



# EES Chapter 5 – Legislative framework

## Warburton Mountain Bike Destination

## Table of Contents

5.0	Legislative framework	1
5.1	Introduction	1
5.2	EES process	2
5.3	Primary approvals	4
5.3.1	Environment Protection and Biodiversity Conservation Act 1999 (Cwth)	4
5.3.2	Planning and Environment Act 1987 (Vic)	4
5.3.3	National Parks Act 1975 (Vic)	4
5.3.4	Water Act 1989 (Vic)	5
5.3.5	Aboriginal Heritage Act 2006 (Vic)	5
5.4	Other approvals	6
5.5	Key legislation relevant to EES assessments	7

## 5.0 Legislative framework

This chapter outlines the legislative framework and in particular the planning and environmental approvals applicable to the Warburton Mountain Bike Destination (the project).

### 5.1 Introduction

On 21 May 2020, The Victorian Minister for Planning issued a decision that the project is to be assessed through the preparation of an environment effects statement (EES) under the *Environment Effects Act 1978* (EE Act). The reasons for the decision were as follows:

- The project has the potential for significant environmental effects, in particular on native vegetation, flora and fauna species and communities listed under the *Flora and Fauna Guarantee Act 1988* and *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) as well as environmentally sensitive waterways.
- An EES is warranted to provide an integrated, robust and transparent process to assess the proposal's effects and associated uncertainties, and to evaluate effectiveness of the proposed avoidance, mitigation, management and offsetting measures, prior to any statutory approval decisions.

The EES process is not an approvals mechanism in itself, but an assessment that demonstrates the ability of the project to meet statutory requirements. It provides decision makers (including ministers and other statutory authorities) with the information they need to determine whether to grant statutory approvals for the project, and if so, what conditions should apply.

On 16 June 2020 the Commonwealth Department of Agriculture, Water and Environment (DAWE) issued a decision that the project is a controlled action under the EPBC Act. The relevant controlling provision under the EPBC Act cited in the decision is "listed threatened species and communities (sections 18 & 18A)". The EES assessment process has been accredited to assess the project for the purposes of the EPBC Act, in accordance with the bilateral agreement between the Commonwealth and Victoria relating to environmental assessment.

Following the Minister for Planning's assessment of the EES, decisions will be made by the relevant ministers and statutory authorities on the following primary approvals:

- Approval of the proposed action under the EPBC Act by the Commonwealth Minister for the Environment
- Approval of amendments to the Yarra Ranges Planning Scheme to facilitate the use and development of the project under the *Planning and Environment Act 1987* by the Minister for Planning
- Approval for works within a National Park under the *National Parks Act 1975* by the Minister for Energy, Environment and Climate Change
- Approval for works on a waterway under the *Water Act 1989* by Melbourne Water
- Approval of a Cultural Heritage Management Plan (CHMP) under the *Aboriginal Heritage Act 2006* by the Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation.

Further details on these primary approvals are provided in Section 5.3 and the EES process which informs decisions on these approvals is described in Section 5.2.

A number of other approvals are potentially required under Victorian legislation for the project to proceed. Details of these are presented in Section 5.4. Secondary consents, including various plans and procedures are also likely to be required as a part of the proposed environmental management framework for project implementation and under conditions of the primary approvals.

A range of other environmental legislation, policy and guidelines are relevant to the assessment of environmental effects presented in the EES. The key legislation relevant to the EES evaluation objectives is outlined in Section 5.5; these requirements are described in greater detail in the EES technical chapters and technical reports.

## 5.2 EES process

The EES process provides a means to describe the project and its potential environmental effects to enable the Minister for Planning to make an assessment on the project's acceptability. The EES process is designed to be rigorous and transparent, with opportunities provided for stakeholders including the wider community to have input. The matters to be investigated and documented in the EES are set out in the EES scoping requirements issued by the Minister for Planning. The EES scoping requirements ensure that the EES:

- Responds to the reasons for the decision that an EES is required
- Identifies potential significant environmental effects of the project
- Explains how the potential environmental effects of the project are proposed to be managed
- Provides the information necessary to allow the Minister to assess the environmental effects of the project under the EE Act and an assessment under the EPBC Act.

Draft EES scoping requirements were exhibited by the Department of Environment, Land, Water and Planning (DELWP) for public comment in September 2020. After considering public submissions, the Minister published final EES scoping requirements in December 2020. This EES has been prepared in accordance with the final EES scoping requirements.

The EES will be on public exhibition for 30 business days. During this time, the public can make written submissions on matters presented in the EES. Submissions can also be made on the draft Planning Scheme Amendment also exhibited (see Attachment VI). At the end of the public exhibition period, an inquiry will be convened to consider the effects of the project having regard to the EES and the public submissions and to provide a report to the Minister for Planning. The Minister for Planning will consider this report prior to issuing a written assessment of the project. The Minister's assessment then informs statutory decision-makers responsible for issuing planning and environmental approvals for the project under the EPBC Act, the *Planning and Environment Act 1987*, the *National Parks Act 1975*, the *Water Act 1989* and the *Aboriginal Heritage Act 2006*. The EES process and how it relates to the primary approvals decisions is depicted in Figure 5-1.

An environmental management framework (EMF) has been established to ensure that the outcomes of the EES process and approvals decisions are effectively implemented. Further information on these arrangements is provided in **Chapter 16: Environmental management framework**.

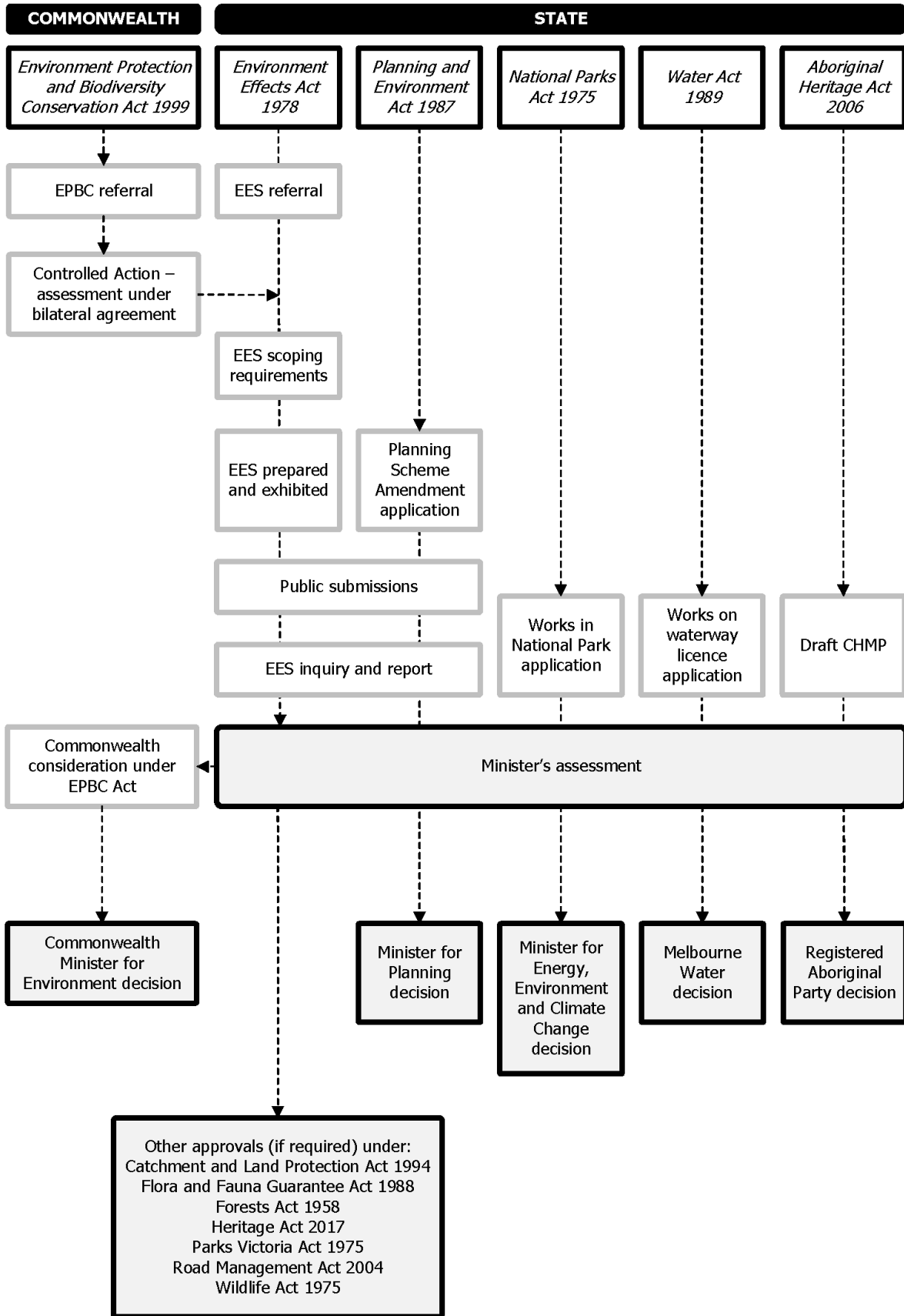


Figure 5-1 EES process

## 5.3 Primary approvals

This section presents details of the primary planning and environmental approvals required under Commonwealth and Victorian legislation.

### 5.3.1 Environment Protection and Biodiversity Conservation Act 1999 (Cwth)

The EPBC Act is the Commonwealth Government's central piece of environmental legislation. It provides a legal framework to protect and manage nationally and internationally important flora, fauna, ecological communities and heritage places, defined in the Act as Matters of National Environmental Significance.

If DAWE decides that a project could potentially have a significant impact on Matters of National Environmental Significance or involve Commonwealth land, the project is designated a 'controlled action' that must be assessed and approved by the Minister before it can proceed. The EPBC Act assessment has been undertaken in accordance with the Matters of National Environmental Significance: Significant Impact Guidelines 1.1 (2013).

As set out in Section 5.1, DAWE decided that the Warburton Mountain Bike Destination is a controlled action and the EES is designated as the accredited assessment process under the bilateral agreement with Victoria. The Commonwealth Minister for the Environment will decide whether the project is approved, approved with conditions or refused under the EPBC Act, after having considered the Minister for Planning's assessment under the EE Act.

### 5.3.2 Planning and Environment Act 1987 (Vic)

The purpose of the *Planning and Environment Act 1987* is to establish a framework for planning the use, development and protection of land in Victoria in the present and long-term interests of all Victorians. The Act sets out the structure and administration of planning in Victoria and authorises the preparation, adoption and approval of planning schemes and planning scheme amendments.

The project affects land in the municipality of Yarra Ranges and the use and development of the land for the project requires planning approval in accordance with the Yarra Ranges Planning Scheme. The planning scheme applies zones and overlays to land, with provisions which development must comply with to be permitted. Under these zones and overlays a planning permit may be required for use and/or for buildings and works associated with development and/or vegetation removal.

The planning pathway is a planning scheme amendment under Section 20(4) of the *Planning and Environment Act 1987*. The planning scheme amendment would facilitate the construction and operation of the project by inserting an Incorporated Document into the Schedules to Clause 45.12 Specific Controls Overlay and Clause 72.04 Documents Incorporated in this Planning Scheme. Clause 45.12-1 states that land affected by this overlay may be used or developed in accordance with a specific control contained within the Incorporated Document.

Following preparation, adoption and approval of the planning scheme amendment, compliance with the amendment, will be required by the *Planning and Environment Act 1987*. Further information on these arrangements is provided in **Chapter 16: Environmental management framework**. Under the Incorporated Document, Ministerial approval would be required for the EMF.

The *Planning and Environment Act 1987* empowers the Minister for Planning to prepare, adopt and approve planning scheme amendments. Following the release of the Minister's assessment of the EES, Yarra Ranges Council would request the Minister for Planning to prepare, adopt and approve an amendment to the Yarra Ranges planning scheme.

Further information on the planning scheme amendment process is included in **Chapter 11: Land use and planning**, and the planning scheme amendment application is included as Attachment VI to the EES.

### 5.3.3 National Parks Act 1975 (Vic)

The *National Parks Act 1975* establishes a network of national parks and other protected areas that are representative of Victoria's diverse natural environments and sets out the legal framework for their protection, use and management. Parks Victoria manages a system of more than 100 parks under the Act on behalf of the Victorian Government working closely with DELWP in their management.

Under Section 23 of the Act, approval of the Minister for Energy, Environment and Climate Change is required for permanent works to be carried out in Yarra Ranges National Park. The works for which approval is required include the construction of a building or other structure or other permanent works for the protection, development or improvement of the park including the establishment of camping places, roads and tracks.

The application for this approval is being prepared concurrent with the EES and is not exhibited with the EES.

#### **5.3.4 Water Act 1989 (Vic)**

The *Water Act 1989* provides the legal framework for the management of Victoria's water resources and seeks to:

- Promote the equitable and efficient use of our water resources
- Make sure our water resources are conserved and properly managed for the benefit of all Victorians
- Increase community involvement in conserving and managing our water resources.

Protection of waterways is regulated under the Act. The Warburton Mountain Bike Destination would involve construction on or over the bed and banks of designated waterways including construction of bridges over the Yarra River. Accordingly, the development will require a licence to be granted by Melbourne Water under Section 67 of the Act for the proposed works.

The application for this approval is being prepared concurrent with the EES and is not exhibited with the EES.

#### **5.3.5 Aboriginal Heritage Act 2006 (Vic)**

The *Aboriginal Heritage Act 2006* provides for the protection of Aboriginal cultural heritage in Victoria. If a project proponent is required to prepare an EES under the EE Act, it must also prepare a CHMP for the area in which works are to be carried out in accordance with the *Aboriginal Heritage Act 2006*.

Yarra Ranges Council is preparing a draft CHMP in consultation with the Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation – the Registered Aboriginal Party (RAP) for the project Activity Area. When it is finalised, the draft CHMP will be submitted to the Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation for approval. As required by Section 49 of the *Aboriginal Heritage Act 2006*, construction of the project cannot commence until the CHMP has been approved.

The draft CHMP is being prepared concurrently with the EES and is not exhibited with the EES.

## 5.4 Other approvals

A number of other approvals may be required for the project under Victorian legislation and these are set out in Table 5-1 below. It is envisaged that these approvals (if required) would be sought after the primary approvals have been obtained and prior to construction commencement.

**Table 5-1 Other approvals potentially required under Victorian legislation**

Legislation	Purpose	Relevance to the project	Approval description	Regulator
<i>Catchment and Land Protection Act 1994</i>	To regulate noxious weeds and pest animals that represent a serious threat to primary production, Crown land, the environment and community health.	While unlikely, construction of the project may require a permit for the management of noxious weeds	Section 71 – Permit to remove soil that is likely to contain any part of a noxious weed.	Agriculture Victoria
<i>Flora and Fauna Guarantee Act 1988</i>	To provide a framework for enabling and promoting conservation of Victoria's native flora and fauna.	Construction of the project may require removal of listed flora	Sections 48 and 52 - Permit to remove listed flora and fauna.	DELWP
<i>Forests Act 1958</i>	To provide a framework for the management of State forests	A licence or permit may be required for operation of the project within the State forest	Section 52 – Licence or permit in respect of Crown land in a reserved forest for a specified purpose	DELWP
<i>Heritage Act 2017</i>	To identify and protect historical sites and objects in Victoria and create a Victorian Heritage Register and a Victorian Heritage Inventory.	Construction of the project may disturb a Victorian Heritage Inventory site	Section 124 - Permit to disturb item listed in the Victorian Heritage Inventory	Heritage Victoria
<i>Parks Victoria Act 1975</i>	To establish the functions and powers for Parks Victoria	Amendments to the Yarra Ranges National Park Management Plan may be warranted to ensure that the plan explicitly recognises the project	Section 48 – Process for making a land management plan or amendment	Parks Victoria
<i>Road Management Act 2004</i>	To establish a coordinated management system for public roads.	Construction of the project may require temporary occupation or access to roads regulated under the Act	Section 16 of Schedule 7 - Consent to temporarily occupy and access roads from the Coordinating Road Authority.	Coordinating Road Authority (Department of Transport or Yarra Ranges Council)
<i>Wildlife Act 1975</i>	To regulate the conduct of persons engaged in activities concerning or relating to wildlife.	While unlikely, construction of the project may require relocation or salvage of wildlife	Section 28A - Authorisation is required to take any wildlife, with the exception of pest animals declared under the <i>Catchment and Land Protection Act 1994</i> and wildlife	DELWP



Legislation	Purpose	Relevance to the project	Approval description	Regulator
			declared to be unprotected wildlife.	

## 5.5 Key legislation relevant to EES assessments

In addition to the specific planning and environmental approvals required for the project to proceed, a range of legislation, policy and guidelines are relevant to the EES assessments. The key legislation relevant to these assessments is presented in Table 5-2 as it corresponds to the EES evaluation objectives contained in the EES scoping requirements. The detailed policies and guidelines relevant to the EES assessments are set out in the EES technical chapters and EES technical reports.

**Table 5-2 EES evaluation objectives and key legislation relevant to associated assessments**

EES evaluation objective	Key legislation relevant to assessments	Relevant EES technical chapters and EES technical reports
Avoid, and where avoidance is not possible, minimise potential adverse effects on native vegetation and animals (particularly listed threatened species and their habitat and listed ecological communities), as well as address offset requirements consistent with state and Commonwealth policies.	<i>Environment Protection and Biodiversity Conservation Act 1999</i> <i>Planning and Environment Act 1987</i> <i>National Parks Act 1975</i> <i>Parks Victoria Act 1975</i> <i>Flora and Fauna Guarantee Act 1988</i> <i>Wildlife Act 1975</i> <i>Catchment and Land Protection Act 1994</i>	Chapter 8: Biodiversity and habitats Chapter 14: Matters of National Environmental Significance Technical Report A: Biodiversity and Habitats
Maintain the functions and values of groundwater, surface water and floodplain environments and minimise effects on water quality and beneficial uses.	<i>Water Act 1989</i> <i>Environment Protection Act 2017</i>	Chapter 9: Surface water, groundwater and geotechnical hazards Technical Report B: Surface Water, Groundwater and Geotechnical Hazards
Minimise potential adverse social, economic, amenity and land use effects at local and regional scales.	<i>Planning and Environment Act 1987</i> <i>Environment Protection Act 2017</i> <i>Road Management Act 2004</i>	Chapter 11: Land use and planning Chapter 12: Socio-economic Chapter 13: Transport Technical Report D: Land use and planning Technical Report E: Socio-economic Technical Report F: Transport
Avoid, or minimise where avoidance is not possible, adverse effects on Aboriginal and historic cultural heritage.	<i>Aboriginal Heritage Act 2006</i> <i>Heritage Act 2017</i>	Chapter 10: Cultural heritage Technical Report C: Cultural Heritage