



# 5 Legislative framework and approval requirements

<b>5.1</b>	<b>Overview</b>	<b>5.1</b>
<b>5.2</b>	<b>Project assessment process</b>	<b>5.1</b>
<b>5.3</b>	<b>Principal approvals</b>	<b>5.3</b>
5.3.1	Environment Protection and Biodiversity Conservation Act 1999	5.3
5.3.2	Planning and Environment Act 1987	5.3
5.3.3	Aboriginal Heritage Act 2006	5.5
<b>5.4</b>	<b>Secondary approvals</b>	<b>5.5</b>
<b>5.5</b>	<b>Relevant legislation, policy and guidelines for the EES</b>	<b>5.6</b>

## Tables

Table 5.1	Relevant legislation	5.6
-----------	----------------------	-----

## Figures

Figure 5.1	Project assessment process	5.2
Figure 5.2	Planning Scheme Amendment and integrated exhibition process	5.4

## 5.1 Overview

This chapter outlines the environmental assessment process and the key planning, environment and heritage approvals required for the project.

The key State legislation governing the environmental assessment of the project is the *Environment Effects Act 1978*, administered by the Minister for Planning.

This EES has been prepared in response to the Minister for Planning's decision on 22 July 2015 that an EES is required. The EES has been prepared with consideration of the scoping requirements issued by the Minister for Planning, comments from the Technical Reference Group and the DELWP Impact Assessment Unit, community consultation feedback, and inputs from technical specialists and their impact assessments. The EES will be considered by an independent inquiry and advisory committee before the Minister for Planning completes their assessment of the project.

The EES and the Minister for Planning's assessment will provide decision makers with information to assist them in determining whether they should issue the principal and secondary approvals for the project, and on what conditions. The assessment of the project under the *Environment Effects Act 1978* does not constitute a statutory approval in its own right.

The key approvals for the construction, operation and maintenance of the project are outlined in Section 5.3 of this chapter. A range of secondary consents would also be required for the project to proceed. These are discussed in Section 5.4.

## 5.2 Project assessment process

The *Environment Effects Act 1978* establishes an administrative process that the Minister for Planning can use to require the proponent of a project to prepare an EES. A project may require an EES where there is the potential for a significant effect on the environment.

The *Ministerial Guidelines for assessment of environmental effects under the Environment Effects Act* (Ministerial Guidelines) (Department of Sustainability and Environment 2006) specify criteria under which a project must be referred to the Minister for a determination as to the need for an EES.

The *Environment Effects Act 1978* and Ministerial Guidelines provide the framework within which this assessment is conducted.

After discussions with DELWP, the project was submitted by RRV (formerly VicRoads) to the Minister for Planning in June 2015. A decision was made by the Minister for Planning on 22 July 2015, requiring RRV to prepare an EES to document the potential environmental effects of the project.

The Minister's decision was based on the following reasons:

- The project has the potential to result in significant adverse effects on biodiversity, land uses and cultural heritage values.
- The opportunity to avoid or minimise significant adverse effects through alignment selection and mitigation requires further investigation via an integrated assessment of environmental effects, prior to decision-making on a final alignment.

Following this decision, the Minister released the draft EES scoping requirements for public exhibition from 21 November to 9 December 2016. After consideration of public submissions, the Minister for Planning issued the final EES scoping requirements on 4 January 2017. These scoping requirements prescribe a minimum set of environmental values to be assessed by RRV as part of the EES process.

The EES assesses the potential environmental impact of the preferred bypass alignment and includes consideration of alternative alignments (see EES Chapter 3: *Project alternatives*) in accordance with the terms of the scoping requirements. To facilitate this process, a Technical Reference Group was established to advise and guide RRV through the EES process. Further information on the role and membership of the Technical Reference Group is included in EES Chapter 7: *Community consultation and stakeholder engagement*.

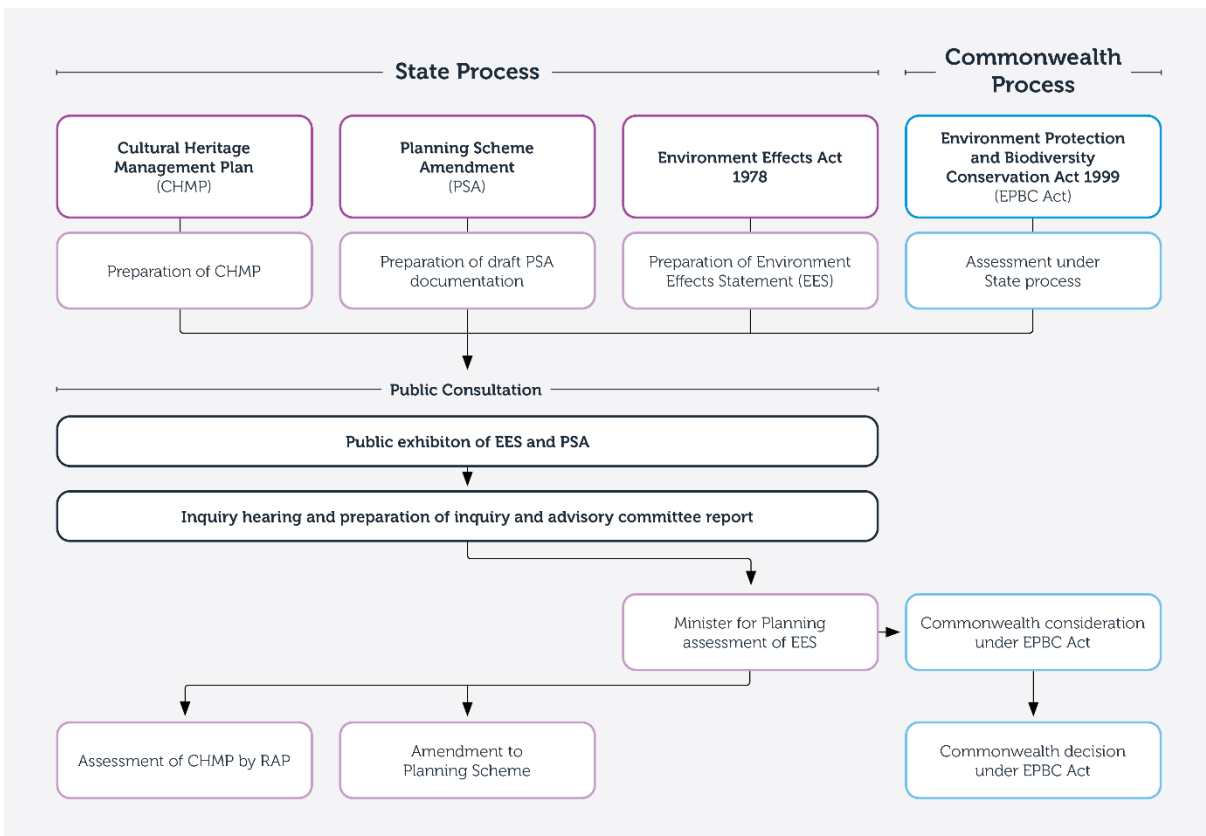
The EES is currently on exhibition for public comment. Submissions received from this exhibition period will be responded to by the proponent (RRV).

Following exhibition, the EES and submissions will be referred to an inquiry and advisory committee appointed by the Minister for Planning. The role of the inquiry is to review the EES and submissions, conduct a public hearing, and provide an inquiry and advisory committee report to the Minister for Planning.

The EES process concludes with the Minister for Planning’s assessment of the environmental effects of the project, informed by the inquiry and advisory committee report. The Minister’s assessment is issued to relevant statutory decision-makers to inform decisions on the project. Government and statutory decision-makers must consider the Minister for Planning’s assessment. The Ministerial Guidelines set out the administrative procedures for these actions.

The general EES process is summarised in Figure 5.1. This figure also shows how the State assessment process (EES) fits into the Commonwealth approvals process (EPBC Act). Further discussion of the EPBC Act approvals process is provided in Section 5.3.1.

Further details regarding the assessment framework used to assess and evaluate the environmental, social and economic impacts of the project is provided in EES Chapter 6: *EES assessment framework and approach*.



**Figure 5.1** Project assessment process

## 5.3 Principal approvals

### 5.3.1 Environment Protection and Biodiversity Conservation Act 1999

The Commonwealth EPBC Act provides a legal framework to protect and manage nationally and internationally important flora, fauna, ecological communities and heritage places. A referral to the Commonwealth Minister for the Environment under the EPBC Act was submitted in January 2021. On 24 February 2021 the Minister determined that the project is considered a 'controlled action' due to potential impacts to 'listed threatened species and communities'. The project is to be assessed under a State accredited process (EES).

### 5.3.2 Planning and Environment Act 1987

The *Planning and Environment Act 1987* establishes the framework for planning the use, development and protection of land in Victoria. The *Planning and Environment Act 1987* sets out the structure and administration of planning in Victoria by providing for the preparation, approval and adoption of planning schemes and the Planning Scheme Amendment process.

A planning scheme is a statutory document which sets out objectives, policies and provisions relating to the use, development, protection and conservation of land in the area to which it applies. As the project is located within the Pyrenees Shire Council area, the Pyrenees Planning Scheme applies to the project. The Pyrenees Planning Scheme is administered by the Pyrenees Shire Council.

The Pyrenees Planning Scheme identifies the various planning zones and overlays that apply to the project study area. These are identified in EES Appendix G: *Planning and land use impact assessment*. Under the provisions of the Pyrenees Planning Scheme, a planning permit would be required should the ultimate alignment fall under any of the following:

#### Zones:

- Clause 35.03: Rural Living Zone
- Clause 32.02: Low Density Residential Zone
- Clause 36.01: Public Use Zone (Schedules 1, 4 and 7)
- Clause 35.07: Farming Zone
- Clause 36.04: Road Zone – Category 1
- Clause 35.06: Rural Conservation Zone
- Clause 36.03: Public Conservation and Resource Zone.

#### Overlays:

- Clause 44.06: Bushfire Management Overlay/Wildfire Management Overlay
- Clause 45.01: Public Acquisition Overlay
- Clause 45.05: Restructure Overlay (Schedule 27)
- Clause 42.02: Vegetation Protection Overlay (Schedule 1)
- Clause 44.03: Flood Overlay
- Clause 44.04: Land Subject to Inundation Overlay.

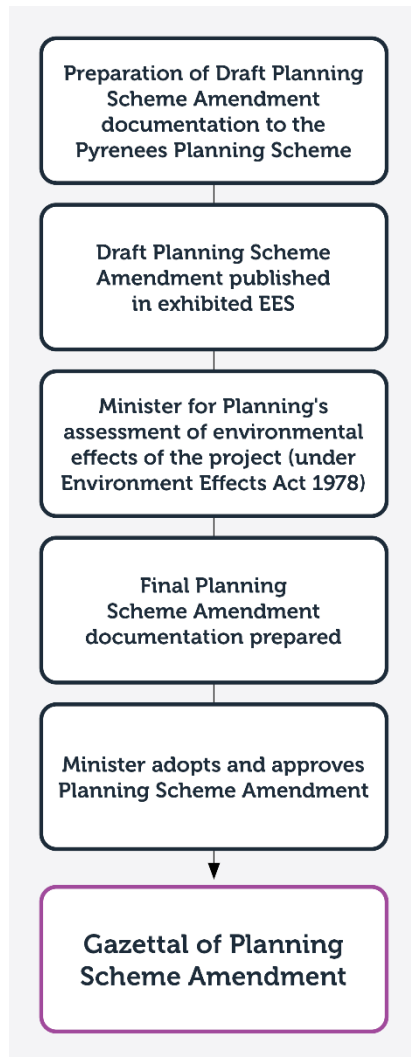
A draft Planning Scheme Amendment to the Pyrenees Planning Scheme for the preferred alignment has been prepared which, if approved, will exempt the project from the individual planning permit requirements of the Pyrenees Planning Scheme. Any such exemption would be subject to the project meeting the recommendations of the Minister for Planning's assessment of the EES. The Planning Scheme Amendment would also create a right-of-way over the Planning Scheme Amendment area by applying a Public Acquisition Overlay, which will enable RRV to acquire land for the construction of the project and associated works. The draft Planning Scheme Amendment is being exhibited with this EES.

Although the draft Planning Scheme Amendment is being exhibited with the EES, it is not a formal exhibition of the Planning Scheme Amendment within the meaning of the *Planning and Environment Act 1987*. The exhibition of the draft Planning Scheme Amendment with the EES, however, provides the opportunity for the public to comment on the draft Planning Scheme Amendment along with the EES.

Following the completion of the EES process, the Planning Scheme Amendment would be considered by the Minister for Planning for approval under Section 20(4) of the *Planning and Environment Act 1987*. This section of the *Planning and Environment Act 1987* allows the Minister for Planning to amend planning schemes without the requirement to give formal notice.

The Minister for Planning may elect to make such a decision in the case of State significant infrastructure projects where there has been considerable community consultation and where an amendment has been informally exhibited as part of the EES process.

A summary of the proposed Planning Scheme Amendment process (under Section 20) for the project is provided in Figure 5.2 below.



**Figure 5.2** Planning Scheme Amendment and integrated exhibition process

### 5.3.3 Aboriginal Heritage Act 2006

The *Aboriginal Heritage Act 2006* and associated regulations require the preparation of a Cultural Heritage Management Plan for activities which fall within the definition of ‘High Impact Activities’ (activities which cause significant ground disturbance) and are within an area of Aboriginal cultural heritage sensitivity. Under Section 49 of the *Aboriginal Heritage Act 2006*, a Cultural Heritage Management Plan must be prepared prior to commencing works for any project for which an EES has been required.

EES Chapter 10: *Cultural heritage* and EES Appendix A: *Aboriginal cultural heritage impact assessment* contains the Aboriginal heritage impact assessment describing the project’s potential impact on Aboriginal heritage within the study area.

Under the *Aboriginal Heritage Act 2006*, Registered Aboriginal Parties are the cultural heritage decision-makers for a designated area, as determined by the Victorian Aboriginal Heritage Council. The Registered Aboriginal Party for the study area is the Wadawurrung Traditional Owners Aboriginal Corporation. The Cultural Heritage Management Plan for the project will be developed in consultation with the Registered Aboriginal Party. The Registered Aboriginal Party will then review, evaluate and approve the Cultural Heritage Management Plan.

A draft standard assessment, as required by the Aboriginal Heritage Regulations 2018, has been prepared and forms part of the Aboriginal cultural heritage impact assessment, included in EES Appendix A: *Aboriginal cultural heritage impact assessment*.

## 5.4 Secondary approvals

There are a number of other approvals required for the project, as outlined in Section 5.1, which will be considered after the Minister for Planning has released the assessment of the EES. All other statutory approvals required for the project would be obtained by RRV or the contractor under the relevant legislation. These include approvals, consents and licences under the following legislation:

- *Flora and Fauna Guarantee Act 1988*: A permit to remove protected flora and fauna from public land
- *Water Act 1989*: A licence to construct works on a waterway
- *Heritage Act 2017*: Consents to disturb historical archaeology sites and/or permits to carry out works to a heritage place
- *Wildlife Act 1975*: Permits to remove trees containing habitat or any other fauna habitat areas, or for fauna salvage and translocation
- *Catchment and Land Protection Act 1994*: Permits to transport noxious weeds to or from works sites
- *Road Management Act 2004*: Road opening permits to undertake road works.

RRV and its contractors must also comply with the requirements of the following legislation:

- *Environment Protection Act 2017* (including relevant State Environment Protection Policies and Environmental Reference Standards) – establishes the powers, duties and functions of the Environment Protection Authority. The *Environment Protection Act 2017* focuses on preventing waste and pollution impacts to the environment rather than managing those impacts after they have occurred. Central to the *Environment Protection Act 2017* is the general environmental duty. Under the general environmental duty, businesses must understand the risk from their activities and how to address them. The extent of measures undertaken to address impacts depends on how much risk the activities pose to human health and the environment. The following physical aspects will require consideration for the protection of Victoria’s environment under the Environment Protection Act 2017: Noise and vibration, Groundwater, Contamination, Surface water and Air quality through a range of policies, standards and guidelines.

These are further discussed in the relevant technical chapters (EES Chapters 8–16). Compliance obligations under these acts are addressed in EES Chapter 17: *Environmental management framework*.

## 5.5 Relevant legislation, policy and guidelines for the EES

The EES has been undertaken in consideration of and, where applicable, in accordance with, the legislation listed in Table 5.1. This is presented against the key matters of the EES evaluation objectives and regulatory requirements as provided in the EES scoping requirements.

Relevant legislation, policies and guidelines specific to each discipline are further discussed in each technical chapter (EES Chapters 8–16), as well as how these have been considered in the assessment of the environmental effects of and/or how these are being met by the project.

**Table 5.1 Relevant legislation**

Legislation	EES scoping matters to be addressed							
	Road efficiency, capacity & safety	Biodiversity	Catchment values & hydrology	Cultural heritage	Social & community	Land use & economics	Amenity	Landscape & visual
<i>Aboriginal and Torres Strait Islander Heritage Protection Act 1984</i> (Commonwealth)				X				
<i>Aboriginal Heritage Act 2006 and Aboriginal Heritage Regulations 2018</i>				X				
<i>Catchment and Land Protection Act 1994</i>		X	X					
<i>Crown Land (Reserves) Act 1978</i>						X		
<i>Environment Effects Act 1978</i>					X			
<i>Environment Protection Act 2017</i>			X				X	
<i>Environment Protection and Biodiversity Conservation Act 1999</i> (Commonwealth)		X						
<i>Fisheries Act 1995</i>		X						
<i>Flora and Fauna Guarantee Act 1988</i>		X						
<i>Forests Act 1958</i>						X		
<i>Heritage Act 2017</i>				X				X
<i>Land Acquisition and Compensation Act 1986</i>						X		
<i>Native Title Act 1993</i> (Commonwealth)				X				
<i>Planning and Environment Act 1987</i>	X	X	X	X	X	X		X
<i>Road Management Act 2004</i>	X					X		
<i>Traditional Owners Settlement Act 2010</i>				X				
<i>Transport Integration Act 2010</i>	X				X	X	X	X
<i>Water Act 1989</i>			X					
<i>Wildlife Act 1975</i>		X						