department of Agriculture and Fisheries (DAF) is responsible for development assessment, along with the conservation and management of fisheries important to the state by ensuring the continued use of fisheries resources (including fish, marine plants and other fish habitats) occurs in a sustainable manner by adopting a strategic approach to maintain and enhance fish habitats in Queensland. This Act prohibits work in a declared fish habitat area without approval. The Department of National Parks, Sport and Racing manage the day to day operations within the relevant Fish Habitat Areas.

##### **A4.4.8.b Relevance to the Project**

Marine-based works in any areas containing marine plants has the potential to damage marine plants and thus, approval is required pursuant to Schedule 10, Part 8 of the Planning Regulation 2017 and the *Fisheries Act 1994*.

As the Trinity Inlet Fish Habitat Area (FHA) and Yorkeys Creek Fish Habitat Area (FHA) are located within the project area, a development permit for operational works that are completely or partly within a FHA will be required. The operational works within the Channel will influence the Trinity Inlet FHA through the widening, whilst the operational works associated with the construction and operation of the delivery pipeline and any aspect of development that may involve the removal, destruction and damage of a marine plant or waterway barrier works will traverse portions of the Yorkeys Creek FHA.

The assessment process for such approvals will be facilitated under the Development Assessment Rules and will require assessment by Fisheries Queensland against the State Development Assessment Provisions – Module 5: Fisheries resources.

In addition, as the *Fisheries Act 1994* does not support dredging within a FHA declared by Regulation under Section 120 of the *Fisheries Act 1994*, there is a legislative need to amend or revoke the declared FHA. Approval of State Cabinet and the Governor-in-Council is required for any declaration that involves the amendment of the Fisheries Regulation 2008.

#### **A4.4.9 Land Act 1994**

##### **A4.4.9.a Overview**

This Act provides for the administration and management of land for the benefit of the people of Queensland through the creation of different forms of land ownership.

##### **A4.4.9.b Relevance to the Project**

During operational works for the proposed pump out facility and pipeline permits to occupy or creation of easements may be required for the use or occupation of unallocated State land, reserves or lease lands.

#### **A4.4.10 Marine Parks Act 2004**

##### **A4.4.10.a Overview**

This Act supports the conservation of the marine environment and provides for the declaration and establishment of marine parks and associated zoning and management plans. It further recognises cultural, economic, environmental and social relationships within marine parks and surrounding areas.

The Marine Parks Regulations 2006 and the Great Barrier Reef Coast Marine Park (GBRCMP) Zoning Plan, in accordance with the Act, includes provisions relating to the zoning and objectives for those areas within marine parks, regulations associated with entry, use and the type of activities permitted within marine parks and review rights. Specifically, the regulation declares the zoning and protection of the GBRCMP.

##### **A4.4.10.b Relevance to the Project**

The proposed dredging at Trinity Inlet and Bay is situated within the GBRCMP (General Use Zone) and will require the issue of a Marine Park Permit in accordance with the Act. A number of policies and guidelines will be addressed in applying for a permit and will include recognition of the GBRMPA Dredging and Dredge Spoil Material Disposal Policy 2016, Environment and Heritage Protection– Disposing of material in tidal waters – and the Memorandum of Understanding between GBRMPA and Queensland Ports Association 2009.

Subject to outcomes of the detailed design and selection of dredging contractor and equipment, the scope of the mooring for the dredge pump out location within the Marine Park may trigger requirement for a Marine Park Permit for a temporary structure or mooring and such will be progressed through the GBRMPA and Qld Marine Parks.

## **A4.4.11 Native Title (Queensland) Act 1993**

### **A4.4.11.a Overview**

This Act, in association with the *Native Title Act 1993* (Cwlth), provides a mechanism to validate past Acts, and intermediate period Acts invalidated because of the existence of native title, to confirm certain rights and to ensure that Queensland law is consistent with standards set by the *Native Title Act 1993* (Cwlth) for future dealings affecting native title.

### **A4.4.11.b Relevance to the Project**

At the time of preparation of this report, there has been only one native title determination in relation to native title in the Trinity Inlet area for the Mundingalbay Yidinji People. Dredging for future channel widening and new swing basin will be clear of the determination area.

A native title claim for part of Trinity Inlet and the landside area of the western side of Trinity has been made by the Gimuy Walubara Yidinji People. Works will impact this area and consequently, a Cultural Heritage Management Plan will be developed with the Gimuy Walubara Yidinji People for the works within their native title claim area.

The Cairns Regional Claim Group claim area includes the proposed pipeline route and material placement area within the Barron Delta and will be relevant subject to progress of the Claim through the NTT and timing of the project.

## **A4.4.12 Nature Conservation Act 1992**

### **A4.4.12.a Overview**

A framework is created under this Act for the dedication, declaration and management of protected areas, protection of wildlife and its habitat. A complex system of regulations has been created under the Act.

The Nature Conservation (Wildlife) Regulation 2006 in accordance with the Act catalogues the flora and fauna recognized as extinct, endangered, vulnerable, rare, near threatened, least concern, international and prohibited that may be impacted by the project. The Regulation further addresses the significance and declared management intent for each class.

The Nature Conservation (Whales and Dolphins) Conservation Plan 1997 in accordance with the Act is designed to protect and conserve whales and dolphins in Queensland waters. The plan outlines management strategies to minimise harm and distress caused by anthropogenic activities such as pollution, noise disturbance and direct contact that may result from the construction and operation of the project.

The Nature Conservation (Protected Areas) Regulation 1994 in accordance with the Act provides a list of former and current descriptions for protected areas as declared by the State of Queensland. Specific to the project, the regulation identifies national parks, conservation parks, resource reserves and nature refuges that are of particular importance to marine and estuarine ecology in and adjacent to Cairns Port.

### **A4.4.12.b Relevance to the Project**

During operational works and construction phases of the project, permits for clearing or damage mitigation under the Act may be required.

## A4.4.13 Planning Act 2016

### A4.4.13.a Overview

The *Sustainable Planning Act 2009* and the associated *Sustainable Planning Regulation 2009* (SP Reg) was the planning legislation for Queensland until 3 July 2017. On 3 July 2017, the *Sustainable Planning Act 2009* and the associated *Sustainable Planning Regulation 2009* was repealed and replaced by the *Planning Act 2016* and the associated *Planning Regulation 2017*. In accordance with Chapter 1, Part 3, the purpose of the Act is to establish an efficient, effective, transparent, integrated, coordinated, and accountable system of land use planning, development assessment and related matters that facilitates the achievement of ecological sustainability.

Port Authorities act as the Assessment Manager for all development applications for development undertaken wholly on strategic port land in accordance with Schedule 8 of the PR 2017. Schedule 10 of the *Planning Regulation 2017* states that development on strategic port land is assessable development if:

- (a) either – the land use plan for the strategic port land states the development is assessable development; or
  - (i) the development is a material change of use that is inconsistent with the land use plan; and
- (b) for premises is a port's master planned area – the port overlay for the master planned area does not state a different category of development for the development.

Development on strategic port land can also constitute assessable development under the provisions of Schedule 8 of the *Planning Regulation 2017* if the proposed development is making a material change of use of premises for an ERA under the EP Act.

Cairns Regional Council act at the Assessment Manager for all development applications undertaken with the Cairns local government area as detailed in the CairnsPlan 2016. The *Planning Regulation 2017* states:

- any aspect of development is assessable under a local categorizing instrument; or
- is for building work, that under the Building Act, is assessable against the building assessment provisions; or
- is for reconfiguring a lot; or
- prescribed tidal works completely in a single local government tidal area.

### A4.4.13.b Relevance to the Project

Ports North has the responsibilities of the Assessment Manager under the *Planning Regulation 2017* for development on strategic port land and administers the responsibilities for land use planning through the Development Assessment Rules. A number of aspects of the project involve development listed under Schedule 10 of the *Planning Regulation 2017* and as such will trigger the requirement for approval under the *Planning Act 2016* and associated legislation.

Cairns Regional Council has the responsibilities of the Assessment Manager under the *Planning Act 2016* for development within the Cairns local government area as detailed in the CairnsPlan 2016. The delivery pipeline and the Barron Delta dredge placement facility will trigger the requirement for approval under the *Planning Act 2016* and associated legislation.

## **A4.4.14 Queensland Heritage Act 1992**

### **A4.4.14.a Overview**

This Act operates in tandem with the *Aboriginal Cultural Heritage Act 2003* (Qld) to protect Queensland's cultural heritage. This Act provides for the conservation of Queensland's cultural heritage for the benefit of the community and future generations through:

- establishing the Queensland Heritage Council
- keeping the Queensland Heritage Register
- providing for the establishment of local heritage registers
- regulating, in conjunction with other legislation, development affecting the cultural heritage significance of registered places
- providing for heritage agreements to encourage appropriate management of registered places
- providing for appropriate enforcement powers to help protect Queensland's cultural heritage.

Under the Act, it is an offence to knowingly destroy or otherwise interfere with registered places or heritage items. The Act also sets out the assessment requirements for any development applications for development in or on a heritage place and is administrated by the Queensland Heritage Council and the Department of Environment and Heritage Protection.

### **A4.4.14.b Relevance to the Project**

The Cairns Wharf Complex is listed on the Queensland Heritage Register (QHR 601790) and therefore approval for the development within, or adjacent a heritage-listed place under the *Queensland Heritage Act 1992* will be required in accordance with Schedule 3 of the SP Reg.

The recommended concept for the wharf includes the provision of new dolphin structures placed between existing bents. The proposed updates will have minimal impact on the existing heritage listed structure and will require a development permit demonstrating consistency with Module 9 of the State Development Assessment Provisions (SDAP).

## **A4.4.15 State Development and Public Works Organisation Act 1971**

### **A4.4.15.a Overview**

This Act (SDPWO Act) establishes the framework for environmental assessment of declared significant projects in Queensland, identifying an Environmental Impact Assessment (EIA) process and its relationship with other Queensland legislation. The approvals framework applicable to the project is set by the *Planning Act (2016)* and the EP Act.

### **A4.4.15.b Relevance to the Project**

On 24 September 2012, the Coordinator-General declared the project to be a 'significant project' (now 'coordinated project') requiring an EIS under section 26(1) (a) of the Act.

This declaration initiated the statutory EIS process of part 4 of the Act, which required the proponent to prepare an EIS for the project.

## A4.4.16 Sustainable Ports Development Act 2015

### A4.4.16.a Overview

The *Sustainable Ports Development Act 2015* is the legislative framework developed by the Queensland Government to implement the main port-related actions of the Reef 2050: Long-Term Sustainability Plan. The legislation restricts new port development to areas within current port limits (or outside Commonwealth and State marine parks), restricts capital dredging for new or expanded port facilities to priority ports only (Gladstone, Hay Point/Mackay, Abbot Point and Townsville) (however there is a special exemption for the Port of Cairns, and the Port of Cairns Shipping Development Project as outlined below), and prohibits sea-based disposal of material generated by port-related capital dredging into the GBRWHA.

Capital dredging relates to dredging for creating or enlarging channels, basins, ports etc., new port foundations, or laying pipe, cable or tubing, rather than for maintenance of existing channels, basins, ports etc. (or protecting human life or property).

However, the Act prohibits capital dredging where dredge material is deposited or disposed of in a restricted area including the GBRWHA, unless used for land reclamation, beach nourishment or environmental restoration. There are no exemptions to this requirement.

### A4.4.16.b Relevance to the project

As well as allowing capital dredging in priority port areas, the legislation permits limited capital dredging within the Port of Cairns' inner harbour to a total of no more than 50 000 cubic metres per approval and a total limit of 150 000 cubic metres in a four-year period. There is a further exemption of this provision for projects which are the subject of an ongoing EIS process started before the commencement of the Act, which includes the CSD Project.

## A4.4.17 Transport Infrastructure Act 1994

### A4.4.17.a Overview

This Act (the TI Act) provides a framework for integrated planning and management of an efficient transport infrastructure network. This Act sets out the provisions for creating port authorities and identifying strategic port land to be regulated by a port authority.

Section 285 of the Act requires each Port Authority to prepare Land Use Plans (LUP) for approval by the Minister of Transport. Under the TI Act and the Planning Regulation 2017, port authorities are considered the Assessment Manager for development undertaken wholly on strategic port land. Integration of assessable development on strategic port land into the Development Assessment Rules is achieved by the *Planning Act 2016*.

It also outlines the requirements for anyone wishing to undertake work in, or interfering with, a State- controlled road.

### A4.4.17.b Relevance to the Project

Ports North is a 'port authority' under the provisions of the TI Act. Development of strategic port land declared under the TI Act is regulated by Ports North in accordance with its LUP adopted in accordance with Section 285 of the Act. The relevant LUP is discussed in further detail in **Chapter B1** (Land).

In accordance with section 50 of the Act, a road corridor permit may be required for any ancillary works and encroachments in a State-controlled road. Further, it is possible that approval/s may be required under the following section/s of the Act:

- Section 33 – approval of the chief executive for carrying out road works on a State-controlled road
- Section 62 – approval of an access between a particular property and a State-controlled road.

These provisions will be relevant to the pipeline route.

## **A4.4.18 Transport Operations (Marine Pollution) Act 1995**

### **A4.4.18.a Overview**

The overall purpose of this Act is to protect Queensland's marine and coastal environment by minimising deliberate and negligent discharges of ship-sourced pollutants into coastal waters.

### **A4.4.18.b Relevance to the Project**

The dredging contractor will be responsible for ensuring that the operation of its vessel in Queensland waters is consistent with the purpose of the Act and does not willingly discharge any pollutants into the waters which are an offence under the Act.

## **A4.4.19 Transport Operations (Marine Safety) Act 1994**

### **A4.4.19.a Overview**

This Act establishes a system under which Maritime Safety Queensland can effectively plan and manage marine safety and related marine operational issues.

### **A4.4.19.b Relevance to the Project**

The project seeks to comply with all relevant provisions outlined in this Act and ensure the safe operation of its marine vessels utilised for the project operational works phase.

## **A4.4.20 Transport Operations (Road Use Management) Act 1995**

### **A4.4.20.a Overview**

The overall purpose of the Act is to:

- provide for the effective and efficient management of road use in the State
- provide a scheme for managing the use of the State's roads
- provide for the effective and efficient management of vehicle use in a public place.

### **A4.4.20.b Relevance to the Project**

Movement of vehicles on public roads during the construction and operation phase of this project will be required to meet the provisions of this Act.

## **A4.4.21 Transport Security (Counter Terrorism) Act 2008**

### **A4.4.21.a Overview**

The main purpose of this Act is to provide for planning for the protection of particular surface transport operations and their users against significant adverse impacts associated with terrorist acts involving surface transport operations.

### **A4.4.21.b Relevance to the Project**

Under the Act, a surface transport operation is an activity or system for:

- transporting passengers by high occupancy vehicles (which carry 10 or more seated adults)
- transporting goods by high payload vehicles (carrying more than 20 tonnes).

In the event that a surface transport operation as part of project is declared as a security-identified surface transport operation under section 11 of the Act, it will be necessary for a Risk Management Plan to be prepared for the approval of the chief executive and the approved plan then implemented in accordance with the Act.

## **A4.4.22 Vegetation Management Act 1999**

### **A4.4.22.a Overview**

This Act regulates the clearing of 'remnant' and 'regulated regrowth' vegetation, with exemption under the *Nature Conservation Act 1992*, the *Land Act 1994*, and the *Forestry Act 1959*.

### **A4.4.22.b Relevance to the Project**

Clearing of any relevant remnant or regulated regrowth vegetation will constitute operational works under schedule 10 of the Planning Regulation 2017 which will require a development approval. Any application for clearing is required to be assessed against the SDAP Module 8: Clearing native vegetation.

Prior to obtaining this development approval there is a requirement under section 22A of the *Vegetation Management Act 1999* that the Chief Executive is satisfied that the proposed clearing is for a relevant purpose to enable an application for clearing to be assessed.

Operational works activity for the establishment of the temporary pipeline route will trigger consideration of the *Vegetation Management Act 1999* (Qld).

## **A4.4.23 Waste Reduction and Recycling Act 2011**

### **A4.4.23.a Overview**

This Act establishes a framework to modernise waste management and resource recovery practices in Queensland to promote waste avoidance and reduction and encourage resource recovery and efficiency.

### **A4.4.23.b Relevance to the Project**

Section 13 of the EP Act defines waste as 'anything that is a left over, surplus, or an unwanted by-product, from an industrial, commercial, domestic or other activity. Waste can be a gas, liquid, solid or energy, or a combination of any of these'. Under Section 319 of the EP Act, waste generators are bound by the general environmental duty. This means that an activity undertaken by Ports North, cruise ship operators, or contractors must not release waste that is likely to cause environmental harm, unless all reasonable and practical measures are taken to prevent or minimise the harm.

The waste generator must follow this general environmental duty and ensure that waste is transported by a licensed transporter and that it is delivered to a licensed facility.

The transportation of some wastes is also regulated. These are referred to as 'trackable wastes' and a substance is considered 'trackable waste' if it is regulated waste as defined in Part 2, section 6 of the Waste Reduction and Recycling Regulation 2011, and listed in Schedule 2E of the Environmental Protection Regulation 2018. If transporting trackable waste commercially or transporting more than 250 kg non-commercially, an environmental permit is required.

If wastes are considered trackable, then waste handlers must submit waste tracking information in the approved forms when transporting regulated waste or waste residues. The waste generator, waste transporter and waste receiver all have certain obligations that are set out under the Environmental Protection Regulation 2008 and on the prescribed forms.

## A4.5 Plans and Policies

### A4.5.1 Relevant Plans and Policies

Relevant national, state, regional and local planning plans and policies include:

- Australian Maritime Safety Authority Marine Orders
- CairnsPlan 2016
- Ports North (Cairns Port Authority) Land Use Plan (LUP)
- Environmental Protection and Biodiversity Conservation Act, Environmental Offsets Policy 2013
- Environmental Protection Policies (EPP)
- Environmentally Relevant Activities (ERA)
- Far North Queensland Regional Plan 2009-31 (FNQRP)
- Fish habitat policies
- Great Barrier Reef Marine Park - Cruise Shipping Policy for the GBRMP 1999
- Maritime Safety Queensland Regulation 2002
- National Assessment Guidelines for Dredging (2009)
- National Strategy for Ecologically Sustainable Development (1992)
- Queensland Biosecurity Strategy 2009-14
- Queensland Coastal Plan
- Queensland Coastal Contingency Action Plan (QCCAP)
- Queensland Ports Strategy 2014
- Standards for Hydrographic Surveys within Queensland Waters
- State Development Assessment Provisions (SDAP)
- State Planning Policy 2016
- State Planning Regulatory Provisions (SPRP)
- Transport Operations (Marine Pollution) Regulation 2008.

### A4.5.2 Australian Maritime Safety Authority Marine Orders

#### A4.5.2.a Overview

Marine Orders are a form of delegated legislation under Australia's Commonwealth laws. They provide an efficient means of implementing Australia's international maritime obligations by giving effect to international conventions in Australian law. The legislation provides the substantive powers for the Australian Maritime Safety Authority (AMSA) to perform certain functions and operational activities, including monitoring and enforcement.

AMSA has two series of Marine Orders:

- Marine Orders 1-98, primarily reflecting international obligations and standards that apply to certain Australian flagged vessels and foreign vessels;
- Marine Orders 500-507, containing the national law requirements applying to domestic commercial vessels.

#### A4.5.2.b Project Relevance/consistency

The dredging contractor will be responsible for ensuring that the operation of its vessel is consistent with the purpose of the marine orders.

### **A4.5.3 CairnsPlan (Cairns Regional Council Planning Scheme)**

#### **A4.5.3.a Overview**

Development within the Cairns local government area, with the exception of land identified as Strategic Port Land pursuant to the TI Act, is described by a Planning Scheme. The CairnsPlan 2016 came into effect on 1 March 2016 and is the Planning Scheme for the Cairns Regional Council local government area. The Planning Scheme sets out the Council's intention for future development in the Planning Scheme area over the 20 years.

#### **A4.5.3.b Project Relevance/consistency**

The TI Act stipulates that Strategic Port Land (SPL) is not subject to a local government planning scheme. SPL is land that is included in the Port Authority's current Land Use Plan (LUP) approved under Section 286(5) of the TI Act.

Development within the SPL is regulated under Schedule 10 of the Planning Regulation 2017 and requires assessment against the LUP. As such, this Land Use Plan is the key planning document for the Cairns SPL parts of the study area.

Ports North has control over development within the Cairns SPL and acts as the assessment manager for development applications.

Development within the Cairns local government area is regulated under Schedule 10 of the PR 2017 and requires assessment against the CairnsPlan 2016. As such, the CairnsPlan 2016 is the key planning document for the pipeline and land placement of dredge material at the Barron Delta DMPA.

Cairns Regional Council has control over development within the Cairns local government area (with the exception of SPL) and acts as the Assessment Manager for development applications.

### **A4.5.4 Ports North (Cairns Port Authority) Land Use Plan**

#### **A4.5.4.a Overview**

Land use and development on Strategic Port Land (SPL) is controlled by the Land Use Plan (LUP) prepared by Ports North in accordance with Section 285 of the TI Act. The LUP specifies Strategic Port Land as well as the current and future uses of SPL. The Land Use Plan sets out the main Local Area Plans that are applicable to the project which include the Seaport Local Area Plan (LAP) for the Seaport area identified within the SPL and a Cityport LAP for the Cityport area identified within the SPL.

The Seaport LAP recognises that expansion of the Port is required to meet the demand for passenger related facilities.

#### **A4.5.4.b Project Relevance/consistency**

Some of the land-based infrastructure required to service proposed cruise ship operations (for example, fuel supply storage and distribution pipeline) will potentially be located within the Seaport LAP area and may trigger the requirement for approval in accordance with the requirements of the LUP.

Such approvals will be assessed by Ports North and may require referral to state agencies depending on the final siting arrangements.

## **A4.5.5 EPBC Act Environmental Offsets Policy 2013**

### **A4.5.5.a Overview**

The Environmental Offsets Policy outlines the Commonwealth Government's approach to the use of environmental offsets under the EPBC Act and their role in environmental impact assessments. Offsets are measures proposed to compensate for the residual impacts of an action on the environment after avoidance and mitigation measures are taken. Where appropriate, offsets are considered during the assessment phase of the EIS, and their suitability is considered as part of the decision to approve or not approve a proposed action under the EPBC Act. The Environmental Offsets Policy includes an offset assessment guide and balance sheet to quantify impacts and offsets and is applicable where an impacted protected matter is a threatened species or ecological community.

In summary, offsets will be required if, after avoidance and mitigation measures are taken, the magnitude of the residual impact on a protected matter is significant and likely. If required, an offset package will be developed in consultation with the Department of the Environment and Energy and with consideration to the types of activities appropriate as offsets for the impact and the specific size and scope of an offsets package.

### **A4.5.5.b Project Relevance/consistency**

During the assessment of this EIS, the decision maker will consider the significance of the residual impacts and if offsets are a suitable compensation approach. If an offset is appropriate, then the proponent (in this case Ports North) should discuss offset options with the Department of the Environment and Energy and submit an offset proposal which describes the offset and demonstrates how it provides an appropriate benefit to compensate for any residential impact on the protected matter.

The decision-maker then considers the offset proposal in deciding whether to approve the proposed action. If granted an approval that incorporates offsets as a condition of approval, Ports North will be responsible for ensuring that the offsets are provided in accordance with the conditions.

## **A4.5.6 Environmental Protection Policies (EPP)**

### **A4.5.6.a Overview**

The EP Act sets out a number of regulations and policies to protect against activities causing environmental harm.

The following regulations and policies are relevant to the project:

- Environmental Protection Regulation 2008
- Environmental Protection (Air) Policy 2008
- Environmental Protection (Noise) Policy 2008
- Environmental Protection (Water) Policy 2009
- Environmental Protection (Waste Management) Policy 2000
- Environmental Protection (Waste Management) Regulation 2000.

### **A4.5.6.b Project Relevance/consistency**

The project will seek to comply with all policies and guidelines outlined under the EP Act.

## **A4.5.7 Far North Queensland Regional Plan 2009-31 (FNQRP)**

### **A4.5.7.a Overview**

The Far North Queensland Regional Plan (FNQRP) provides for the strategic planning framework for the Far North Queensland Region. The FNQRP identifies a number of policy outcomes, strategies and actions to guide development and activities around the Cairns CBD and recognises the Port of Cairns as a key regionally significant transport infrastructure. The FNQRP outlines the following land use policies to support the ongoing operation of the port and the minimisation of conflict with surrounding land uses:

- sea ports and their access road and operation at Cairns (and Mourilyan) are protected from encroachment of noise sensitive land uses except where permitted in land use plans for strategic port land
- adequate strategic port land at Cairns (and Mourilyan) is made available for coastal uses, such as commercial fishing, other land based marine activities and logistics (including bulk sugar terminal, live cattle or forestry cargo handling facilities)
- the development of sustainable cruise shipping infrastructure and services is facilitated.

The land based works associated with the project is located within the 'Urban Footprint' area and dredging within the inner shipping channel situated within the 'Regional Landscape and Rural Production Area'.

The Barron Delta dredge placement facility and the delivery pipeline are situated within the 'Regional Landscape and Rural Production Area'.

### **A4.5.7.b Project Relevance/consistency**

The FNQRP identifies policies that deal with a range of regional matters. Of key relevance to the project are the policies relating to the natural environment, economic development, and water management. The relevant policies are summarised below.

#### **Natural Environment**

To protect, manage and enhance the region's natural assets urban development is to be located outside of areas of high ecological significance, or operated to avoid impacts on ecological impacts, and if unavoidable, minimise impacts and offset the residual impacts so there is a net gain of the impacted values.

Offsets requiring revegetation that cannot be achieved on the development site should be focussed within strategic rehabilitation areas (identified by the FNQRP) where appropriate.

To protect and manage the region's coastal resources, development is to be located, designed, and managed to firstly avoid, then minimise and offset impacts on coastal resources and ecologically significant coastal areas, including fish habitat areas. Impacts on fish habitat areas are to be offset in accordance with the relevant fisheries management policies and guidelines. Development does not occur within erosion prone or storm tide inundation hazard areas, except in accordance with relevant policies of the state and regional coastal management plans.

#### **Economic Development**

The economic development policies in the FNQRP seek to support a diverse regional economy that minimises the cause of climate change and promote and expand regional activity, including export and imports. Land use policies are concerned with strategically locating business and industry uses and protecting them from incompatible development, providing adequate strategic port land at Cairns is for coastal industries, and providing an adequate supply of land to accommodate future growth in operations at air and sea ports.

The project seeks to facilitate additional economic activities at the port and is consistent with the economic development policies outlined in the FNQRP.

## Water Management

To protect and improve the physical condition, ecological health, environmental values and water quality of the region's surface and groundwater systems, development must be planned, designed, constructed and managed in accordance with best practice environmental management and meet the objectives of the Environmental Protection Policy (Water) 1997. Urban development, other than for required community infrastructure is to be set back from wetlands and waterways through the adoption of appropriate buffer zones.

The location of the project in the wetland and waterway area is unavoidable due to its coastal dependant nature.

### A4.5.8 Fish Habitat Policies

#### A4.5.8.a Overview

The *Fisheries Act 1994* outlines a number of fish habitat policies, with management objectives for assessing development proposals which impact on the values and functions of fish habitats. The purpose of these policies is to ensure the long-term protection and enhancement of marine plants and fish habitats along Queensland's coast. Namely:

- management and protection of marine plants and other tidal fish habitats (FHMOP 001)
- management of declared fish habitat areas (FHMOP 002)
- departmental procedures for permit applications assessment and approvals for insect pest control in coastal wetlands (FHMOP 003)
- dredging, extraction and spoil disposal activities: Departmental procedures for provision of fisheries comments (FHMOP 004)
- marine fish habitat offset policy (FHMOP 005.2)
- fish habitat area selection and assessment (FHMOP007)
- waterway barrier works approvals and fishway assessments: Departmental procedures (FHMOP 008)
- restoration notices for fish habitats - formulation and implementation: Departmental procedures (FHMOP 009)
- tidal fish habitats, erosion control and beach replenishment (FHMOP 010).

#### A4.5.8.b Project Relevance/consistency

The project involves the disturbance of marine plants. FHMOP 001 guides the assessment of applications for the disturbance of marine plants and fish habitats. It identifies works that may be approved and works not supported. The policy identifies 'significant (co-ordinated) projects' under the SDPWO Act as works that may be approved and recognises the role of the Co-ordinator General in the assessment and decision making process.

The project will involve dredging within the Trinity Inlet Fish Habitat Area (FHA) and operational works in the Yorkeys Creek FHA in association with the delivery pipeline. FHMOP 004 does not support dredging within a declared FHA. Therefore, approval from the Queensland Government is required and a legislative process of amending or revoking the declared FHA will need be undertaken.

The removal, destruction or damage to marine plants or waterway barrier works associated with the pipeline route will require approval from the Queensland Government.

## **A4.5.9 Cruise Shipping Policy for the GBRMP 1999**

### **A4.5.9.a Overview**

This policy provides guidance for cruise shipping activities within the Great Barrier Reef Marine Park. It outlines the procedures and protocols for marine park access, suitable anchorages and permission requirement for to cruise shipping related activities

Attachment 1 of this policy outlines interim cruise shipping strategies, addressing permits, access, bookings, and activities. Attachment 2 identifies designated locations with the GBRMP suitable for cruise ship anchorages.

### **A4.5.9.b Project Relevance/consistency**

The project considers and will be consistent with the cruise shipping policy for the GBRMP. The proposed works are not envisaged to affect existing designated anchorages. This Policy is presently under review by the GBRMPA.

## **A4.5.10 Maritime Safety Queensland Regulation**

### **A4.5.10.a Overview**

Maritime Safety Queensland is responsible for:

- improving maritime safety for shipping and small craft through regulation and education
- minimising vessel-sourced waste and responding to marine pollution
- providing essential maritime services such as pilotage for regional ports and aids to navigation
- encouraging and supporting innovation in the maritime industry.

### **A4.5.10.b Project Relevance/consistency**

The project will need to comply with the regulation, guidelines and policies administered by Maritime Safety Queensland for the capital dredging works, maintenance dredging, ship navigation and safety during operation.

## **A4.5.11 National Assessment Guidelines for Dredging (2009)**

### **A4.5.11.a Overview**

The National Assessment Guidelines for Dredging (2009) set out the framework for the environmental impact assessment and permitting of the ocean disposal of dredged material. The framework includes:

- evaluating alternatives to ocean disposal
- assessing loading and disposal sites
- assessing potential impacts on the marine environment and other users
- determining management and monitoring requirements.

For material to be disposed of within a marine environment, the characteristics of the material and potential impacts at the disposal site must be reported as required under the guidelines.

### **A4.5.11.b Project Relevance/consistency**

The preparation of this EIS and the approvals process undertaken for this project demonstrate compliance with the National Assessment Guidelines for Dredging.

## **A4.5.12 National Strategy for Ecologically Sustainable Development**

### **A4.5.12.a Overview**

Ecologically Sustainable Development (ESD) is development that aims to meet the needs of people today while conserving our ecosystems for the benefit of future generations. The National Strategy for ESD has evolved over several years through extensive consultation with all levels of government, business, industry, academia, conservation organisations, community groups and individuals. In December 1992, the Council of Commonwealth Governments endorsed the National Strategy for ESD. The document is intended to play a critical role in setting the scene for broad changes in direction and approach for governments to take to try to achieve ESD. The Council encouraged businesses, unions and community groups to use the Strategy for ESD as a basis for actions which contribute to the pursuit of Australia's goal for ESD.

A key challenge in regards to land use planning and decision making, is to ensure land use decision making processes at all levels of government meet the overall goal of ESD. The Strategy's approach to dealing with this challenge is to encourage environmental and economic land use decision making which takes full account of all relevant land and resource values and to establish and operate systems of land use decision making and dispute resolutions. An objective identified by the Strategy is to continue to develop cooperative and consultative arrangements between jurisdictions modelled on approaches such as the Great Barrier Reef Marine Park Authority.

Since 1992, the principles of ESD have been incorporated into many Acts of parliament including the EPBC Act and the EP Act.

### **A4.5.12.b Relevance to the Project**

The project will continue to be reviewed in accordance with the bilateral agreement between the Commonwealth and Queensland governments that enshrine both pieces of legislation. The implementation of the principles of ESD is accordingly discussed in the separate section of this report dealing with the EP Act.

## **A4.5.13 Queensland Biosecurity Strategy 2009-14**

### **A4.5.13.a Overview**

The Queensland Biosecurity Strategy sets out the strategic direction for:

- Queensland's biosecurity
- articulates a shared vision for Queensland's biosecurity system
- sets out the high level goals and strategies for biosecurity in Queensland
- identifies the key strategies that will be pursued to achieve these goals
- positions Queensland within the changing national and international biosecurity environment.

### **A4.5.13.b Project Relevance/consistency**

The strategy places a duty of care on anyone conducting an activity that has biosecurity implications to take all reasonable measures to mitigate the biosecurity risks associated with that activity.

## **A4.5.14 Queensland Coastal Management Plan 2014**

### **A4.5.14.a Overview**

The Coastal Management Plan is prepared under the *Coastal Protection and Management Act 1995* and identifies how the coastal zone of Queensland is to be managed. The plan provides non-regulatory policy guidance to coastal land managers. The plan identifies various approaches to managing coastal land, including the preservation of coastal land forms and coastal processes, conservation of matters of state environmental significance, maintaining and enhancing indigenous peoples' connections to coastal and marine resources, maintaining public access to the coast, and planning and monitoring coastal land uses. The plan is applied to guide planning, activities and works that are not assessable development under the SP Act.

#### **A4.5.14.b Project Relevance/consistency**

In considering development on Strategic Port Land, Ports North will have regard to this plan in its decision-making and assessment manager role of the project. The project will operate under the guidance of the Ports North in meeting the requirements of the Coastal Management Plan.

In considering development of the Barron Delta dredge placement facility, and the location of the delivery pipeline route, the Queensland Government will have regard to the Queensland Coastal Management Plan 2014 in its decision-making role and assessment manager role of the project.

#### **A4.5.15 Queensland Coastal Contingency Action Plan (QCCAP)**

##### **A4.5.15.a Overview**

The Action Plan, supported by Maritime Safety Queensland, outlines Australia's national arrangements for oil and chemical spills under the Inter-Governmental Agreement on Australia's National Plan to Combat Pollution of the Sea by Oil and Other Noxious and Hazardous Substances. QCCAP also links to Queensland's revised disaster management arrangements and supports Queensland's recently revised State Disaster Management Plan.

##### **A4.5.15.b Project Relevance/consistency**

The project will have procedures and protocols in place to meet the objectives of the QCCAP.

#### **A4.5.16 Standards for Hydrographic Surveys within Queensland Waters**

##### **A4.5.16.a Overview**

Maritime Safety Queensland has developed standards for hydrographic surveys within Queensland waters in consultation with all Queensland Port Authorities. These standards are based on the national Principles for Gathering and Processing Hydrographic Information in Australian Ports prepared by the Association of Australian Port and Marine Authorities (AAPMA). They supplement the International Hydrographic Organisation (IHO) Special Publication S44 which provides the minimum international standards for hydrographic surveys.

The Audit Plan for Hydrographic Surveys within Queensland Waters sets out the procedure for selecting, conducting and reporting of survey audits.

##### **A4.5.16.b Project Relevance/consistency**

The dredging work associated with the project will seek to comply with and monitored for compliance with the standards for hydrographic surveys within Queensland waters as provided by Maritime Safety Queensland.

#### **A4.5.17 State Development Assessment Provisions**

##### **A4.5.17.a Overview**

The State Development Assessment Provisions (SDAP) sets out the matters of interest to the state for development assessment, where the Chief Executive administering the Planning Act 2016, (being the Director- General of DILGP), is responsible for assessing or deciding development applications. The SDAP is prescribed in the PR 2017.

#### A4.5.17.b Project Relevance/consistency

The SDAP identifies the following matters of state interests potentially applicable to the project:

- environmentally relevant activities
- fisheries resources – development in a declared fish habitat area
- coastal protection – tidal works or development in a coastal management district
- native vegetation clearing - regional ecosystems – of least concern
- Queensland heritage place
- state transport network functionality – access to State controlled roads
- water resources.

Development approvals required for the project which involve the above matters will require assessment against the corresponding modules of the SDAP. **Table A4-1** below provides a summary of each SDAP and outlines the project relevance and consistency.

**TABLE A4-1 STATE DEVELOPMENT ASSESSMENT PROVISIONS – RELEVANT MODULES**

SDAP Name	Purpose and Outcomes	Relevance to the Project
Module 1: Community amenity	<p>The purpose of the code is to:</p> <ul style="list-style-type: none"> <li>• (1) ensure that state transport operations and infrastructure are protected from development on nearby land that may lead to operational constraints on the state’s transport system</li> <li>• (2) protect the community from significantly adverse impacts on health, wellbeing and quality of life resulting from environmental emissions (noise and vibration) generated by existing and future state transport operations and infrastructure.</li> </ul>	<p>The project will need to comply with the assessment criteria outlined in this module. Specifically the works will need to ensure that land affected by environmental emissions (noise and vibration) from State-Controlled transport operations and infrastructure is developed in a way that reduces the community’s exposure to such emissions.</p>
Module 4: Environmentally relevant activities	<p>The purpose of this code is to protect Queensland’s environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends (ecologically sustainable development).</p>	<p>A material change of use for an environmentally relevant activity mentioned in column 1 of Table 4.1.1 in this module must comply with the relevant provisions</p> <p>The project involves a number of environmentally relevant activities and impacts on matters of state environmental significance.</p>
Module 5: Fisheries resources	<p>The purpose of this code is to ensure development in and adjacent to declared fish habitat areas is managed to support the fish stocks on which Queensland’s fishing and seafood industry sectors rely. The code is designed to ensure that development:</p> <ul style="list-style-type: none"> <li>• (1) is managed to support fish stocks</li> <li>• (2) maintains the integrity, structure and fish habitat values of all fish habitat areas, and ensuring these areas are given significant protection from physical disturbance.</li> </ul>	<p>The project is within the Trinity Inlet declared fish habitat area and the Yorkeys Creek declared fish habitat area and is therefore required to comply with the criteria for assessment outlined in this module.</p>

(Continued over)

SDAP Name	Purpose and Outcomes	Relevance to the Project
Module 7: Water resources	The purpose of this Module is to provide for the sustainable management of water and other resources.	The project will involve taking or interfering with a watercourse and is therefore required to comply with the relevant provisions outlined in this module.
Module 8: Native vegetation clearing	<p>The purpose of the code is to regulate the clearing of native vegetation within the Queensland bioregions. The key outcome of this Module is to:</p> <ul style="list-style-type: none"> <li>• (1) conserve remnant vegetation</li> <li>• (2) conserve vegetation in declared areas</li> <li>• (3) ensure clearing does not cause land degradation</li> <li>• (4) prevent loss of biodiversity</li> <li>• (5) maintain ecological processes</li> <li>• (6) manage environmental effects of the clearing</li> <li>• (7) reduce greenhouse gas emissions.</li> </ul>	<p>The project is located within the Coastal bioregions and clearing of native vegetation within this region is required to comply with the Coastal bioregion state code.</p> <p>The construction of the delivery pipeline may involve native vegetation clearing where the pipeline is located above ground.</p>
Module 9: Queensland heritage	The purpose of this code is to ensure that development of State heritage places and archaeological places is compatible with the long-term conservation of these places.	The project will involve works within and adjacent to the Cairns Wharf Complex which is listed on the Queensland heritage register. The project will need to comply with the assessment criteria outlined in this module.
Module 10: Coastal protection	<p>The purpose of this code is to ensure development in coastal areas:</p> <ul style="list-style-type: none"> <li>• (1) is managed to protect and conserve environmental, social and economic coastal resources</li> <li>• (2) enhances the resilience of coastal communities to coastal hazards.</li> </ul>	<p>The project will involve tidal works and development within a coastal management district. The project will need to comply with the assessment criteria identified in this module.</p> <p>The project is generally consistent with the purpose of the code.</p>
Module 11: Wetland protection and wild river areas	The purpose of this code is to ensure that development in wetland protection areas is planned, designed, constructed and operated to prevent the loss or degradation of wetland environmental values, or enhances the values of wetlands within these areas.	The project is located within the Trinity inlet and is required to comply with the assessment criteria outlined in this module.
Module 13: Major hazard facilities	<p>The purpose of this code is to:</p> <ul style="list-style-type: none"> <li>• (1) assess off-site physical or chemical risks associated with developments involving a major hazard facility or proposed major hazard facility</li> <li>• (2) identify clear, concise and robust assessment criteria to assess any off-site risks a major hazard facility or proposed major hazard facility may have on its surrounding environment</li> <li>• (3) minimise the risk of knock-on effects between a major hazard facility or proposed major hazard facility and any adjacent buildings or structures, hazardous facilities or existing major hazard facilities,</li> </ul>	The project is required to comply with the assessment criteria outlined in this module if the proposed works require a development permit for a material change of use considered to involve a Major Hazard Facility, as defined in Schedule 15 of the Work Health and Safety Regulation 2011.

(Continued over)

SDAP Name	Purpose and Outcomes	Relevance to the Project
Module 14: Maritime safety	<p>The purpose of the code is to ensure development:</p> <ul style="list-style-type: none"> <li>• (1) supports the viable operation of navigation aids</li> <li>• (2) supports the safe operation of vessels in navigable channels</li> <li>• (3) supports equitable access to navigable waterways.</li> </ul>	<p>The project is required to comply with the assessment criteria outlined in this module with particular reference to navigational aids and operation of vessels</p>
Module 17: Public and active transport	<p>The purpose of the code is to ensure that development:</p> <ul style="list-style-type: none"> <li>• (1) supports the integration of land use with public transport</li> <li>• (2) does not have a significant adverse impact on existing or future public transport</li> <li>• (3) promotes and maximises the use of public transport</li> <li>• (4) increases opportunities for people to access public transport</li> <li>• (5) supports public passenger transport infrastructure.</li> </ul>	<p>The project will need to show consistency with the assessment criteria outlined in this module.</p> <p>Specifically relating to providing sufficient access to existing public and active transport infrastructure.</p>
Module 18: State transport infrastructure protection	<p>The purpose of the code is to ensure that buildings and structures located in, over or adjacent to existing or future state transport corridors or state transport infrastructure avoid or mitigate any adverse impacts on the operation and structural integrity of state transport infrastructure.</p>	<p>The project will need to ensure the assessment criteria in this module are appropriately addressed particularly in relation to the protection of existing and future state transport infrastructure.</p>
Module 19: State transport network functionality	<p>The purpose of this code is to ensure that development does not adversely impact the safety, function and operational efficiency of the state- controlled road network or a future state-controlled road.</p>	<p>The project will need to ensure the assessment criteria in this module are appropriately addressed. Particularly in relation to the safety, function and operational efficiency of the state road network.</p>

## A4.5.18 State Planning Policy 2016

### A4.5.18.a Overview

The State Planning Policy (SPP) establishes the Queensland Government's position in regard to planning matters of state significance. It provides a comprehensive set of principles which underpin Queensland's planning system to guide land use planning and development assessment. The state interests addressed in the SPP are:

- liveable communities and housing
- economic growth
- environment and heritage
- hazards and safety
- infrastructure.

### A4.5.18.b Project Relevance/consistency

The project is generally consistent with the outcomes sought by the SPP and in particular in its potential to promote economic growth.

## **A4.5.19 Transport Operations (Marine Pollution) Regulation 2008**

### **A4.5.19.a Overview**

This regulation sets out to protect Queensland's marine and coastal environment by managing and regulating deliberate and negligent discharges of ship-sourced pollutants into coastal waters.

### **A4.5.19.b Relevance to the Project**

The dredging contractor will be responsible for ensuring that the operation of its vessel in Queensland waters complies with requirements set out the Transport Operations (Marine Pollution) Regulation 2008.

## A4.6 Approvals

### A4.6.1 Commonwealth Government Approvals

The approvals required for the project from the Commonwealth Government relate to the potential impacts the project that may have on matters of national environmental significance. Where a Queensland bilateral agreement is not in place, the proponent will seek a coordinated assessment process as much as possible to ensure the project is referred, coordinated and assessed under both Commonwealth and State Acts at the same time.

The summary of approvals required from the Commonwealth Government includes:

- approval of the relevant 'Controlled Actions' under the EPBC Act
- Native title clearance for proposed use of land where native title has not been extinguished requires notification under section 24KA of the *Native Title (Queensland) Act 1993* (Qld).

### A4.6.2 Queensland Government Approvals

The following Queensland Government approvals are required for the whole of the project and are required prior to obtaining other state and local government approvals and commencing any works:

- Approval under the SDPWO Act. The Coordinator General's report on the evaluation of the EIS will also be assessed by the Commonwealth Government due to the potential impacts on matters of National Environmental Significance and impact on the Great Barrier Reef Marine Park
- Approval under the *Aboriginal Cultural Heritage Act 2003*. A CHMP approved by the Department of Environment and Heritage Protection. The Act states that where an EIS is required under a legislative framework then a Cultural Heritage Management Plan must be prepared to manage all aspects of cultural heritage for the construction and operation of the project
- State Marine Parks Permit. Compliance will include but not limited to guidelines set out in the GBRMPA Dredging and Dredge Spoil Material Disposal Policy 2016, Environment and Heritage Protection – Disposing of material in tidal water.
- Operational Works in a declared fish habitat area.

### A4.6.3 Operational Work in coastal management district (tidal works Local Government Approvals

The approvals required for the project from Cairns Regional Council:

- Development application for land placement of dredge material on the Barron Delta.
- Development application for certain aspects of Operational Works for delivery pipeline.

### A4.6.4 Approvals by Project Component

Subject to and subsequent to a positive Commonwealth and State assessment of the Project, the following approvals will be required to implement each project component.

#### A4.6.4.a Capital Dredging and Placement

Capital dredging required for widening and deepening the outer and inner channel and swing basin will require the following approvals under Commonwealth and Queensland legislation before work can commence.

**Table A4-2** outlines the approvals required for capital dredging works associated with the project, as well as those required for the construction of the delivery pipeline.

**TABLE A4-2 POTENTIAL APPROVALS REQUIRED FOR CAPITAL DREDGING**

Activity	Legislation	Approval	Approving Authority
Dredging works	Environmental Protection Act 1994	Environmental Authority and Development Permit for Material Change of Use for an Environmentally Relevant Activity ERA16 Extractive and Screening Activities (Dredging)	DEHP
Removal of quarry materials from tidal waters	Coastal Protection and Management Act 1995	Allocation of Quarry Material or Dredge Management Plan (if other than marine disposal of dredge material is proposed)	DEHP / DILGP
Undertaking tidal works for the delivery pipeline at the mouth of Richters Creek and at the upstream crossing	Coastal Protection and Management Act 1995	Development Permit for Operational Works (that are tidal works)	DEHP / DILGP
Dredging works in tidal waters	Coastal Protection and Management Act 1995	Development Permit for Operational Works (that are tidal works for capital dredging)	DEHP / DILGP
Works within the Trinity Inlet Fish Habitat Area and the Yorkeys Creek FHA	Fisheries Act 1994	Revocation or amendment of the existing Fish Habitat Area boundaries and operational works within these FHAs (e.g. delivery pipeline).	DAF / DILGP
Destruction of marine plants found within the dredge footprint area	Fisheries Act 1994	Development Permit for Operational Works (that is the removal, destruction or damage of a marine plant) – if marine plants are found in the dredge footprint or at or adjacent to the proposed dredge material ground.	DAF / DILGP
Destruction of marine plants found within the delivery pipeline corridor	Fisheries Act 1994	Development Permit for Operational Works (that is the removal, destruction or damage of a marine plant) - if marine plants are found within the delivery pipeline corridor.	DAF / DILGP
Waterway barrier works	Fisheries Act 1994	Development Permit for Operational Works that involves waterway barrier works.	DAF / DILGP
Dredging to widen and lengthen the access channel within the General Use Zone of the Great Barrier Reef Coast Marine Park (State Marine Park)	Marine Parks Act 2004	Marine Park Permit	Department of National Parks, Sport, and Racing / Great Barrier Reef Marine Park Authority

Activity	Legislation	Approval	Approving Authority
Works to install a pipeline in the General Use Zone and the Estuarine Conservation Zone of the Great Barrier Reef Coast Marine Park (State Marine Park)	Marine Parks Act 2004	Marine Park Permit	Department of National Parks, Sport, and Racing

#### **A4.6.4.b Upgrades to Existing Wharf and Land Based Infrastructure**

The installation of additional piles within the existing wharf footprint area and the installation of fenders and bollards are considered 'tidal works' as defined in the *Coastal Protection and Management Act 1995* and are defined as assessable development in accordance with Schedule 10 of the PR 2017.

Given that the tidal works are completely located in Port North's strategic port land tidal area, Ports North will be the assessment manager for the tidal works in accordance with Schedule 10 of the PR 2017. DILGP will be the co-ordinating agency, who would coordinate DEHP's and MSQ's referral agency response for the tidal works application, which will be assessed through the Development Assessment Rules.

Cairns Wharf Complex is listed on the Queensland Heritage Register (QHR 601790) and therefore approval for development within a heritage-listed place under the *Queensland Heritage Act 1992* will be required for the proposed wharf upgrades (in accordance with Schedule 10 of the PR 2017). This approval is planned to be integrated with the application for tidal works and therefore Port North will be the assessment manager and DEHP (through SARA) the concurrence agency under the Development Assessment Rules in regard to the purposes of the *Queensland Heritage Act 1992*.

Further, on the basis that the site is listed on the EMR/CLR, any removal and disposal of contaminated soils associated with the land based component of the wharf upgrades will require approval under the EP Act. As with the heritage requirements, if contaminated soils are to be disturbed as part of the wharf upgrades, this will likely be integrated with the other aspects of development for which application is being made and therefore Port North will be the assessment manager and DILGP (with DEHP as a technical agency through SARA) will be a concurrence agency under the Development Assessment Rules in regard to the purposes of the EP Act.

In the event that Ports North determines that new major mooring points need to be installed on the landward side of the wharves for additional tying-up for larger cruise ships, development of such facilities will trigger the need for approvals under the *Queensland Heritage Act 1992* and the *Building Act 1975*.

**Table A4-3** identifies the potential approvals required for the upgrades to existing wharf and land based infrastructure associated with the project.

**TABLE A4-3 POTENTIAL APPROVALS REQUIRED FOR THE UPGRADES TO EXISTING WHARF AND LAND BASED INFRASTRUCTURE**

<b>Activity</b>	<b>Legislation</b>	<b>Approval</b>	<b>Approving Authority</b>
Installation of additional piles within the existing wharf footprint areas and installation of fenders and bollards	Coastal Protection and Management Act 1995	Development Permit for Operational Works (that are tidal works for capital dredging)	Ports North / DILGP
Development within the Cairns Wharf Complex (Queensland heritage place) (integrated with tidal works application)	Queensland Heritage Act 1992	Development Permit for works on a Queensland Heritage Place	Ports North / DEHP / DILGP
Removal and disposal of contaminated soils associated with the wharf upgrades	Environmental Protection Act 1994	Disposal permit to treat or dispose of contaminated soil from land recorded in the environmental management register (EMR) or contaminated land register (CLR) under section 424 of the Environmental Protection Act 1994 (EP Act).	Ports North / DEHP
Chemical storage for the proposed 7500 ton heavy fuel oil storage tank.	Environmental Protection Act 1994	Chemical storage for the proposed 7,500 ton heavy fuel oil storage tank.	Ports North / DEHP
Building work declared as assessable under Chapter 2 of the Building Act 1975	Building Act 1975	Development Permit for Building Work	Private Certifier
Plumbing work	Plumbing and Drainage Act 2002	Compliance Certificate for Regulated Plumbing Works	Ports North / Cairns Regional Council
Sewerage Upgrade Works and storage facilities	Plumbing and Drainage Act 2002	Compliance Certificate for Regulated Plumbing Works	Ports North / Cairns Regional Council
Fire Fighting Service Upgrades	Plumbing and Drainage Act 2002	Compliance Certificate for Regulated Plumbing Works	Ports North / Cairns Regional Council

#### **A4.6.4.c Support Infrastructure Upgrades**

Potentially, approvals that may be triggered for these infrastructure upgrades subject to the determination of detailed design and siting arrangements include:

- Development Permit for Material Change of Use for an Environmentally Relevant Activity (ERA 8 – Chemical Storage) under the EP Act for the proposed Heavy Fuel Oil storage tank.
- Development Permit for Building Work declared as assessable under Chapter 2 of the *Building Act 1975*.
- Compliance Certificate for Regulated Plumbing Works under the *Plumbing and Drainage Act 2002*.

#### **A4.6.5 Revocation of Portion of Trinity Inlet Fish Habitat Area**

The proposed widening of the approach channel is likely to encroach into the declared Trinity Inlet FHA and existing policy developed under the *Fisheries Act 1994* does not support dredging within a declared FHA.

FHAs are declared by Regulation under Section 120 of the *Fisheries Act 1994*. Declaration of an FHA requires amendment of the Fisheries Regulation 2008 and the approval of State Cabinet and the Governor-in-Council. Therefore, where a proposal which encroaches within a declared FHA is accepted by the Queensland Government, there is a need for a legislative process to amend or revoke the declared FHA.

The Department of Agriculture and Fisheries provides a framework for the selection, assessment, declaration and review of declared FHAs in their operational policy Marine Resource Management: Fish Habitat Area selection, assessment, declaration and review. The policy states that declared FHA amendments may be proposed to accommodate additional infrastructure need. An initial assessment of the proposal is undertaken to prepare Terms of Reference for a 'Revocation Assessment Study'. The proponent (in this case, Ports North) carries out the study and submits it to DAF.

It is noted that approval in principle has been received from DAF and DNPSR for an exchange in affected portion of the Trinity Inlet FHA.