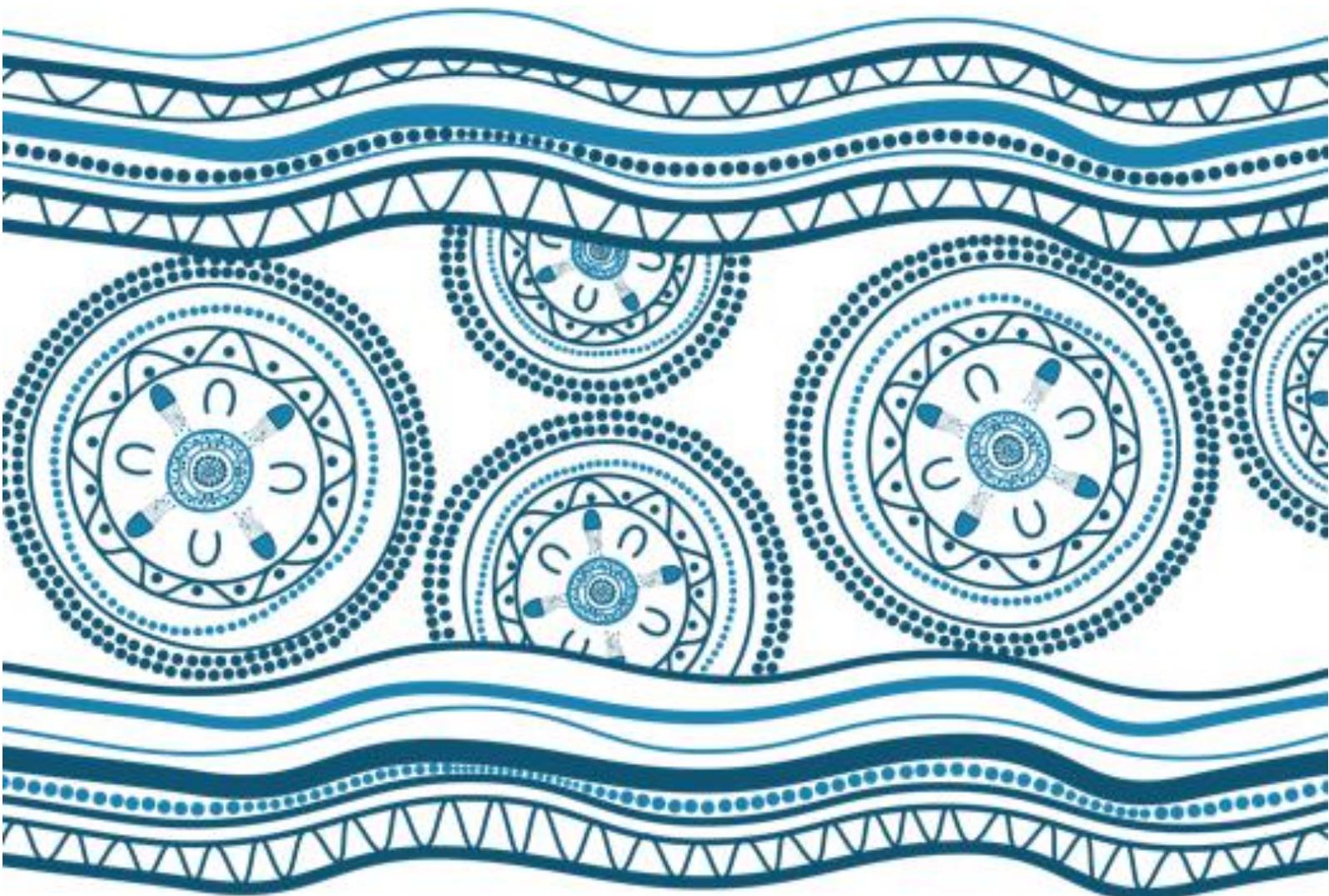


Chapter 2

Assessment process



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2 Assessment process

This chapter describes the planning approval process for the project as well as other relevant environmental planning and statutory approval requirements.

2.1 Approval framework

2.1.1 Environmental Planning and Assessment Act 1979

Transport for NSW is seeking approval for the project under Division 5.2 of the *Environmental Planning and Assessment Act 1979* (NSW) (EP&A Act).

The State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP) sets out the regulations and controls for delivery of infrastructure across NSW. Part 3, Division 13 Clause 68(4) permits development for the purpose of wharf or boating facilities to be carried out on any land by or on behalf of a public authority without consent. However, such development may only be carried out on land reserved under the *National Parks and Wildlife Act 1974* (NSW) (NPW Act) if the development is authorised by or under that Act.

As the project is for the purposes of a public ferry wharf and is to be carried out by Transport for NSW, it can be assessed under Division 5.2 of the EP&A Act. Development consent from council is not required. Part of the project is located in Kamay Botany Bay National Park (the National Park) which is land reserved under the NPW Act. Authorisation will be required for the project under the NPW Act.

The project is State Significant Infrastructure (SSI) under section 5.12 of the EP&A Act by virtue of Clause 14 of the State Environmental Planning Policy (State and Regional Development) (SRD SEPP) 2011. Transport for NSW formed the opinion that the project has the potential to significantly affect the environment and would require an EIS to be prepared.

In May 2020, Transport for NSW submitted an application under section 5.15 of the EP&A Act to the Secretary of Department of Planning, Industry and Environment (DPIE) to carry out the project.

On 1 July 2020, the Secretary of DPIE issued SEARs to Transport for NSW. The SEARs were revised on 4 May 2021. A copy of the SEARs and an indication of where each requirement is addressed in the EIS is provided in Appendix B (Secretary's environmental assessment requirements and Commonwealth assessment requirements).

This EIS has been prepared in accordance with Part 3 of Schedule 2 of the EP&A Regulation. In particular, the EIS complies with the General Provisions outlined in Part 3, including the project description, alternative options, likely environmental impacts and mitigation measures and relevant environmental planning approvals and permits. Appendix C (Environmental Planning and Assessment Regulation 2000 checklist) outlines where each of the regulation requirements are discussed in this EIS.

The approval process under Division 5.2 of the EP&A Act is illustrated in Figure 2-1. Further information on the assessment process is available on the DPIE website (www.planning.nsw.gov.au).

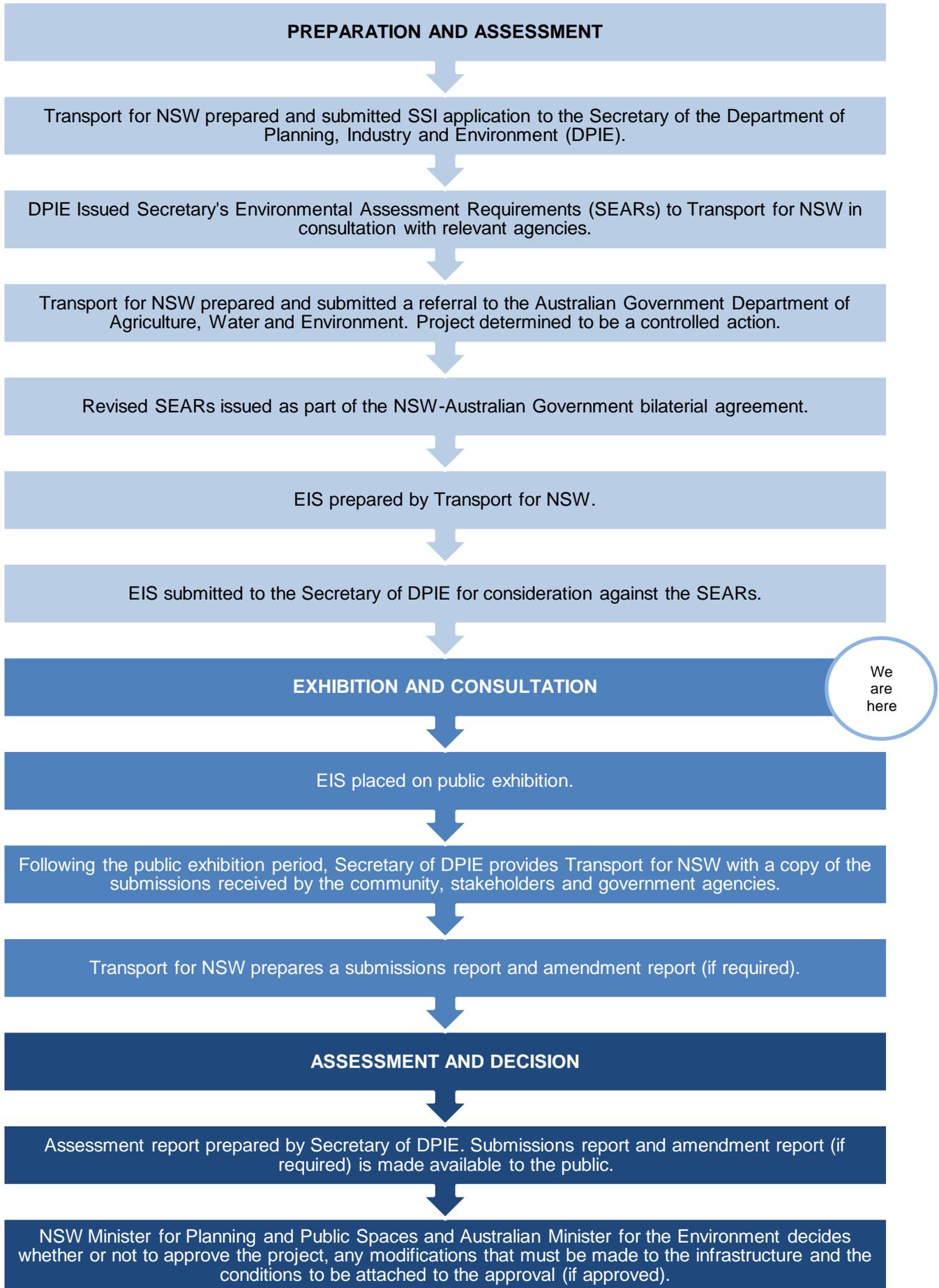


Figure 2-1: Approvals process under Division 5.2 of the EP&A Act and EPBC Act

2.2 Land ownership and management

The project is mostly located on State land that is owned and administered by various public authorities depending on its purpose as shown in Table 2-1, Figure 2-2 and Figure 2-3. Transport for NSW manage the seabed within the marine environment of Botany Bay, while National Parks and Wildlife Service manage the land within the National Park. At La Perouse, the project is located on two areas of Crown Land which are set aside for public purposes managed by the State.

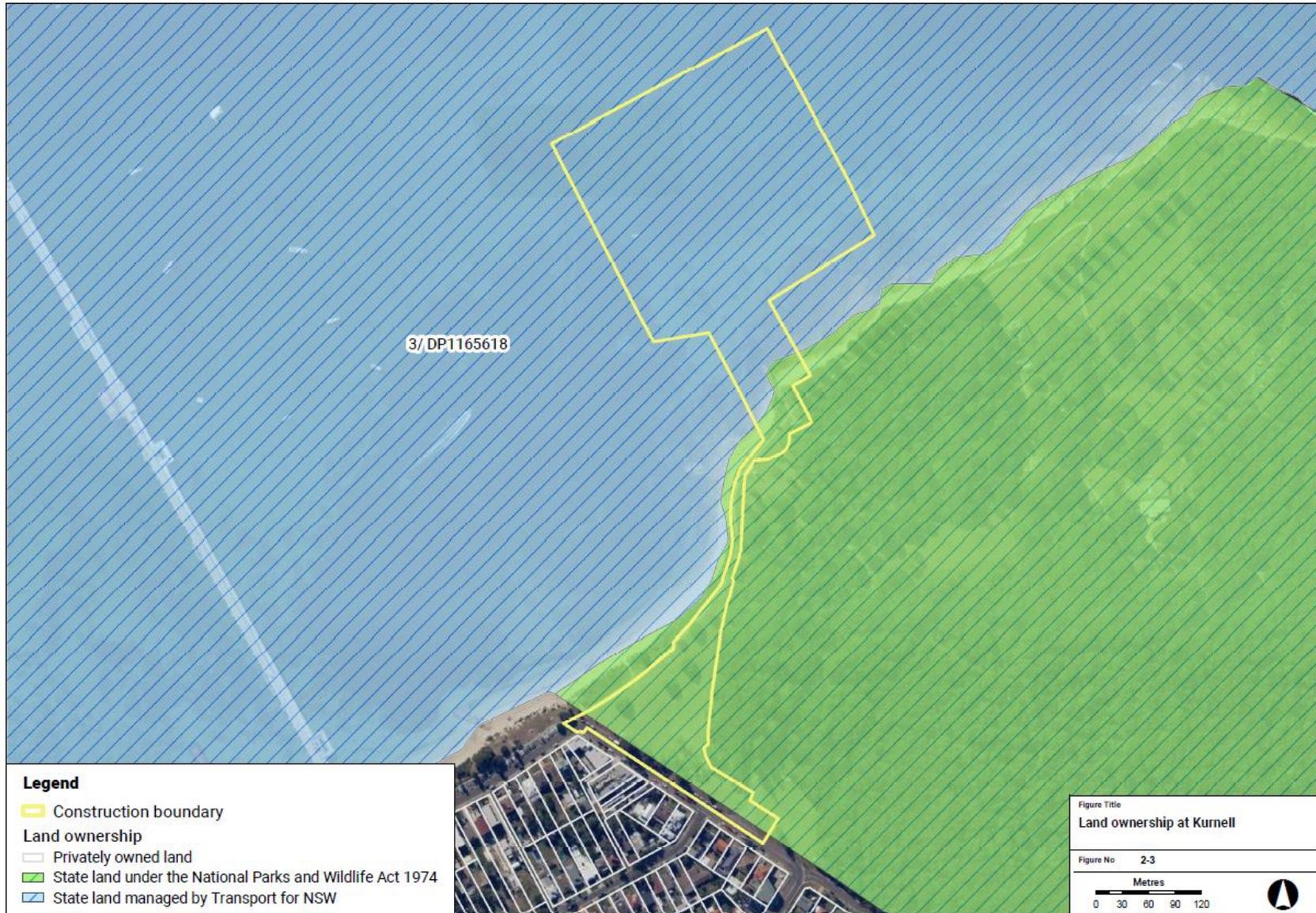
Table 2-1: Land ownership

Address	Lot and deposited plan	Ownership
Botany Bay	Lot 3 DP 1165618	State land managed by Transport for NSW
La Perouse headland	Lot 1 DP 915424	State land managed by National Parks and Wildlife Services
La Perouse headland	Lot 5113 DP 752015	Crown land
La Perouse headland	Lot 7045 DP1026891	Crown land
Kurnell	N/A	State land within Kamay Botany Bay National Park is managed by National Parks and Wildlife Services.



* Roads are State Land managed by Randwick City Council

Figure 2-2: Land ownership at La Perouse



* Roads are state land managed by Sutherland Shire Council

Figure 2-3: Land ownership at Kurnell

2.3 Other legislation

2.3.1 NSW legislation

Approvals, licenses and/or notification requirements under NSW legislation that may apply to the project are outlined in Table 2-2.

Table 2-2: NSW legislation or regulations that apply to the project

Legislation	Requirement type	Description
<i>National Parks and Wildlife Act 1974</i> (NSW)	Approval	The project is consistent with the Kamay Botany Bay National Park Plan of Management (NSW DPIE, 2020a). Refer to Chapter 3 (Strategic justification and project need) and Chapter 27 (Project justification and conclusion). Consent and appropriate tenure is required from National Parks and Wildlife Services in accordance with the NPW Act.
<i>Aboriginal Land Rights Act 1983</i> (NSW)	Notification or approval	There are four Aboriginal land claims which affect the construction boundary for the project as shown in Figure 2-4 and Figure 2-5. These include: <ul style="list-style-type: none"> • A land claim over all of Botany Bay (12821) • A land claim over the La Perouse headland (35528) • Two land claims over the Crown Land at La Perouse (32010, 42494). Transport for NSW will work with the land claim applicants (La Perouse Local Aboriginal Land Council and NSW Aboriginal Land Council) obtain consent or resolve the land claims prior to construction of the project on those lands.
<i>Roads Act 1993</i> (NSW)	Approval	Consent is required under section 138 of the <i>Roads Act 1993</i> for any work or activities in the public reserve or on a public road, namely associated with the additional car parking provisions at La Perouse.
<i>Fisheries Management Act 1994</i> (NSW)	Notification	Notification to the Minister for Primary Industries for any dredging or reclamation works are required under section 199 of the <i>Fisheries Management Act 1994</i> . There is no dredging as part of the project. The construction of the temporary causeway at Kurnell would meet the definition of reclamation work, therefore notification to the Minister for Primary Industries would be required for this work.
<i>Contaminated Land Management Act 1997</i> (NSW)	Notification	Section 60 of the <i>Contaminated Land Management Act 1997</i> applies as there is potential for land at La Perouse and Kurnell to be contaminated. This requires that Transport for NSW report known contamination to the EPA.
Ports and Maritime Administration Regulation 2012 (NSW)	Approval	As the project would disturb sediment, written permission from the Harbour Master would be required before the project commences in accordance with section 67ZN of the Ports and Maritime Administration Regulation 2012.
<i>Crown Land Management Act 2016</i> (NSW)	Approval	Crown Lands have noted that Lot 5113, DP 752015 is the land on which the proposed wharf tie-in at La Perouse is located, is Crown Land, and is likely to be impacted during construction and operation of the wharf. In addition, the construction boundary sits within another Crown Land allotment at Lot 7045, DP1026891. Figure 2-2 and Figure 2-3 shows land zoning and ownership. Approval for a licence will be required.
Marine Safety Regulation 2016 (NSW)	Licence	The project would be subject to licencing under the terms of section 97 of the Marine Safety Regulation 2016 as it is located within navigable water in the harbour as defined in the <i>Marine Safety Act 1998</i> (NSW). The Harbour Master and Ports Authority will need to be informed of navigational exclusions

Legislation	Requirement type	Description
		zones for the project and nautical charts would be updated where necessary once works are complete
<i>Heritage Act 1977</i> (NSW)	Notification	Section 146 of the <i>Heritage Act 1977</i> requires that the Heritage Council be notified if a relic is uncovered during construction and if it is reasonable to believe that the Heritage Council is unaware of the location of the relic.

As the project is SSI, a number of approvals are not required for a project approved under Division 5.2 of the EP&A Act (section 5.23) including:

- Permits under sections 201, 205 and 219 of the *Fisheries Management Act 1994* (NSW) to carry out dredging, reclamation works, to harm marine vegetation in protected areas or block fish passage.
- Approvals under Part 4 of the *Heritage Act 1977* (NSW) (to demolish, disturb or excavate a place, building, work, relic, moveable object, precinct or land to which an interim heritage order or listing on the State Heritage Register applies), section 139 (excavation permits).
- Aboriginal heritage permits under section 90 of the *National Parks and Wildlife Act 1974* (NSW).
- Various approvals under the *Water Management Act 2000* (NSW), including water use approvals under section 89, water management work approvals under section 90, and activity approvals (other than aquifer interference approvals) under section 91. Despite the approvals not being required, the proposed management measures in Chapter 17 (Soil, water and contamination) would ensure the protection of waterfront land.
- Schedule 1 of the Protection of the *Environment Operations Act 1997* (NSW) lists the activities that require the need for an Environment Protection Licence from the Environment Protection Authority. None of the proposed activities for the project trigger the need for an Environment Protection Licence.

Because the project is SSI, section 5.23(2) of the EP&A Act precludes the following being made to prevent or interfere with the carrying out of the project once approved:

- An order restricting harm to buildings, works, relics or places that are not the subject of an interim heritage order or listing under the State Heritage Register under Part 6 of the *Heritage Act 1977* (NSW).

The DPIE would still consult with each of the relevant agencies to seek advice on any specific requirements to be considered in the planning approval.

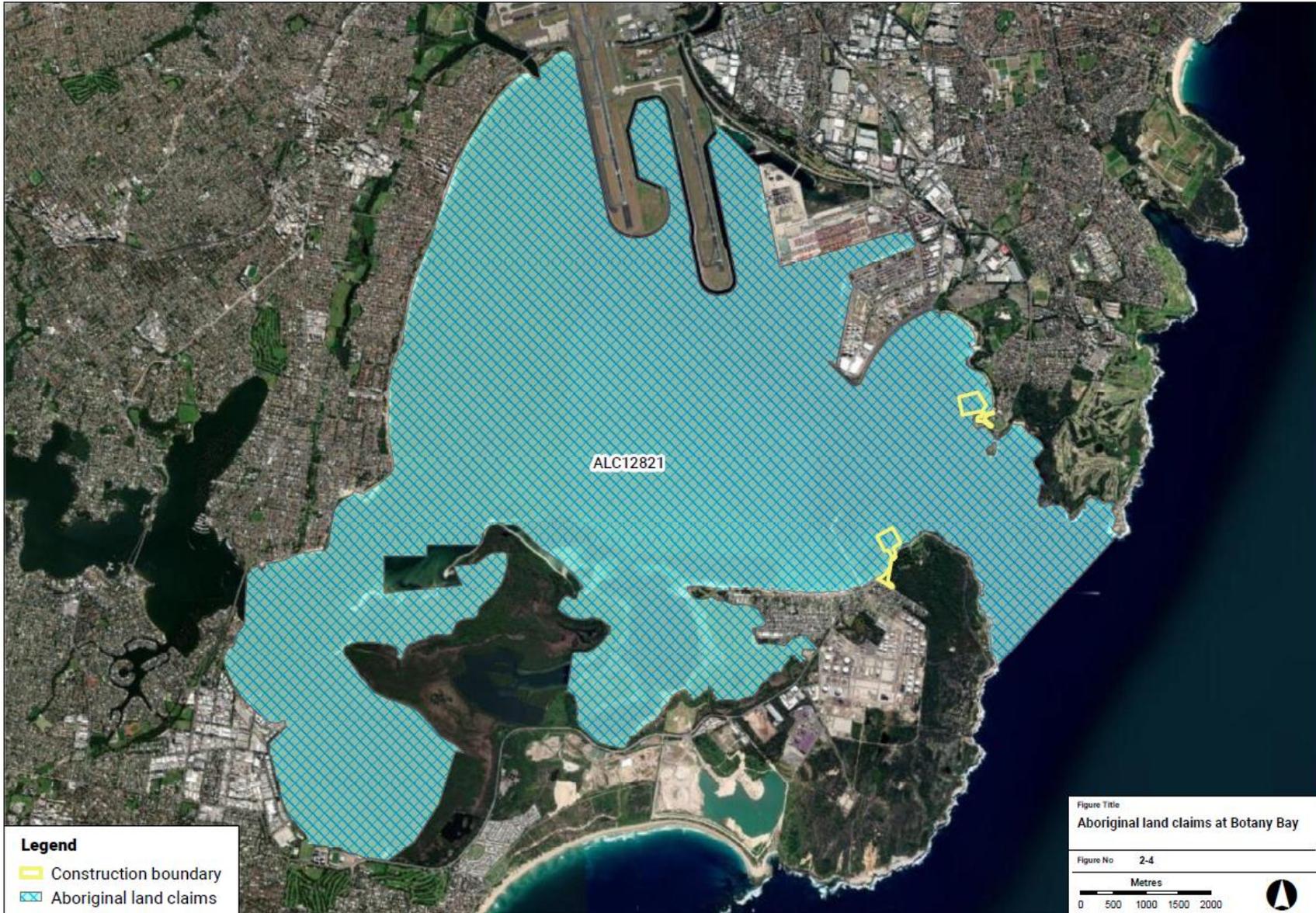


Figure 2-4: Aboriginal land claims for Botany Bay



Figure 2-5: Aboriginal land claims at La Perouse

2.3.2 Commonwealth legislation

Environment Protection and Biodiversity Act 1999 (Cth)

Under the *Environment Protection and Biodiversity Act 1999* (Cth) (EPBC Act) proposed 'actions' that have the potential to significantly impact on matters of national environmental significance (MNES), significantly impact the environment of Commonwealth land or that are being carried out by a Commonwealth agency must be referred to the Australian Government. If the Australian Minister for the Environment determines that a referred project is a "controlled action", the approval of that Minister would be required for the project in addition to the NSW approval.

An assessment of the project's potential impact on MNES found that there is potential for significant impact on the following MNES:

- *Posidonia australis* seagrass
- Black Rock-cod
- Kurnell Peninsula National Heritage Listing.

Accordingly, the project was referred to the Australian Government Department of the Agriculture, Water and the Environment in October 2020 and a decision that the project constitutes a controlled action was received on 12 January 2021. The controlled action also included White's Seahorse and Cauliflower Soft Coral.

Details of the assessment of potential impacts to these MNES and how significant impacts have been avoided, mitigated or offset are provided in Chapter 7 (Aboriginal heritage), Chapter 8 (Non-Aboriginal heritage), Chapter 9 (Underwater heritage) and Chapter 10 (Marine biodiversity) of this EIS.

Native Title Act 1993 (Cth)

A search of the National Native Title Vision database was completed in January 2021. At that time there were no Native Title claims registered in the study area. Therefore, the *Native Title Act 1993* is not applicable to the project.

Airports Act 1996 (Cth)

The project is located four kilometres to the southeast of Sydney (Kingsford Smith) Airport. The Australian Government *Airports Act 1996* and the Australian Government Airport Regulations 1997 define the Obstacle Limitation Surface (OLS) and Procedures for Air Navigation Services Aircraft Operations (PAN-OPS) airspace to protect aircraft landing and taking off. These take the form of height restrictions where activities cannot 'intrude' into this airspace.

The OLS for the La Perouse project area is 50 mAHD. For the Kurnell project area this varies between 51 mAHD to 70 mAHD. The PAN-OPS for both La Perouse and Kurnell project areas is 126.4mAHD. During construction and once operational, the project would not intrude into these OLS and PAN-OPS restrictions, and approval under the *Airports Act 1996* is not required.

Disability Discrimination Act 1992 (Cth)

The *Disability Discrimination Act 1992* (DDA) includes provisions to prevent discrimination based on disability, while also providing equal rights and access for all people. This was supplemented in 2002 by the Disabled Standards for Accessible Public Transport (DSAPT), which were introduced to require public transport operators and providers to "remove discrimination from public transport services". The DSAPT provide detailed information on how transport infrastructure should be designed and built to provide disabled access. In NSW, this has been adopted as the Transport Access Program, with the project being designed to comply with the provisions of the DDA. The proposed wharves would be DDA compliant.