SMITH BAY WHARF

DRAFT ENVIRONMENTAL IMPACT STATEMENT

APPENDIX D

PREPARED FOR KANGAROO ISLAND PLANTATION TIMBERS BY ENVIRONMENTAL PROJECTS

JANUARY 2019

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APPENDIX D – LEGISLATIVE FRAMEWORK

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1. INTRODUCTION – SCOPE AND PURPOSE

This appendix (summarised in Chapter 5 of this Environmental Impact Statement (EIS)) identifies the Commonwealth and South Australian legislative environmental requirements that apply to the KIPT Smith Bay Wharf Project.

Those requirements comprise:

- the environmental impact assessment process, which will determine whether the proposal receives environmental approval at state and Commonwealth levels
- the need for environmental permits (for example, licences under the South Australian *Environment Protection Act 1993*) if the proposal is approved
- ongoing obligations imposed by a range of environmental and natural resources legislation which, subject to initial approval, would apply during the construction and operational stages of the Project (for example, the general statutory duties under the South Australian *Natural Resources Management Act 2004* duties under the state's *Aboriginal Heritage Act 1988*).

2. MAJOR DEVELOPMENT ASSESSMENT

2.1 Development Act 1993 (SA)

The Development Act 1993 (Development Act) and associated Development Regulations 2008 (Development Regulations) set out the processes and procedures by which different forms of development are assessed in South Australia. This legislation is administered by the Development Division of the Department of Planning, Transport and Infrastructure (DPTI).

Part 4 of the Development Act sets out assessment processes for proposed major developments and projects. In particular, the Act specifies:

i. the processes and procedures applying to the Minister's power to declare a major project or development
ii. the requirement for referral of such a proposal to the Development Assessment Commission (DAC) for a determination of what level of assessment is required (an environmental impact statement (EIS), public environmental report (PER) or development report (DR)) and for formulation of assessment guidelines.

On 16 February 2017, the Minister for Planning declared the deep-water port facility at Smith Bay (referred to in this EIS as the KI Seaport) to be a major development. A copy of the Government Gazette notice (23 February 2017) is attached to this EIS as Appendix A2).

The DAC has determined under Section 46 of the Development Act that the level of assessment required for the Project is an EIS. The proposal is therefore subject to the requirements of section 46B of the Development Act regarding environmental impact statements. Further details of the EIS assessment and approval process are provided in the Introduction to this Draft EIS (see Section 1.6).

2.2 Planning, Development and Infrastructure Act 2016 (SA)

The *Planning, Development and Infrastructure Act 2016* (SA) was passed by Parliament to replace the existing Development Act. Implementation of that Act is occurring in stages and it is expected to be fully operational in 2019. Meanwhile, transitional provisions of the new Act and the *Planning, Development and Infrastructure (Transitional Provisions) Act 2017* are expected to ensure a smooth change from the current planning regime to the new one and to protect the interests of parties in processes commenced under the current Development Act.

Schedule 8 of the *Planning, Development and Infrastructure Act 201*6 refers specifically to projects declared to be major developments or projects under section 46 of the Development Act prior to the date on which it is determined that the comparable 'impact assessed development' provisions of the new Act come into effect.

If the new major projects provisions come into operation before the KIPT proposal is assessed and before any consequent approval is finalised, the relevant provisions of the Development Act will apply. However, the Minister for Planning—rather than the Governor (effectively Cabinet) as is currently the case under section 48 of the Development Act—will be responsible for the state government's final decision about the Project.

2.3 Environment Protection and Biodiversity Conservation Act 1999 (Commonwealth)

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) is the Commonwealth Government's principal environmental legislation. It provides a legal framework to protect and manage nationally and internationally important flora, fauna, ecological communities and heritage places—classified under the EPBC Act as matters of national environmental significance (MNES)—and to establish and manage Commonwealth areas of environmental significance. The EPBC Act is administered by the Department of the Environment and Energy (DoEE).

The relationship between proposed developments and the protection of MNES occurs through the environmental impact assessment process established under the EPBC Act. The Act requires developers who are proposing an action that may have a significant impact on an MNES to prepare a submission (known as a referral) to assist the Commonwealth Minister of the Environment to determine, on the advice of DoEE, whether the proposal may have such an impact. If so, it is determined to be a 'controlled action' requiring assessment and approval under the Act.

A determination that a proposal is not a 'controlled action' indicates that the proposal is not likely to have a significant impact on any MNES and no further assessment is required under the Act.

On 8 November 2016, the Smith Bay Wharf Project was referred to the Commonwealth Environment Minister to determine whether the Project was a 'controlled action' pursuant to the EPBC Act (reference number 2016/7814).

On 14 December 2016, the Smith Bay Wharf Project was declared a 'controlled action' requiring the preparation of an EIS under the EPBC Act. A copy of the letter from the Commonwealth informing KIPT of the Decision on Referral appears in Appendix K4. The MNES which triggered this decision were:

- Endangered Southern Right Whales in Commonwealth marine waters
- Endangered Kangaroo Island Echidnas
- Vulnerable Hooded Plover (eastern)
- Vulnerable Southern Brown Bandicoot (eastern).

The Project will be assessed by the South Australian Department of Transport, Planning and Infrastructure (DPTI) under a bilateral agreement between the Commonwealth of Australia and South Australia.[1]This agreement accredits the South Australian major projects assessment process provided under the Development Act for the purpose of assessing a 'controlled action' under the EPBC Act. As indicated above, the South Australian Development Assessment Commission has determined that the preparation of an environmental impact statement is necessary.

However, approval of the proposal under the EPBC Act remains the responsibility of the Commonwealth Minister under that Act.

Potential impacts on any MNES arising from the Smith Bay Wharf Project are identified in Chapter 14, along with assessment of the potential impact and discussion of appropriate management and mitigation strategies.

3. CONSISTENCY WITH SA PLANNING INSTRUMENTS AND KANGAROO ISLAND POLICIES

The South Australian Development Act is significant for this proposal in two important respects.

- It establishes the state environmental impact assessment process for major projects.
- In assessing the proposal, the EIS must include a statement of the extent to which the expected effects of the development or project are consistent with, amongst other things, the provisions of:
    - any relevant Development Plan prepared under the Development Act
    - the Planning Strategy prepared under the Development Act
    - any matters prescribed by the Development Regulations.

No matters have been prescribed under the regulations. The compatibility of the KIPT Wharf Proposal with the Kangaroo Island Development Plan and Planning Strategy, respectively, is addressed in Chapter 6, Section 6.3.

4. POLLUTION, WASTE MANAGEMENT AND PETROLEUM STORAGE

In matters relating to potential pollution, waste management and petroleum storage, the construction and operation of the proposed KIPT wharf facility would attract the provisions of the *Environment Protection Act 1993* (SA), the *Protection of Marine Waters (Prevention of Pollution from Ships) Act 1987* (SA), the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* (Commonwealth), the *Protection of the Sea (Harmful Anti-fouling Systems) Act 2006* (Commonwealth), the Environment Protection (Sea Dumping) Act 1981 (Commonwealth) and the *Dangerous Substances Act 1979* (SA).

The following is an overview of this legislation and the nature and extent of its application to the Project.

[1] Commonwealth of Australia and the State of South Australia. Bilateral Agreement made under section 45 of the *Environment Protection and Biodiversity Act (Clth)* relating to environmental assessment. September 2014.

4.1 Environment Protection Act 1993

Structure and Objects

The *Environment Protection Act 1993* (EP Act) is the principal South Australian pollution[2] control and waste[3] management legislation. Its objectives are to promote the principles of ecologically sustainable development and, considering those principles, to ensure that all reasonable and practicable measures are taken to protect, restore and enhance the quality of the environment.

The EP Act is administered by the Environment Protection Authority (EPA). The essential machinery of the Act comprises:

- a general environmental duty imposed on all persons (including companies) not to undertake an activity that pollutes or might pollute the environment unless all reasonable and practicable measures have been taken to prevent or minimise resulting environmental harm
- a licensing regime for prescribed activities of environmental significance (PAES) as listed in Schedule 1 of the Act
- Environment Protection Policies prepared under the Act to regulate, amongst other matters, air quality, water quality and noise
- several offences of causing environmental harm or a nuisance
- power in the agency to enforce the Act whenever necessary by issuing environment protection orders and clean-up orders, using civil enforcement in the courts and prosecuting for specified breaches of the Act.

National environment protection measures (NEPMs) are established under the Commonwealth *National Environment Protection Council Act 1994* and the state equivalent legislation (for South Australia the *National Environment Protection Council (South Australia) Act 1995*) so that certain pollution and waste management matters are regulated consistently across the nation. In South Australia, these are implemented as Environment Protection Policies (EPPs).

Licensing

Authorisation (in the form of a works approval, licence or exemption) to undertake a prescribed activity of environmental significance (PAES) is required from the EPA. When deciding whether to grant an authorisation (and its conditions), the EPA must take into account a wide range of matters specified in section 47 of the Act including the objects of the Act, the general environmental duty and any relevant environment protection policies. PAES that may be relevant to the KIPT Project include:

- bulk shipping facilities
- dredging
- petroleum storage (depending on volumes)
- earthworks operations
- fuel burning.

KIPT would apply for the appropriate authorisations to operate the Smith Bay Wharf facility before commencing operations. This EIS provides details of the activities that are likely to require an authorisation under the Act.

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[2] The terms “pollute” and “pollution” have specific meanings for the purposes of the South Australian Environment Protection Act 1993. See section 3 of that Act.

[3] Similarly, the term ‘waste’ is given a specific meaning for the purposes of the Environment Protection Act (see section 3).

The proposal has been referred to the EPA as required by the EIS provisions of the Development Act. As further required by that Act, the EIS contains a statement describing the extent to which the effects of the Project are consistent with the objects of the Environment Protection Act, the general environmental duty and relevant environment protection policies (see above).

Environment Protection (Water Quality) Policy 2015

The Environment Protection (Water Quality) Policy 2015 (Water Quality EPP) provides the structure for regulating and managing water quality in South Australian inland surface waters, marine waters and groundwaters.

Based on the objects of the Environment Protection Act, the principal object of the Water Quality EPP is to ensure that all reasonable and practicable measures are taken to protect, restore and enhance water quality while having regard to the principles of ecologically sustainable development.

The Water Quality EPP:

- provides a waste management hierarchy for the purposes of managing waste
- establishes environmental values for waters
- creates 'trigger values' that a person must avoid activating (and thus breaching the general environmental duty under the Act)
- creates a series of offences for a breach of mandatory provisions of the EPP.

The EPP contains specific provisions for the management of waste on vessels and the use, removal and management of antifoulants on vessels and structures. The law addressing the management of antifoulants with respect to Australian and foreign shipping is discussed below (see Commonwealth *Protection of the Sea (Harmful Anti-fouling Systems) Act 2006*).

The Water Quality EPP applies to the waters of Smith Bay and activities undertaken with respect to those waters. The construction and operation of the KIPT wharf would comply with the Water Quality EPP.

Environment Protection (Air Quality) Policy 2016

The Environment Protection (Air Quality) Policy 2016 (Air Quality EPP) is the principal regulatory tool for managing activities that potentially affect air quality in South Australia.

The Air Quality EPP:

- prohibits burning within council areas (subject to certain exceptions)
- allows for the acquisition of burning permits
- creates the offence of burning 'prohibited substances' specified in the Act
- permits the EPA to establish local air quality objectives in designated areas of South Australia
- requires occupiers of premises to take all reasonable and practicable measures to avoid air emissions from those premises.

The Air Quality EPP specifies a range of matters relating to air quality that the EPA must take into account when determining an application for an authorisation under the Act that may have implications for air quality. These matters will be taken into account by the EPA when the EIS is referred to it as required by the major developments or projects provisions of the Development Act.

Environment Protection (Noise) Policy 2007

The Environment Protection (Noise) Policy 2007 (Noise EPP) provides a regulatory framework for managing noise in South Australia.

The Noise EPP:

- establishes procedures for measuring noise
- sets noise goals (based on background noise levels or indicative noise levels calculated in accordance with the Policy) compliance with which satisfies the general environmental duty under the Act
- sets out criteria to be used by the EPA or other administering authority to determine what measures, if any, will be imposed on non-compliant noise sources
- endeavors to assist in achieving consistency in the approach to noise assessment with the development approvals process under the Development Act.

The Noise EPP contains special provisions for the control of construction noise; however, these provisions do not apply to noise arising from the construction of roads, rail or public infrastructure. Although the wharf will have the capacity for use by others, it is unlikely to be perceived as public infrastructure. Consequently, provisions of the EPP applying to construction noise will apply to the project.

4.2 Protection of Marine Waters (Prevention of Pollution from Ships) Act 1987 (SA)

The *Protection of Marine Waters (Prevention of Pollution from Ships) Act 1987* applies to South Australian coastal waters, including the waters immediately adjacent to the site of the proposed KIPT facility. It is administered by the South Australian Department of Planning, Transport and Infrastructure (DPTI) and implements the International Convention for the Prevention of Pollution from Ships 1973 and the 1978 Protocol.[4]

The Act creates a series of offences with respect to pollution from ships within those coastal waters. Under the Act, 'pollution' includes oil, oil residues, noxious substances, packaged harmful substances and garbage. The master of a ship in South Australian waters is obliged to report oil pollution incidents, unless otherwise excluded from the operation of the Act, to a prescribed officer (currently within DPTI).

Under the Act it is an offence to discharge oil or an oily mixture from a vehicle or apparatus into South Australian waters. The term 'ship' includes the pontoon proposed for the KIPT Project. 'Apparatus' includes any structure located on land used for the purposes of constructing or operating the KI Seaport project. The proposed causeway would constitute land. Consequently, the discharge of oil or an oily mixture into Smith Bay from any structure or machinery located on that land would breach the Act.

4.3 Protection of the Sea (Prevention of Pollution by Ships) Act 1983 (Commonwealth)

The *Protection of the Sea (Prevention of Pollution by Ships) Act 1983* is administered by the Australian Maritime Safety Authority (AMSA) and applies to Commonwealth waters, i.e. waters outside the three-nautical-mile limit from the mean low water mark. Waters within the three-nautical-mile limit are the responsibility of respective state and territory governments (see above).

[4] International Convention for the Prevention of Pollution from Ships, 1973, as Modified by the Protocol of 1978 relating thereto – Optional Annex IV (London, 13 March 2000).

Like the South Australian Protection of Marine Waters (Prevention of Pollution from Ships) Act, the Commonwealth Act implements the International Convention for the Prevention of Pollution from Ships 1973 and the 1978 Protocol. Its structure and content are similar to the South Australian Act.

With respect to the KI Seaport project, the Commonwealth Act would apply to any vessel outside South Australian coastal waters travelling to or from the wharf at Smith Bay.

4.4 Protection of the Sea (Harmful Anti-fouling Systems) Act 2006 (Commonwealth)

Anti-fouling paints are used to coat the bottoms of ships to prevent marine life such as algae and molluscs from attaching themselves to the hull, thereby slowing down the ship and increasing fuel consumption. Australia is a signatory to the International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001 (the HAFS Convention)[5] which is implemented through the Commonwealth Protection of the Sea (Harmful Anti-fouling Systems) Act 2006. The Act is administered by the Commonwealth Department of Infrastructure and Regional Development (DIRD).

Reflecting the provisions of the Convention, the Act:

i. Prohibits the application of harmful anti-fouling compounds (HAFC) to ships

ii. Prohibits the taking of a 'non-compliant' ship into an Australian port

iii. Provides for the issuing of anti-fouling certificates and anti-fouling declarations, as the case may be, that indicate compliance with the Act.

A ship complies with the anti-fouling requirements of the Convention and Act if it has no HAFC on external surfaces or, if it does, there is a coating on those surfaces that forms a barrier to the HAFC leaching into water.

4.5 Environment Protection (Sea Dumping) Act 1981 (Commonwealth)

KIPT proposes dredging within Smith Bay and the disposal of the dredged material. This raises the potential application of sea dumping legislation. However, KIPT proposes the management of dredged material on-shore (see Project Description, Chapter 4, Section 4.4.2) in conformity with conditions imposed by any authorisation issued under the South Australian Environment Protection Act.

The *Commonwealth Environment Protection (Sea Dumping) Act 1981*, which is administered by the Department of Environment and Energy (DoEE), implements the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972[6]. In the absence of a permit issued under the Act it is an offence, amongst other offences, to dump 'controlled material' including 'wastes or other matter' (within the meaning of the Protocol[7]) into Australian waters from a vessel, aircraft or platform. Controlled material includes dredge spoil.

The provisions of the South Australian equivalent legislation (the *Environment Protection (Sea Dumping) Act 1984*) have not commenced and the Commonwealth Act therefore applies to South Australian coastal waters. An offence under the Commonwealth Act of dumping 'controlled materials' without a permit could be committed in

[5] International Convention on the Control of Harmful Anti-Fouling Systems on Ships done at London on 18 October 2001.

[6] 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter of 29 December 1972 (London, 7 November 1996).

[7] 'Wastes and other matter' are defined in clause 8 of Article 1 of the 1996 Protocol to the Convention on the Prevention of Marine Pollution by the Dumping of Wastes and Other Matter 1972 (as amended in 2006) as meaning 'material and substance of any kind, form or description'.

South Australian coastal waters if dredge spoil were to be deposited at sea without the relevant permit. This is not proposed by KIPT.

The regulation of dredging in South Australian waters occurs principally through the state's Environment Protection Act. Dredging and earthworks drainage are prescribed activities of environmental significance requiring authorisation under the Act (see above).

4.6 Dangerous Substances Act 1979 (SA)

Amongst other matters, the *Dangerous Substances Act 1979* regulates how to handle, transport, convey and dispose of dangerous substances as defined under the Act.[8] Under the Act, 'dangerous substances' include fuels such as petroleum, diesel and LPG.

Administered by SafeWork SA, it implements the provisions of the Australian Code for the Transport of Dangerous Goods by Road and Rail.[9]

The Act imposes on all persons a general duty to take precautions and exercise such care as is reasonable in the circumstances to avoid endangering the health or safety of persons or causing damage to property and to prevent the risk of environmental harm.

The Act imposes a similar duty on persons in charge of or using plant associated with dangerous substances although this obligation does not extend to potential environmental harm. It is an offence to breach either of the above duties.

Depending on volume, the bulk storage and conveyance of dangerous substances prescribed under the Act (including petroleum products) must be licensed.

Of significance to the KIPT proposal is the declaration in the Dangerous Substances Regulations 1979 that flammable liquids are prescribed dangerous substances for the purposes of the Act. Therefore, a licence may be required depending on the volume of fuel to be kept (retained) on the site. Below specified volume thresholds, flammable liquids may be stored without a licence provided certain requirements are met.

5. CLIMATE CHANGE AND GREENHOUSE GAS REDUCTION

5.1 Climate Change and Greenhouse Emissions Reduction Act 2007 (SA)

The *Climate Change and Greenhouse Emissions Reduction Act 2007*, which is administered by DEW, extensively addresses greenhouse gas emissions, climate change and its impacts. The principal object of this Act is to help achieve ecologically sustainable development in South Australia by addressing issues associated with climate change. Under the Act, this object is to be realised by setting targets for greenhouse gas emissions, renewable electricity and relevant activities of various sectors of South Australia's economy.

Under the Act, the Minister for Environment and Water has the power to develop policies and programs for reducing greenhouse gases and encouraging energy efficiency.

[8] "Dangerous substances" are defined under the Act as "dangerous goods or any other substance or article that is toxic, corrosive, flammable or otherwise dangerous and declared by the regulations to be a dangerous substance" (section 2).

[9] National Transport Commission Australia. *Australian Code for the Transport of Dangerous Goods by Road and Rail.* Edition 7.6, 2018

The principal target set by the Act is the reduction of greenhouse gas emissions by 60% (to an amount equal to 40% of 1990 levels) by 31 December 2050.

Current government policy and strategic direction on climate change is reflected in South Australia's *Climate Change Strategy 2015-2050*. *Towards a Low Carbon Economy*.[10]

5.2 National Greenhouse Energy Reporting Act 2007 (Commonwealth)

The *National Greenhouse Energy Reporting Act 2007* introduces a national framework for reporting and disseminating information related to greenhouse gas emissions, greenhouse gas projects, energy consumption and energy production of corporations. The Act is administered by the Commonwealth Clean Energy Regulator; the Department of the Environment and Energy is responsible for overseeing the NGER Scheme.

A 'controlling corporation' must apply to the Clean Energy Regulator for registration under the Act if it meets certain thresholds for greenhouse gas emissions, energy production or consumption. Once registered, the corporation must report annually to the Regulator its greenhouse gas emissions, energy production or energy consumption as required by the Act.

KIPT expects not to reach any of the specified thresholds for the purposes of registration and reporting under the Act. The issue of greenhouse gas emissions associated with the development is addressed in Chapter 19 of the EIS.

5.3 Coast Protection Act 1972 (SA)

The *Coast Protection Act 1972* provides for the conservation and protection of the coast of South Australia. 'Coast' for the purposes of the Act includes land above and within 100 m of the mean high-water mark, the sea from below and within three nautical miles of the mean low-water mark to a distance of three nautical miles and bays, inlets and estuaries.

The Act establishes the Coast Protection Board (CPB) which manages the coast through the proclamation of coast protection districts (including Kangaroo Island), development and implementation of management plans, provision of funds for protection works and the undertaking of certain works. CPB policy and the provisions of the Board's management plans are now mostly implemented via the coastal provisions of relevant development plans under the Development Act.

The Coast Protection Board has addressed the issue of new development in the context of sea level rise in its policy document revised in 2016.[11]

[10] Government of South Australia. Department of Environment, Water and Natural Resources. Undated. *Climate Change Strategy 2015-2050. Towards a Low Carbon Economy.*

[11] Coast Protection Board. Coast Protection Policy Document revised 29 July 2016, Appendix 1: *"Standards Applying to New Development with Regard to Coastal Flooding and Erosion and Associated Coastal Works".*

6. NATURAL RESOURCES MANAGEMENT

6.1 Environment Protection and Biodiversity Conservation Act 1999 (Commonwealth)

The application of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) to the environmental assessment of proposals that may have a significant impact on matters of national environmental significance (MNES) has been addressed above (see Section 2.3). MNES include threatened species and communities listed in the Act, listed migratory species and the marine environment under the jurisdiction of the Commonwealth (Commonwealth marine areas). The Act is breached if an action is taken that has or may have a significant impact on a MNES unless an approval has been obtained from the Minister or is otherwise authorised under the Act; this attracts a civil or criminal penalty.

KIPT would comply with any and all conditions imposed to protect the populations and members of the species specified in the referral notice.

Amongst other measures for the protection of threatened species and ecological communities listed under the Act the Minister may prepare recovery plans. These plans must provide for research and management actions that are necessary to stop the decline and support the recovery of the threatened species or community concerned. Such a plan has been prepared for the Southern Right Whale, one of the four MNES that have triggered the application of the EPBC Act to the KI Seaport project. This is discussed in more detail in Section 2.1 of Appendix I2, Chapter 12.

6.2 Native Vegetation Act 1991 (SA)

6.2.1 Objects, Administration and Scope

The *Native Vegetation Act 1991* aims mainly to provide incentives and assistance to landowners to preserve and enhance native vegetation and to control its clearance in South Australia.

The Act extends to the marine environment within South Australian coastal waters (to the three-nautical-mile limit). ‘Native vegetation’ includes indigenous plants growing in or under seawaters within South Australia and therefore extends to seagrasses.

With the support of the Department for Environment and Water (DEW), the Act is administered by the Native Vegetation Council, a statutory authority.

6.2.2 Clearance of Native Vegetation

Subject to the Native Vegetation Regulations, the clearance of native vegetation requires approval from the Native Vegetation Council. The clearance of a small amount of remnant vegetation from the Smith Bay project site is anticipated as well as limited loss of seagrass as a consequence of construction and operation of the facility. The management of roadside vegetation for the purposes of maintaining safety standards on routes used for the transport of timber will also be necessary. The machinery available under the Act and regulations in these respects is as follows:

On-site Remnant Vegetation - Major Developments and Projects

Under the regulations, approval is not required where a major development or project is subject to assessment and approval under the Development Act. The regulations provide that consent is not required from the Native Vegetation Council where:

- an EIS, amongst other forms of assessment, has been prepared
- the Minister for Planning has referred the EIS to the Native Vegetation Council for comment

- the Governor has granted consent to the proposal
- the clearance occurs in accordance with relevant conditions imposed by the Governor with respect to the Project
- the clearance occurs in accordance with a management plan approved by the Native Vegetation Council which provides a 'significant environmental benefit'.

In lieu of a management plan providing a significant environmental benefit, an amount of money may be paid into the Native Vegetation Fund that, in the opinion of the NVC, provides a significant environmental benefit (SEB) as contemplated by the Act.

Clearance of remnant on-site native vegetation that is needed for this Project would conform with any relevant approval conditions imposed by the Governor and with any management plan approved by the Native Vegetation Council as an outcome of the EIA process for Project.

Seagrass

As stated above, seagrass is native vegetation for the purposes of the Native Vegetation Act. The clearance of seagrass arising from the construction and operation of the Smith Bay facility would be subject to the same processes under the Act and regulations as described above with respect to on-site remnant vegetation.

Management of Roadside Native Vegetation

The Kangaroo Island Council manages roadside native vegetation in accordance with the Kangaroo Island Council Roadside Vegetation Management Plan 2007 which has been authorised by the Native Vegetation Council. Under the Native Vegetation Regulations, the Kangaroo Island Council (or a person on its behalf) may clear roadside vegetation provided that occurs in conformity with the Management Plan.

On roads to be used for the purpose of timber transport by KIPT, the Council would manage roadside vegetation in conformity with its Roadside Vegetation Management Plan.

New Interim Guidelines for the Management of Roadside Vegetation, replacing the 2012 version, were introduced in October 2018.

6.3 National Parks and Wildlife Act 1972 (SA)

The *National Parks and Wildlife Act 1972* is South Australia's primary conservation legislation and is administered by DEW. It establishes and provides for the management of reserves (national parks, conservations parks, game reserves, recreation parks and regional reserves) and conserves native plants and animals. The area of land proposed for the KI Seaport is not within, or within the vicinity of, a reserve established under the Act.

Reserves may be established over marine waters; however, the waters within Smith Bay have not been declared a reserve.

Three of the species listed in the referral to the Commonwealth under the EPBC Act (Southern Right Whale, Hooded Plover (eastern) and Southern Brown Bandicoot (eastern)) are listed under Schedule 8 of the National Parks and Wildlife Act as 'vulnerable').

It is an offence under the Act to 'take' a protected animal without a permit obtained under the Act; the term 'take' includes to injure or kill. Species listed in Schedule 8 are protected animals for the purposes of the Act. It is also an offence under the Act to 'take' protected plant species without a permit.

The National Parks and Wildlife (Protected Animals – Marine Mammals) Regulations 2010 protect marine mammals, including whales, by imposing restrictions on human activities within the vicinity of such animals. This includes the operation of vessels close to marine mammals.

6.4 Natural Resources Management Act 2004 (SA)

The object of the *Natural Resources Management Act 2004* is to help achieve ecologically sustainable development through the integrated management of South Australia's land systems — specifically the use of the state's water resources, management of soils and the control of pest plants and animals. The Minister for Environment and Water is responsible for the Act which is administered through a series of natural resources management boards established under it.

The Act imposes general statutory duties on all persons to act reasonably in the management of the natural resources of the state.

The preparation of natural resources management plans and water allocation plans guides the decision-making of the relevant authorities under the Act. Kangaroo Island's Natural Resources Management Plan was adopted by the former State Minister for Sustainability, Environment and Conservation in May 2017.[12]

Degradation of land may be addressed by a notice requiring the preparation of an action plan. Action may be taken by the Chief Officer (the Chief Executive of DEW) in the event of non-compliance. Pest plants and animals are managed using similar machinery under the Act, with additional powers to control the movement of such organisms within the state.

Water resources are managed mainly by:

- declaring prescribed water resources
- a licensing system for consumption and use of prescribed water resources
- requiring permits to drill wells to take groundwater
- controlling activities that may adversely affect water resources and their sources.

This Act is unlikely to impose obligations on KIPT that would be critical to the KI Seaport project; however, the proponent would comply with any specific obligations imposed by the Act and would seek any authorisations required.

7. MARINE CONSERVATION, FISHERY AND AQUACULTURE

7.1 Marine Parks Act 2007 (SA)

The objects of the *Marine Parks Act 2007* are to protect and conserve marine biological diversity and marine habitats in South Australia through the declaration and management of marine parks. The objects also include assistance in allowing the ecologically sustainable development and use of marine environments. The Act is administered by the State Department for Environment and Water.

The Act permits the state government to establish and name marine parks and to develop management plans for them. Interim protection orders may control activities within parks prior to a management plan being adopted under the Act.

[12] Government of South Australia. Kangaroo Island Natural Resources Management Board. *Natural Resources Management Plan, 2017-2027*. May 2017.

A management plan for a marine park may:

- establish zones within the park (and regulations may restrict activities with such zones)
- identify special purpose areas
- direct management of day-to-day issues within a park
- provide guidelines regarding the granting of permits for various activities within a park.

In addition to the obligation to comply with any restriction within a zone or with the conditions of any permit to undertake an activity with a zone that would otherwise be unlawful, the Act includes a general duty of care as follows:

> *A person must take all reasonable measures to prevent or minimise harm to a marine park through his or her actions or activities.*

Smith Bay is not situated within a marine park declared under the Act. Encounter Marine Park lies east of Smith Bay and Southern Spencer Gulf park is located west of the bay.

7.2 Fisheries Management Act 2007 (SA)

The object of the *Fisheries Management Act 2007* is to protect, manage, use and develop South Australia's aquatic resources consistently with ecologically sustainable development. It is administered by the Department of Primary Industries and Regions, SA (PIRSA).

To facilitate this objective, the Act permits the declaration of aquatic reserves, the preparation of management plans for commercial fishing, recreational fishing and aquatic reserves and requires commercial fishers to hold a licence or permit. The Act creates a series of offences relating to fishing activities.

Smith Bay is not within an aquatic reserve established under the Act.

7.3 Aquaculture Act 2001 (SA)

The objects of the *Aquaculture Act 2001* are to promote the development of ecologically sustainable marine and inland aquaculture, to maximise the benefits to the community of South Australia's aquaculture resources and to ensure the efficient and effective regulation of the aquaculture industry. It is administered by PIRSA.

The Act provides for the development of draft aquaculture policies including the establishment of state aquaculture zones and the specification of criteria to be taken into account where an application for a licence to operate within a particular zone is made. At present Kangaroo Island is not subject to any draft aquaculture policy.

Under the Act a person may not carry out aquaculture activities without an aquaculture licence. A licence may be acquired within state waters or on land adjacent (as defined in the *Harbors and Navigation Act 1993*) to state waters only if the area the subject of the application has been declared an aquaculture lease. This requirement does not apply where aquaculture is land-based or being undertaken by a navigable vessel.

Three aquaculture licences have been issued for aquaculture activities in the western sector of Smith Bay, east of the Project site (see Chapter 6, Section 6.2.7). One is non-operational.

8. CULTURAL HERITAGE VALUES

8.1 Aboriginal Heritage Act 1988 (SA)

The *Aboriginal Heritage Act 1988* is designed to protect and preserve Aboriginal cultural heritage in South Australia. Administered by the Department of the Premier and Cabinet, the Act protects Aboriginal sites and objects which are broadly defined under the Act to be sites or objects of significance to Aboriginal people traditionally, archaeologically, anthropologically or historically.

Even if a site or object does not appear on the Register established under the Act, it may still be protected. The Act implies the need to consult with potentially interested Aboriginal people and communities to reduce the risk of damaging a site, object or remains and to determine the significance of any item or object that may be discovered.

An owner or occupier of land who discovers any Aboriginal site, object or remains must report the discovery to the Minister responsible for the Act. It is an offence to fail to do so.

Without the authority of the Minister it is also an offence to:

- damage, disturb or interfere with an Aboriginal site
- damage an Aboriginal object
- disturb, interfere with or remove an Aboriginal object or remains.

Consultation with Aboriginal organisations or groups with an interest in Smith Bay is presented in Chapter 7.

If Aboriginal sites, objects or remains were discovered during the construction or operation of the KI Seaport, KIPT would comply in all respects with the Act and consult with Aboriginal Affairs and Reconciliation (AAR) in the Department of the Premier and Cabinet. In liaison with AAR, KIPT would implement the Cultural Heritage Management Plan prepared for the proposed development.

Native Title Act 1993 (Commonwealth)

The *Native Title Act 1993* is the Commonwealth Government's response to the decision of the High Court in the Mabo Case[13] which confirms that native title continues to exist in Australia under the common law. The Commonwealth Attorney-General is responsible for administration of the Act other than certain provisions administered by the Minister for Indigenous Affairs.

The Act provides for the recognition and protection of native title, establishes ways for future dealings affecting native title to proceed, establishes a mechanism for determining claims to native title and provides for the recognition of past acts and 'intermediate period acts' in relation to the use of land that would otherwise be invalidated by the existence of native title.

There have been no successful native title claims over land on Kangaroo Island. A claim made by the Ramandjeri people over an area of the Fleurieu Peninsula in South Australia, including Kangaroo Island, was rejected by the Federal Court of Australia in 2014.[14]

[13] Mabo and Others v. State of Queensland (No2) [1992] HCA 23; (1992) CLR 1.

[14] Walker v. State of South Australia [2014] FCA 962 (5 September 2014).

8.2 Native Title (South Australia) Act 1994

This Act complements and is consistent with the Commonwealth *Native Title Act*. Although native title claims may be heard in South Australian courts, such claims have been dealt with in the Federal Court. The Attorney-General administers the Act; however, various state agencies are involved in facilitating its provisions. Native title services are provided to indigenous Australians by the South Australian Native Title Services (SANTS).

South Australia has in place an alternative right to negotiate regime, consistent with the Commonwealth Act, that encourages the settlement of native title claims through negotiation and the formulation of Indigenous Land Use Agreements (ILUAs) rather than through the courts.

8.3 Heritage Places Act 1993 (SA)

The purpose of the *Heritage Places Act 1993* is mainly to identify, record and conserve places and objects of non-Aboriginal heritage significance. Administered by DEW, the Act establishes a register that contains a range of listed items, zones and areas of Commonwealth, state and local heritage significance.

Under the Act it is an offence to intentionally or negligently damage a state heritage place or to engage in behaviour knowing, or with reckless indifference to the possibility, that it may destroy or reduce the heritage significance of the place. It is also an offence to take action that may destroy or reduce the heritage significance of a state heritage place whatever the offender's state of mind.

There are no places or objects directly associated with the Smith Bay site entered on the South Australian Heritage Register.

8.4 Historic Shipwrecks Act 1981 (SA)

The objects of the *Historic Shipwrecks Act 1981* are to protect certain shipwrecks and relics of historic significance. The Act applies only to those waters over which South Australia has jurisdiction for the purposes of the Act.

This jurisdiction is limited. The Act states that it applies to shipwrecks within the territorial limits of South Australia (waters within the three-nautical-mile limit of the state) and 'internal waters' (bays and gulfs).

However, in 1980 a proclamation was made under the Commonwealth *Historic Shipwrecks Act 1976* giving the Commonwealth jurisdiction over the waters adjacent to the coast of South Australia. South Australia's Act therefore only applies to certain gulfs, bays and estuaries; the Commonwealth has jurisdiction over the remainder including the waters of Investigator Strait and Backstairs Passage. Because the Commonwealth has jurisdiction over shipwrecks in these waters, its responsibility extends to Smith Bay.

Under this jurisdictional arrangement the Commonwealth has delegated a range of powers to the South Australian Minister for the Environment. Consequently, the protection of historic shipwrecks in South Australia remains substantially the day-to-day responsibility of South Australian heritage officers in DEW. However, any interference with a relic or shipwreck (other than on the shoreline) attributable to the KIPT project would breach the Commonwealth Act (see below).

8.5 Historic Shipwrecks Act 1976 (Commonwealth)

As is the case with the South *Australian Historic Shipwrecks Act*, the purpose of the Commonwealth Act is to protect certain shipwrecks and relics of historic significance.

The Commonwealth Minister responsible for the Act (presently the Minister of the Environment) may declare the remains of ships in Australian waters to be historic shipwrecks and may declare articles associated with ships to be historic relics.

At the request of state ministers, the Commonwealth Minister may declare all ships that are in Australian waters — from the coast of that state to the limit of the continental shelf — and which are at least seventy-five years old to be historic shipwrecks. This occurred in South Australia in 1993. The Minister has similar powers in relation to articles associated with the remains of a ship that is at least seventy-five years old.

It is an offence under the Act to destroy, damage, interfere with or cause the disposal or removal of an historic shipwreck or historic relic other than in accordance with a permit issued under the Act.

The Minister may declare protection zones not exceeding 200 hectares in an area containing a historic shipwreck or historic relic.

The Minister is required by the Act to keep a Register of Historic Shipwrecks in which is entered particulars of all declarations and notices made under the Act and the details of all known Dutch shipwrecks and Dutch relics. One shipwreck, *Chum*, 1942, is listed on the Register (the Australian National Shipwrecks Data Base) as being located within Smith Bay. Further detail about this shipwreck is provided in Chapter 24, Section 24.4.4 of the EIS).

9. HARBOR MANAGEMENT AND COASTAL PROCESSES

9.1 Harbors and Navigation Act 1993 (SA)

The *Harbors and Navigation Act 1993* provides for the administration, development and management of harbors within South Australian waters and to facilitate safe navigation of those waters. It is administered by DPTI. The KI Seaport would become a port and harbor under the Act and therefore would be subject to the Act's provisions.

Importantly, the Minister responsible for the Act has the power to grant leases or licences over land (including waters) for which he or she is responsible. KIPT would apply for all the leases and licences under the Act needed to construct and operate the facility.

9.2 Coast Protection Act 1972 (SA)

The scope and purpose of the Coast Protection Act and the role of the Coast Protection Board (CPB) have been addressed in Section 6.3, above. It is anticipated that once prepared, the Minister will refer the draft EIS for the KIPT Project to the CPB for comment. Potential impacts on coastal processes arising from the Smith Bay Wharf Project are detailed in Chapter 19.

10. BIOSECURITY – KANGAROO ISLAND

10.1 Maritime Activities

10.1.1 Biosecurity Act 2015 (Commonwealth)

Scope

The purpose of the *Biosecurity Act 2015* is to manage diseases and pests that may cause damage to the health of humans, animals, plants and the environment. The Act is directed essentially to managing 'biosecurity risk' – that is, the likelihood of a disease or pest entering Australia or establishing itself or spreading in Australia and the potential for the disease or pest to cause harm to human, animal or plant health or to cause harm to the environment.

Chapter 5 of the Act regulates the management of ballast water and sediments[15] of certain vessels. The Act adopts the the International Convention for the Control and Management of Ships' Ballast Water and Sediments 2004 (BWM Convention) which came into effect in Australia on September 8th, 2017.

Unlike the regulation of ballast water, the issue of vessel biofouling (see Section 10.1.4, below) does not have a dedicated chapter under the Act. Instead, it is addressed by Chapter 4 of the Act ('Managing Biosecurity Risks') which provides a range of powers to Commonwealth government officers to assess and address biosecurity risks, including biofouling, posed by different circumstances including incoming and outgoing vessels. The issue is addressed in more detail below.

The Commonwealth Department of Agriculture and Water Resources (DAWR) administers the Biosecurity Act.

International Shipping

Goods and conveyances (vessels and aircraft) from overseas are automatically subject to biosecurity control once they enter Australian territory, usually by passing within 12 nautical miles of the Australian coastline. Vessels are released from biosecurity control either by a notice issued under the Act stating that the vessel is so released or by leaving Australian territory.

Under the *Biosecurity Act* all vessels subject to biosecurity control are required to arrive at a First Point of Entry, unless permission has been granted by the Commonwealth Department of Agriculture and Water Resources in advance of the arrival at a non-first point of entry. Ports that are designated a First Point of Entry need to meet minimum standards about facilities and processes required to manage biosecurity risks.

The KI Seaport will not be a First Point of Entry. International vessels arriving at the port will need to have travelled via a First Point of Entry.

10.1.2 Ballast Water Management under the Biosecurity Act

Purpose and Application of the Act

Australia is a signatory to the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004[16], the terms of which were adopted in Chapter 5 of the Commonwealth Biosecurity Act 2015 when the Convention came into effect on 8th September 2017.

The Convention, and thus the Biosecurity Act, recognises and aims to manage the risks that are posed by ships' ballast water discharge. Within ballast water taken up in one place there may be marine pathogens and organisms which on discharge into a different marine environment may adversely affect the fauna and flora of the receiving waters, including valuable commercial species.

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[15] "Sediments means matter settled out of ballast water in a ship." *International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004* (London, 13 February 2004) Article 1, Clause 11

[16] *International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004* (London, 13 February 2004). Australian Treaty Series [2017] ATS 15

When the ballast water management provisions of the Biosecurity Act came into effect, the Commonwealth government assumed responsibility for the regulation of biosecurity risk presented by the discharge into Australian seas of ballast water from foreign and Australian vessels other than in situations where ballast water is to be treated or disposed of after removal from a vessel: for example, discharge to a land-based water reception facility. In such circumstances, relevant State laws will apply in parallel with the relevant provisions of the Biosecurity Act.[17] KIPT is not proposing or anticipating the on-shore treatment of ballast water from ships engaged in transporting timber from the KI Seaport.

Where ballast water contains contaminants other than those that present a biosecurity risk (for example, oil or chemical residues), State laws purporting to regulate the management of ballast water may continue to apply

Despite these exceptions it may be broadly assumed that responsibility for the discharge of ballast water within Australian seas lies with the Commonwealth government. International shipping proposing to enter Kangaroo Island Seaport will be required to comply with the Biosecurity Act in this respect.

The Australian Ballast Water Management Requirements[18] provide guidance on compliance with the ballast water management obligations specified in the Biosecurity Act. Vessels complying with the Requirements are regarded as complying with the obligations specified in the Act.

For a more detailed consideration in this EIS of the nature and scope of the ballast water regulatory regime in Australia, and its application to the operation of the Kangaroo Island Seaport, see Chapter 15, Section 15.5.3 and Appendix D2.

Discharge of Ballast Water

It is an offence under the Biosecurity Act for a vessel to discharge ballast water into Australian seas – that is, within a distance of 200 nautical miles from the Australian shoreline. However, there are several exceptions to this, details of which are contained in two legislative instruments under the Act:

i. the Biosecurity (Ballast Water and Sediment) Determination 2017 (“the Determination”); and

ii. the Biosecurity (Ballast Water Same Risk Area) Instrument 2017.

The exceptions are as follows:

Exception 1 – Ballast Water has been Managed for Discharge

This exception addresses the situation where the Director of Biosecurity has approved the manner of discharge. This includes approval of an on-board ballast water treatment system as contemplated by the Convention. The exception also includes “ballast water exchange” – that is the discharge and uptake of replacement ballast water in an “approved location” – principally outside Australian seas (on the high seas).

Exception 2 – Approved Discharge to a Ballast Water Reception Facility

See the discussion above.

Exception 3 - Discharge Covered by Prescribed Conditions

The offence of discharging ballast water is not committed if the discharge complies with certain conditions prescribed in the Determination referred to above. Included in these conditions are the following:

i. Where at least 95 per cent of the water to be discharged was taken up on the high seas - that is, outside the exclusive economic zone (EEZ);

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[17] See, for example, regulations 218 and 219 of the South Australian Harbors and Navigation Regulations, 2009; Environment Protection (Water Quality) Policy, 2015.

[18] Commonwealth of Australia. Department of Agriculture and Water Resources. *Australian Ballast Water Management Requirements, Version 7*, 2017.

ii. At least 95 per cent of the ballast water discharged was taken up in a "same risk area" (see below) and was discharged in that area.

Exception 4 – Discharge Covered by Exemption

Under the Act, and in conformity with conditions specified in the Determination, the Director may grant an exemption from the provisions of the Act for one or more discharges of ballast water from a vessel. Exemptions may be applied for in the case of certain vessels, including floating platforms, floating storage units (FSUs) and floating production, storage and offloading units (FPSOs) [19].

Exception 5 – Taking up and Discharging Ballast Water at the Same Place

An offence is not committed if ballast water is taken up in a port, offshore terminal or other point and is then discharged in the same port or offshore terminal or within one nautical mile of the other point of uptake.

Exception 6 – Safety, Accident, Pollution

It is not an offence to discharge ballast water for reasons of the safety of the vessel or saving life at sea, accidentally or for avoiding or minimizing pollution from the vessel.

Same Risk Areas

The waters of St Vincent and Spencer Gulf along with the waters containing Backstairs Passage and Investigator Strait have been declared a 'same risk' area for the purposes of ballast water management under the *Biosecurity Act*. That is, if the uptake and discharge of ballast water occurs in the specified area vessels are not required to manage ballast water as otherwise required by the Act. The appropriateness of using the "same risk area" for managing the ballast water of international and local shipping accessing the KI Seaport is addressed in Chapter 15 of this EIS.

Ballast Water Management Plans and Reporting

Australian vessels (anywhere) and foreign vessels within Australian seas, must carry a ballast water management plan and certificate approved either by the Director of Biosecurity or a survey authority under the Biosecurity Act.

The Act requires that normally, within Australian seas, vessels must have on board and maintain a ballast water management record system.

With some exceptions (including where a vessel has undertaken ballast water exchange in conformity with the Act), the operator of a vessel must give a report to the Director of Biosecurity if it discharges, or it is intended to discharge, ballast water into Australian territorial seas – that is, within the 12 nautical mile limit. Smith Bay lies within Australian territorial seas.

10.1.3 Ballast Water Management under the Fisheries Management Act 2007 (SA)

It is an offence under the Fisheries Management Act, unless authorised by a permit issued under the Act, to bring or cause to be brought into the State aquatic resources (fish or aquatic plants) of a noxious species. This prohibition applies to the introduction of such species via ballast water. 'Noxious' species means a species declared by the Minister to be such. Several species have been declared noxious by the Minister and in relation to Kangaroo Island are discussed in further detail in Appendix I5 of Chapter 12.

It is also an offence unless authorised by a permit issued under the Act to release or permit exotic fish, amongst other fish, to escape into State waters. 'Exotic fish' are those that are non-endemic to the waters of South Australia.

[19] See *Australian Ballast Water Management Requirements, Version 7, 2017* at page 18.

10.1.4 Biofouling Management

The Issue

Biofouling is the 'accumulation of aquatic organisms (micro-organisms, plants and animals) on surfaces and structures immersed in or exposed to the aquatic environment'[20] This includes ships.

The potentially polluting effects of the use of harmful anti-fouling compounds (HAFCs) has been discussed above in this chapter (see Section 4.4). The biosecurity risks associated with biofouling itself are addressed by International Maritime Organisation (IMO) Guidelines, the Biosecurity Act, Commonwealth Guidelines and State law.

International Maritime Organisation Guidelines

In 2011 the International Maritime Organisation (IMO) issued guidelines intended to provide a globally consistent approach to the management of biofouling[21].

Biosecurity Act and Guidelines

As indicated above, biofouling is not addressed through a separate chapter in the Act (as is ballast water). However, biofouling is considered a significant biosecurity risk and is addressed by the application of provisions of chapter 4 of the Act. This chapter sets out the powers possessed by biosecurity officers to assess and address unacceptable levels of biosecurity risk including those posed by the biofouling of incoming or outgoing vessels.

The Department of Agriculture and Water Resources has issued a suite of vessel biofouling management guidelines that contain detailed information on management practices that minimise biosecurity risk.

These guidelines include the National Biofouling Management Guidelines for Commercial Vessels[22] which present 'procedures for operators of commercial vessels to follow to assist in the prevention of marine pest introduction and translocations'.

Meanwhile, the Commonwealth Anti-fouling and in-Water Cleaning Guidelines (2015)[23] apply to vessels and other moveable structures in aquatic environments and reflect international conventions intended to protect the aquatic environment from invasive pest species and contaminants introduced by shipping. The guidelines address both the marine contamination and biosecurity risks associated with different methods of biofouling management.

Both these guidelines apply to commercial shipping likely to service the proposed KI Seaport wherever these vessels may be located.

DAWR is developing further guidance and policy requirements that will enable vessel operators and agents to demonstrate that a vessel's biofouling does not present an unacceptable biosecurity risk before the vessel enters Australian territory. The policy will be consistent with the direction set by the IMO biofouling guidelines 2011, referred to above, with the intent that all vessels minimise their level of biofouling through proactive biofouling management practices. These new requirements may take the form of regulations under the Biosecurity Act.

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[20] Australian Government. Department of Agriculture and Department of the Environment. *Anti-fouling and in-Water Cleaning Guidelines. April, 2015.*

[21] International Maritime Organisation (IMO). *Guidelines for the control and management of ships' biofouling to minimize the transfer of invasive aquatic species, 2011*.

[22] Commonwealth of Australia. National Biofouling Management Guidelines for Commercial Vessels. 2009.

[23] See above.

Environment Protection Act 1993 (SA)

The South Australian Environment Protection Authority's Code of Practice for Vessel and Facility Management (Marine and Inland Waters)[24] applies to all vessels within South Australian coastal waters. It contains a series of mandatory and recommended practices to prevent and manage biofouling. The mandatory provisions include a requirement to comply with the vessel cleaning provisions of the Code.

Fisheries Management Act 2007 (SA)

As is the case with ballast water management, the South Australian Fisheries Management Act prohibits the introduction of noxious aquatic species specified under the Act in the absence of a permit. Like the regulation of ballast water (see above), this provision applies to the transporting of such species on the hulls or other parts of vessels.

10.2 Terrestrial Biosecurity

10.2.1 Policies

The statutory basis for biosecurity control directed to the protection of Kangaroo Island's marine environments has been addressed in Section 10.1 above. The legislative provisions that apply to the terrestrial biosecurity of the Island are considered here. The practical application of terrestrial biosecurity controls with respect to the KI Seaport project is discussed in Chapter 15 of the EIS.

Minimisation of the risk of a biosecurity breach arising from construction and operation of the wharf is a primary objective of KIPT. The principal sources of such risk include:

- the importation to the Island of plant, machinery and vehicles necessary for construction and operation of the wharf; and
- the movement of construction employees' vehicles to and from the mainland.

The policy context for the application of biosecurity controls is provided by a range of Commonwealth, State and Island-specific policies. Australian governments have recognised that national and state biosecurity is a shared responsibility as reflected in the Intergovernmental Agreement on Biosecurity, 2012 (IGAB)[25]. The Agreement was developed:

> *'to improve the national biosecurity system by identifying the roles and responsibilities of governments and outlines the priority areas for collaboration to minimise the impact of pests and disease on Australia's economy, environment and the community'.*

Through the Biosecurity Act the Commonwealth has principal responsibility for protecting the nation's agricultural and environmental resources from incursion by unwanted overseas pest plants, animals and diseases. The States and Territories assume responsibility for biosecurity management within their respective jurisdictions, acknowledging through the IGAB the need to cooperate nationally.

[24] Environment Protection Authority, SA. *Code of Practice for Vessel and Facility Management (Marine and Inland Waters).* April, 2017.

[25] Council of Australian Governments. *Intergovernmental Agreement on Biosecurity*, 2012.

The South Australian Biosecurity Policy 2017-2021[26] acknowledges the IGAB and the membership of PIRSA on the National Biosecurity Committee established under that Agreement. The State Biosecurity Policy is guided by the National Framework for the Management of Established Pests and Diseases of National Significance[27], a key deliverable of the IGAB.

The priorities expressed in the South Australian Biosecurity Policy are reflected in the Biosecurity Strategy for Kangaroo Island, 2017-2027.[28] This strategy 'articulates a framework that will support a robust biosecurity system for Kangaroo Island'. It builds on the Kangaroo Island Quarantine Policy, 2007.[29]

10.2.2 Legislation

Natural Resources Management Act 2004

The principal State legislation for the management of weeds and pest animals in South Australia (including Kangaroo Island) is the *Natural Resources Management Act 2004* (the NRM Act). The role of that Act in achieving appropriate biosecurity for South Australia, including Kangaroo Island, is addressed in this Section. The state government proposes the replacement of this Act.

The Minister for Environment and Water administers the NRM Act through the Department for Environment and Water in concert with Regional Natural Resource Management Boards established under the Act including the Kangaroo Island NRM Board. NRM Boards and Biosecurity SA within Primary Industries and Regions SA (PIRSA) oversee programs to destroy or contain weeds and pest animals and to prevent new pests coming into South Australia. Chapter 8 of the NRM Act establishes the State's structure for the control of pest animals and plants. The Minister may declare classes of plants or animals and the provisions of the Act that apply to respective classes. Different classes may be assigned by Ministerial declaration to one of three categories specified in the Act. Any class of plant or animal not so assigned is automatically within Category 1. Powers, obligations and penalties under the Act may vary according to the category to which a particular class is assigned. The Minister may also declare a specified area of the State to be a 'control area' for that class of animal or plant (and the applicable provisions) or may declare an absolute prohibition in relation to the class of animal or plant.

A class of animal or plant may be subject to a wide range of restrictions specified in the Act relating to the movement and transport, possession, sale and release of pest animals and plants. Whether such restrictions apply within Kangaroo Island is determined by consulting the Ministerial declaration of pest animals and plants (in the Government Gazette and on the PIRSA web site) which specifies the statutory provisions applying to the class within the control area (Kangaroo Island).

[26] Government of South Australia. *State Biosecurity Policy 2017/2021*. September 2017.

[27] Australian Government. Department of Agriculture and Water Resources. *National Framework for the Management of Established Pests and Diseases of National Significance*, 2016.

[28] Government of South Australia. Department of Environment, Water and Natural Resources. *Biosecurity Strategy for Kangaroo Island*, 2017-2027. 2017.

[29] Kangaroo Island NRM Board. *Kangaroo Island Quarantine Policy, 2007*.

For the purposes of this EIS, the following statutory restrictions and associated offences have been identified as of most likely relevance to the KIPT project:

- not to bring (or permit the bringing of) an animal or plant from the relevant class into a specified control area
- in the absence of a written approval from an authorised officer, not to transport or move (or cause the transport or movement of) a declared plant within a relevant control area or *'any animal, plant soil, vehicle, farming implement or other produce, goods, material or thing carrying a plant of that class*'
- in the absence of a written approval from an authorized officer, not to transport or move on a public road within a control area a plant or animal of the relevant class or any plant, soil vehicle, farming implement etc. carrying a plant or animal of that class
- in the absence of a written approval from an authorised officer, the owner of land within a control area to which a class of declared animals or plants applies, must not move or permit the movement of an animal or plant of that class (or any animal, plant, vehicle, farming implement or other produce, goods, material or thing carrying a plant of that class) to another part of the land not affected by the animal or plant or to any land within the control area.

The owner of land within a control area for a class of animals must, if required by the Act, destroy all animals or plants of that class on the land. Similarly, if required by the Act, the owner of land must within a control area control (and keep controlled) the relevant class of animals or plants.

The owner of land within a control area to which a class of animals or plants applies must comply with any applicable regulations or the direction of the relevant NRM Board (or Chief Executive of DEW) with respect to the control of those animals or the treatment of the land or anything on it.

If an authorised officer believes that an owner of land is in breach, or likely to be in breach of, any of the above obligations, he/she may require the owner to prepare an action plan to address the actual or potential breach. Failure to comply with the notice requiring such a plan is an offence under the Act.

Ancillary Legislation

There are two additional state Acts of importance to the protection of Kangaroo Island's biosecurity.

The *Livestock Act 1997*, administered by PIRSA, regulates a wide range of matters regarding livestock in South Australia (for example, keeping, breeding, diseases and branding). Of specific importance to Kangaroo Island are provisions of the Act that reserve Kangaroo Island for pure Ligurian bees. Additionally, the Act prohibits the introduction of other species of bees, second-hand beehives and second-hand apiary equipment.

The Act is unlikely to have any immediate relevance to the KI Seaport project. However, KIPT acknowledges its significance in protecting the island's valuable bee industry.

The Plant Health Act 2009, also administered by PIRSA, protects agricultural plants from pests and diseases. Important to Kangaroo Island are the provisions of the Act that protect the relatively pest and disease-free seed potato industry on the Island. Other provisions of the Act manage the risk of pests and diseases being introduced from interstate by any means.

The Act provides the Minister with the power to declare quarantine areas to control or prevent any outbreak of plant pest or disease. To the extent that KIPT operations may be subject to a quarantine order, the Act is relevant to the project.

Appendix D2 – Ballast Water Management and Biosecurity

TABLE OF CONTENTS

1. INTRODUCTION

KIPT proposes the use of Panamax and Handymax-sized vessels for the export of timber and timber products from the KI Seaport (see Chapter 4, Section 4.5.2). The company has signed an initial woodchip sale and purchase agreement with Mitsui Bussan Woodchip Oceania Pty. Ltd. (MWO) for the purpose of facilitating sales.

In some cases, Mitsui Tokyo (MWO's parent company) would directly charter international bulk timber carriers to transport the timber and timber products on behalf of its customer (the ultimate purchaser). In other cases, the customer would charter its ships directly.

Vessels used for the export of timber and timber products from Kangaroo Island would be engaged in international trade between countries and ports around the world, for example, ports in Japan, China, Vietnam, Brazil, Chile and South Africa. Cargo loading and unloading operations would be conducted in these ports.

It follows that, vessels loading timber at the KI Seaport may have taken up ballast water (defined below) at various ocean locations and foreign ports.

2. BALLAST WATER MANAGEMENT – OPERATIONAL REQUIREMENTS

"Ballast is any solid or liquid placed in a ship to increase the draft, to change the trim, to regulate the stability, or to maintain stress loads within acceptable limits . . . . . "[B]allast" includes the sediment that accumulates in ballast tanks, which may be discharged with ballast water" (U.S. National Academies of Science, Engineering, Medicine, 1996).[1]

"Ballast Water" is defined under the *International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004* as "water with its suspended matter taken on board a ship to control trim, list, draught, stability or stresses of the ship" (see Article 1). This definition is adopted in the *Commonwealth Biosecurity Act 2015* (see Section 4).

Ballast, including ballast water, is necessary to retain a vessel's stability while at sea, and during loading and unloading operations. De-ballasting may also be necessary when a vessel is entering a relatively shallow channel.

Essentially, ballasting and de-ballasting are carried out during cargo loading and unloading operations. Ships also require ballast to replace cargo where a return journey is to be undertaken with no or partial cargo.

It follows that bulk timber carriers to be used to transport timber and timber products from the KI Seaport would not be unloading cargo at the port and would therefore discharge ballast water into or in the vicinity of Smith Bay.

[1] United States National Academies of Science, Engineering, Medicine. 1996. *Stemming the Tide. Controlling Introductions of Nonindigenous Species by Ships' Ballast Water.* National Academy Press. Washington, D.C.

3. THE ENVIRONMENTAL RISK (BIOSECURITY)

The biosecurity risks posed by the uptake of ballast water in one place and its discharge in another can be considerable. Ballast water can contain marine pathogens and organisms which on discharge into a different marine environment may adversely affect the flora and fauna of the receiving waters, including valuable commercial species.

The Guidelines issued by the South Australian Development Assessment Commission (DAC) for the purposes of this EIS, specify the required level of assessment for the purposes of addressing biosecurity as “critical” and, in this respect, specifically refer to ballast water. The EIS recognises the significance of this issue (see, for example, Table 8.3 – Key Issues and Section 12.5.6 – Marine Pests and Diseases).

Kangaroo Island and its primary industries have a “clean and green” status. The proximity to the proposed seaport to the Yumbah abalone farm abutting Smith Bay argues for a clear appreciation of both the risks arising from the discharge of ballast water into or in the vicinity of Smith Bay and the management and mitigation measures required to effectively address that risk.

The management and mitigation measures applicable to this biosecurity risk arise principally from Commonwealth legislation reflecting international obligations assumed by the Australian Government.

4. THE BALLAST WATER MANAGEMENT CONVENTION

It was recognition at a global level of the biosecurity risk posed by ships’ ballast water discharge that lead to the International Convention for the Control and Management of Ships’ Ballast Water and Sediments, 2004 (BWM) which came into force on 8 September 2017. Australia is a signatory to that Convention and its terms are reflected in Chapter 5 of the *Commonwealth Biosecurity Act 2015* which came into effect on that date.

In broad terms, the Convention (and thus the Biosecurity Act) contemplates that, over time, ships will, depending on their date of construction, possess an on-board ballast water treatment system. Meanwhile, other methods of managing ballast water (including ballast water exchange) are addressed in the Convention and adopted by the Biosecurity Act.

5. REGULATORY RESPONSIBILITY

When the Convention came into force and was largely adopted in Chapter 5 of the Biosecurity Act, the Australian Government assumed responsibility for the regulation of the biosecurity risk posed by ballast water throughout Australia to the exclusion of the States other than as expressed in section 265:

Section 265: Relationship with State and Territory laws

(1) This Chapter applies (subject to subsection (2)) to the exclusion of a law, or a provision of a law, of a State or Territory to the extent that the law or provision deals with biosecurity risks associated with ballast water or sediment.

(2) This Chapter does not exclude or limit the concurrent operation of a law, or a provision of a law, of a State or Territory to the extent that the law or provision deals with the treatment or disposal of ballast water or sediment after it has been removed from a vessel.

South Australian laws and administrative roles as regards the regulation of biosecurity threats arising from ballast water discharge that existed prior to September 2017 no longer apply. Regulatory responsibility for that issue now lies with the Commonwealth through the Director of Biosecurity, subject to the application of any State laws that may purport to address the management of ballast water after it has been removed from a vessel, e.g. to an on-shore ballast water reception facility.

6. THE REGULATORY SCHEME UNDER THE BIOSECURITY ACT

6.1 Offence to Discharge Ballast Water in Australian Seas

The "base" position of the Commonwealth under the Biosecurity Act is that it is an offence for a vessel to discharge ballast water into Australian seas[2] – broadly speaking, from the shoreline to the limits of the exclusive economic zone (EEZ)[3]. That zone extends 200 nautical miles from the Australian shoreline. However, there are several exceptions to this which reflect the provisions of the Convention. Compliance by shipowners and operators with relevant exceptions in the Act (and certain other provisions) will result in a valid discharge of ballast water.

It should be noted that the provisions of the Act vary depending upon whether a ship has entered the territorial sea of Australia (12 nautical miles from the shoreline) or is outside the territorial sea but otherwise within Australian seas (that is, within the Australian EEZ), defined above.

The ballast water provisions of the Act also refer to the concept of "the high seas". The high seas are defined under Article 86 of the Convention on the Law of the Sea as waters that are not included in the EEZ, the territorial sea or the internal waters of a State.

Detailed requirements for the management of ballast water are contained in two legislative instruments made under the Act. They are:

i. the *Biosecurity (Ballast Water and Sediment) Determination 2017* ("the Determination"); and

ii. the *Biosecurity (Ballast Water Same Risk Area) Instrument 2017*.

6.2 Exceptions to the Offence

Exception 1 – Ballast Water Has been Managed for Discharge

Discharge in a Manner Approved

Ballast water has been "managed for discharge" if it has been discharged in a manner approved by the Director of Biosecurity under the Act. Ballast water treatment systems involving treatment before discharge fall within this exception.[4]

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[2] Section 270(1)

[3] The terms "Australian seas" and "the EEZ" are strictly speaking not interchangeable, Australian seas comprise the Australian territorial seas (that is, from the shoreline to a distance of 12 nautical miles) and the EEZ which extends from the shoreline to a distance of 200 nautical miles. Australia's powers over the sea vary depending upon whether the matter that the government is seeking to regulate occurs or exists within territorial seas or the EEZ.

[4] It is broadly estimated that approximately 5% of international shipping possesses and operates such systems in 2018. The number of ships with installed ballast water management systems (BWMS) worldwide is not known. However, the number of ships with a BWMS will increase as shipping owners move towards compliance with the ballast water discharge standards in the BWM Convention. Russell McCrudden, DAWR, pers comm. 23.10.18

Ballast Water Exchange

"Ballast water exchange is a process which involves the substitution of water in ship's ballast tanks using either a sequential, flow-through, dilution or other exchange method which is recommended or made obligatory by the IMO, in order to preserve ecology in biologically rich coastal waters and similarly to those in deep oceanic waters".[5]

Ballast water has been "managed for discharge" if the ballast water is discharged as part of "an acceptable water ballast exchange". Subject to approval from the Director of Biosecurity, certain vessels (relative to their date of construction) cannot use ballast water exchange as an exception to the offence of discharging ballast water. Such ships are expected under the Convention to have a ballast water treatment system on board or to utilise such other means (for example, on-shore reception facilities) that meet the discharge standard required under the Convention.

Where a vessel has not sourced its ballast water from the Australian EEZ (that is the ballast has been sourced from the marine waters of another nation), ballast water exchange must occur within an 'acceptable location': that is at least 200 nautical miles from the nearest land, or, if that is not possible, at least 50 nautical miles from the nearest land or, if neither is possible, at least 12 nautical miles from the nearest land (as approved by the Director) and outside the Ningaloo ballast water exchange exclusion area as defined in the Determination. Where ballast water exchange has occurred in contravention of this provision, the onus lies with the operator or person in charge of the vessel to demonstrate that it was not possible to discharge within an acceptable location.

Where a vessel has sourced its ballast water from the Australian EEZ (e.g. from an Australian port after discharging cargo) the ballast water exchange area must be at least 12 nautical miles from land or a lesser distance approved by the Director and outside the Ningaloo area.

Where a vessel conducts ballast water exchange in an area described above, section 14 specifies a range of requirements for the ballast water exchange operation. These include relevant depth of water (200 and 50 metres depth depending on location), the percentage volumetric exchange (95 per cent), and conformity with an acceptable method referred to in International Maritime Organisation (IMO) guidelines.

Exception 2 – Approved Discharge to a Ballast Water Reception Facility

Ballast water may be discharged to a reception facility with the approval of the Director of Biosecurity or where the facility has been provided or approved under IMO Guidelines.

Exception 3 – Discharge Covered by Prescribed Conditions

The offence of discharging ballast water is not committed if the discharge complies with certain conditions prescribed in the Determination referred to above. Included in these conditions are the following:

i. Where at least 95 per cent of the water to be discharged was taken up on the high seas - that is, outside the EEZ;

ii. At least 95 per cent of the ballast water discharged was taken up in a "same risk area" (see below) and was discharged in that area.

Exception 4 – Discharge Covered by Exemption

Under the Act, and in conformity with conditions specified in the Determination, the Director may grant an exemption from the provisions of the Act for one or more discharges of ballast water from a vessel.

Exception 5 – Taking up and Discharging Ballast Water at the Same Place

An offence is not committed if ballast water (not mixed with other ballast water not managed in accordance with the Act) is taken up in a port, offshore terminal or other point and is then discharged in the same port, offshore terminal or within one nautical mile of the other point of uptake.

5 Bikram Singh. 2016. Marine Environment. Maritime Law. *Everything you Wanted to Know about Ballast Water Exchange and Management Plan.* https://www.marineinsight.com/maritime-law/everything-you-wanted-to-know-about-ballast-water-exchange-and-management-plan/

Exception 6 – Safety, Accident, Pollution

In circumstances specified in the Act, it is not an offence to discharge ballast water for reasons of the safety of the vessel or saving life at sea, accidentally or for avoiding or minimising pollution from the vessel.

6.3 Ballast Water Management Plans and Reporting

Subject to any exemption granted under the Act, an Australian vessel, whether within or outside the Australian EEZ, must have a ballast water management plan and certificate approved by the Director of Biosecurity or a survey authority under the Biosecurity Act. Foreign vessels, if within the Australian EEZ, must also carry an approved management plan and certificate.

With some exceptions, the Biosecurity Act requires that a vessel in the Australian EEZ must have on board, and maintain, a ballast water management record system. Records of ballast water operations must be recorded within that system in conformity with the Act. The records permit the Director of Biosecurity to identify and assess any biosecurity risk associated with a ship's ballast water and to determine whether records are false or misleading.

In the event of detected or suspected non-compliance the Director of Biosecurity may exercise a wide range of powers specified under the Act and in accordance with the Department's Biosecurity Compliance Plan and Statement.

Again, with some exceptions specified in the Determination (including where ballast water exchange has occurred in conformity with the Biosecurity Act), the operator of a vessel must give a report to the Director of Biosecurity if it discharges or intends to discharge ballast water into Australian territorial seas – that is, within the 12 nautical mile limit. Smith Bay lies within Australian territorial seas. The requirements for such reporting are specified in the Biosecurity Determination, 2017.

6.4 Same Risk Areas

Three locations in Australia have been specified in the Biosecurity (Ballast Water Same Risk Area) Instrument 2017 to be "same risk areas". These are Port Phillip Bay (Victoria), the Great Barrier Reef (Qld) and Spencer Gulf/St Vincent Gulf (SA) (See Figure 1).

7. SUMMARY OF STATUTORY OBLIGATIONS IMPOSED ON INTERNATIONAL BULK CARRIER OPERATORS

All international (and domestic) shipping is subject to the ballast water management requirements of the Commonwealth Biosecurity Act as follows:

i. With certain exceptions, vessels within the Australian EEZ must have an approved ballast water management plan and certificate;

ii. Other than in specified circumstances (including lawful ballast water exchange), if the operator of ship discharges, or intends to discharge, ballast water into Australian territorial seas (that as, within 12 nautical miles of the shoreline and which include Smith Bay) the operator must report to the Director of Biosecurity in conformity with the Act;

iii. Ships that possess an in-vessel ballast water treatment system and have obtained approval of that method of ballast water management by the Director of Biosecurity may discharge treated ballast water into the Australia EEZ;

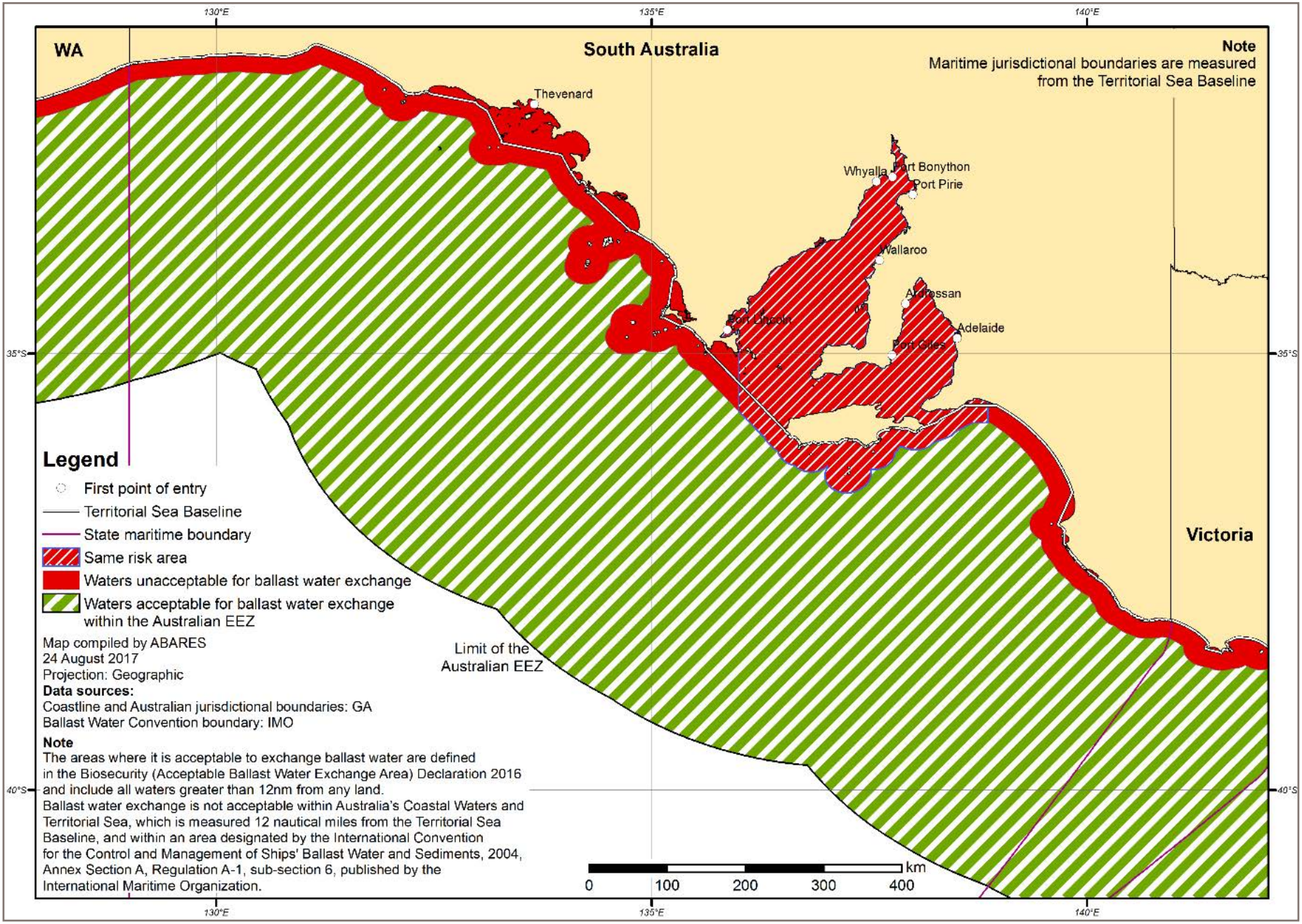

Figure 1 South Australian same risk areas for ballast water management

Source: DAWR, 2017

iv. Subject to the above requirements, foreign ships (other than those with an approved ballast water management system) may discharge ballast water into the Australian EEZ provided at least 95 per cent of the water to be discharged was taken up on the high seas;

v. It is permissible to discharge ballast water within a “same risk” area provided at least 95 per cent of that ballast water was taken up and discharged within that area;

vi. The discharge of ballast water into the Australian EEZ is subject to requirements specified through the Biosecurity Act. Essentially, these are:

- Where the ballast water has been sourced from the waters of a foreign nation ballast water exchange must take place at least 200 nautical miles from the nearest land;
- If that is not possible, it must take place at least 50 nautical miles from the nearest land;
- If neither is possible, it must occur at least 12 nautical miles from the nearest land with the approval of the Director of Biosecurity.
- In any of the above circumstances, the ballast water exchange is subject to specified requirements such as minimum water depth and a minimum volumetric ballast water exchange of 95 per cent.

8. OPERATIONAL SCENARIOS FOR KI SEAPORT

8.1 Scope and purpose

The following provides a summary of the way in which the regulatory requirements for managing ballast water, as previously described, are likely to apply to international bulk carriers using the KI Seaport for the purposes of timber export from KIPT plantations.

8.2 First Point of Entry

The Biosecurity Act specifies that a vessel becomes subject to biosecurity control (that is subject to the powers of the Director of Biosecurity under the Biosecurity Act) once it enters Australian territory (that is, within 12 nautical miles of the coastline). However, obligations under the Act (and derived from the Ballast Water Management Convention) regarding the management of ballast water apply once a vessel enters the EEZ.

The Act requires that vessels entering Australian territory (and therefore subject to biosecurity control) initially moor at a first point of entry designated as such under the Act by the Director of Biosecurity. The KI Seaport would not be a first point of entry. There are several designated first points of entry in proximity to the proposed KI Seaport.

Foreign bulk timber carriers proposing loading operations at KI Seaport would initially arrive at a first point of entry. They would not travel directly to the KI Seaport unless special permission is obtained under the Biosecurity Act.

Arrival at the first point of entry facilitates, amongst other matters, inspection of ships’ records, including required ballast water records, by the Department of Agriculture and Water Resources (DAWR) to determine compliance with the ballast water management requirements of the Biosecurity Act.

Non-compliance with the specific ballast water management requirements of the Act may be an offence under the Act or may attract a civil penalty. Additionally, where a biosecurity officer suspects on reasonable grounds that a vessel presents an unacceptable level of biosecurity risk the officer may issue a notice that the vessel not be moved.

8.3 Ballast Water Management

Relatively few ships, including bulk timber carriers, have on-board ballast water treatment systems. On that basis, vessels entering the Australian EEZ for the purposes of berthing and loading at the KI Seaport would rely on ballast water exchange (see Section 6.2) prior to entering the Australian EEZ to manage biosecurity risk.

It would be normal practice for bulk timber carriers to have undertaken ballast water exchange outside the 200 nautical mile limit as required by the Biosecurity Act. In the event that this is not possible, ballast water exchange would be undertaken closer to the Australian coastline but again, in conformity with the requirements of the Act (see Section 6.2).

8.4 Uptake on the High Seas

In exceptional instances, a bulk timber carrier proceeding to KI Seaport may be travelling with no or minimal ballast water and during the journey takes up ballast water. Provided at least 95 per cent of the water to be discharged was taken up on the high seas, the vessel may discharge that ballast water into the Australian EEZ including Smith Bay.

8.5 Use of the Same Risk Area

Although Smith Bay lies within a “same risk” area (see Figure 1) which would allow uptake and discharge of ballast water within that area without breaching the general offence of discharging ballast water within the Australian EEZ (see Sections 6.2 and 6.4), it is highly unlikely that this ballast water management option would be practicable or cost effective for international bulk timber carriers. It may apply to the unlikely situation where a bulk timber carrier enters a port within the same risk area (e.g. Port Adelaide) with cargo and unloads that cargo thus necessitating the uptake of ballast water before proceeding to Smith Bay.

In the event that domestic shipping (that is, shipping operating within the South Australian same risk area) is required to access Smith Bay for the purposes of construction or operation of the KI Seaport, KIPT would require that vessels manage the biosecurity risk posed by domestic-sourced ballast water by implementing a ballast water management plan (in accordance with all advice given by Primary Industries and Regions SA (PIRSA)). The development and implementation of operating procedures for domestic shipping would reduce the risk of discharging unacceptable ballast water into Smith Bay.