



# 3 Legislative framework and approval requirements

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### 3.1 OVERVIEW

This chapter outlines the legislative framework and approvals process for the project, including the key planning, environmental and cultural heritage approvals required for the project.

Assessment of the project is via this Environment Effects Statement (EES) under the *Environment Effects Act 1978* (Vic). This process is not an approval process, but enables Ministers, local government and statutory authorities to make informed decisions about whether the project should proceed to the next stage. This EES analyses the project's potential environmental effects and proposes measures to avoid, minimise and manage negative effects. It includes public involvement and the opportunity for an integrated assessment of environmental effects.

The scope of the EES was agreed with the Department of Environment, Land, Water and Planning (DELWP) and confirmed within the EES Scoping Requirements report (May 2018) which forms the basis of the assessment. The key matters addressed within the EES, as identified within the Scoping Requirements report, have their own relevant legislation, policy and guidance for each specific discipline. This is outlined in Section 3.5.

This EES considers relevant Commonwealth and Victorian legislation, including applicable laws for approvals. Legislation and approvals that apply to the project are listed below.

Commonwealth:

- *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act): Potential impacts on Matters of National Environmental Significance (MNES), including Ramsar wetlands, listed threatened species and communities, and listed migratory species.

Victorian:

- *Planning and Environment Act 1987* (Vic) (P&E Act): Amendments to the Kingston and Greater Dandenong Planning Schemes, including reserving land for road purposes and approval to remove native vegetation.
- *Flora and Fauna Guarantee Act 1988* (Vic) (FFG Act): A licence to remove protected flora and fauna from public land.
- *Wildlife Act 1975* (Vic): Permits to remove trees containing habitat or any other fauna habitat areas or fauna salvage and translocation.
- *Water Act 1989* (Vic): A licence to construct works on a waterway or to construct a bore, and take water from a waterway or groundwater use.
- *Aboriginal Heritage Act 2006* (Vic): Preparation of a Cultural Heritage Management Plan (CHMP).
- *Heritage Act 2017* (Vic): Consent to disturb archaeological sites and/or permits to carry out works at a heritage place.
- *Road Management Act 2004* (Vic): Road opening permits to undertake works.
- *Catchment and Land Protection Act 1994* (Vic) (CaLP Act): Measures to avoid and or minimise weed dispersal from works sites.

### 3.2 PROJECT APPROVAL PROCESS

The *Environment Effects Act 1978*, administered by the Minister for Planning, provides for the assessment through an EES of projects that could have a significant effect on the environment. Under the Act, this EES informs all statutory decision-makers under Victorian law and the Commonwealth Minister for the Environment and Energy as to whether the proposed environmental impacts are acceptable.

The Ministerial guidelines for assessment of environmental effects under the *Environment Effects Act 1978* (Department of Sustainability and Environment (DSE) 2006) specify criteria under which a project must be referred to the Minister to decide whether an EES is required. As the project met several of these criteria, it was referred to the Minister in July 2017. On 25 September 2017, the Minister decided that an EES was required for the project because the project has the potential for a range of significant environmental effects associated with:

- the habitat value and quality of wetlands and other habitats adjoining or traversed by the project, especially with regard to threatened species
- the surface water and groundwater systems which contribute to the health and habitat quality of adjacent and nearby wetlands, including the Ramsar-listed Edithvale wetland
- Indigenous cultural heritage values that may occur within the project alignment
- the containment and management of potentially contaminated soils and potential acid sulphate soils; and
- amenity values of adjacent land, especially residential land and parkland.

The Minister's reasons explain that other potential effects on environmental (including social and economic) values are less likely to be significant and should be amenable to effective management through existing statutory processes and requirements, for example under the *Planning and Environment Act 1987* and the *Environment Protection Act 1970*, including impacts such as construction noise, traffic and transport impacts and visual impacts.

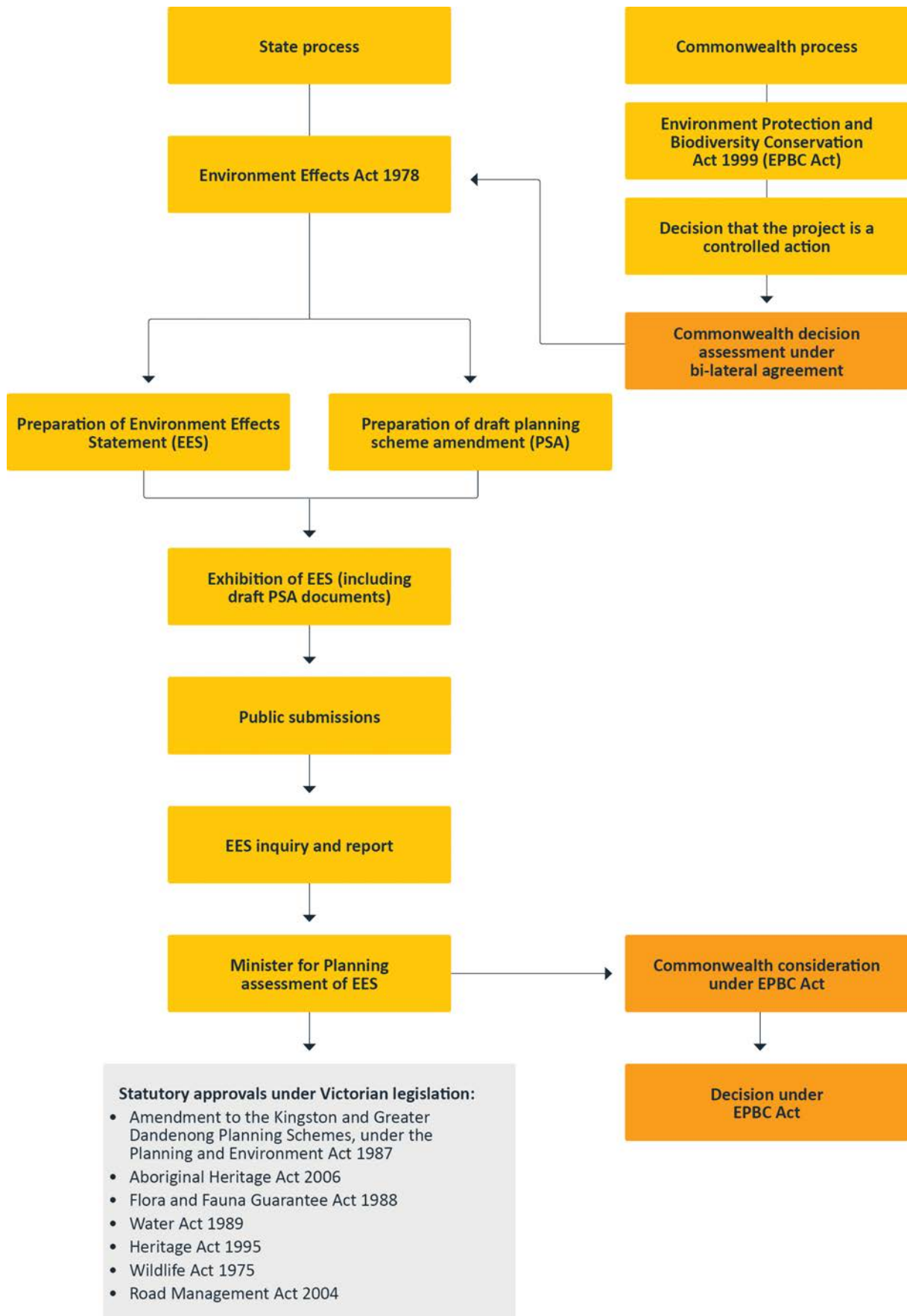
A Technical Reference Group (TRG) was formed with participants from government agencies, local government and regional authorities to provide technical advice on preparing a quality EES. Further information on the TRG is provided in Chapter 7: *Consultation and stakeholder engagement*.

As part of the process, the EES is exhibited for public comment. Feedback from the community and other stakeholders is during a public exhibition process and the proponent responds to submissions. Clarification or further information may be sought where needed.

The Minister may also appoint an independent inquiry into the effects of the project based on this EES, public submissions, and MRPA's response to the submissions. The Minister stated when he decided that an EES was required for the Project that he would appoint an 'inquiry'.

The EES process concludes with the Minister's assessment of the project's environmental effects, informed by the inquiry report. This assessment is issued to relevant statutory decision-makers to inform decisions on the project. Government and statutory decision-makers must consider the Minister's assessment.

The EES process is shown in Figure 3.1. This figure also provides an overview of how the EES fits into approvals under the *Environment Protection and Biodiversity Conservation Act 1999*, *Planning and Environment Act 1987*, *Aboriginal Heritage Act 2006* and *Heritage Act 2017*, as discussed in the following sections.



**Figure 3.1 Project approval process**

### 3.3 PRINCIPAL APPROVALS

#### 3.3.1 *Environment Protection and Biodiversity Conservation Act 1999*

The EPBC Act provides a legal framework to protect and manage matters of national environmental significance.

MRPA referred the project to the Commonwealth Government under the EPBC Act on 30 October 2017 (EPBC 2017/8019). On 30 January 2018, the delegate to the Minister for Environment and Energy determined that the project is considered a controlled action for the following reasons:

... *the proposed action is likely to have a significant impact on the following matters protected by the EPBC Act:*

- *Ramsar wetlands (sections 16 and 17B)*
- *Listed threatened species and communities (sections 18 and 18A)*
- *Listed migratory species (sections 20 and 20A).*

The EES process is an accredited process under the EPBC Act in accordance with the assessment bilateral agreement between the Commonwealth and Victorian governments. This means that the Commonwealth Minister for the Environment and Energy will decide whether to approve the project under the EPBC Act, based on the Victorian Minister's assessment of the environmental effects of the project.

Matters relevant to the EPBC Act are discussed within Chapter 22: *Matters of national environmental significance.*

#### 3.3.2 *Planning and Environment Act 1987*

The *Planning and Environment Act 1987* (P&E Act) establishes the framework for planning the use, development and protection of land in Victoria, in the present and long-term interest of all Victorians. The Act sets out the structure and administration of planning in Victoria, provides for the preparation, approval and adoption of planning schemes and regulates the planning scheme amendment process.

A planning scheme is a statutory document that sets out objectives, policies and provisions relating to the use, development, protection and conservation of land in the area to which it applies. Two planning schemes apply to this project: the Kingston Planning Scheme and Greater Dandenong Planning Scheme.

The planning zones and overlays in these two planning schemes that apply to the project are identified in Appendix B: *Land use and planning impact assessment.*

Unless exempted, planning permission would be required for the project under the following provisions of the Kingston and Greater Dandenong Planning Schemes:

- Kingston Planning Scheme clause 36.01 Public Use Zones SUZ1 and SUZ7
- Kingston Planning Scheme clause 37.03 Urban Floodway Zone
- Kingston Planning Scheme clause 44.04 Land Subject to Inundation Overlay
- Kingston Planning Scheme clause 44.05 Special Building Overlay
- Greater Dandenong Planning Scheme clause 42.02 Vegetation Protection Overlay.

Amendment of the Kingston Planning Scheme and Greater Dandenong Planning Scheme (PSA) by the Minister of Planning will introduce a project specific Incorporated Document to facilitate the use and development of the project without the need to obtain planning permits.

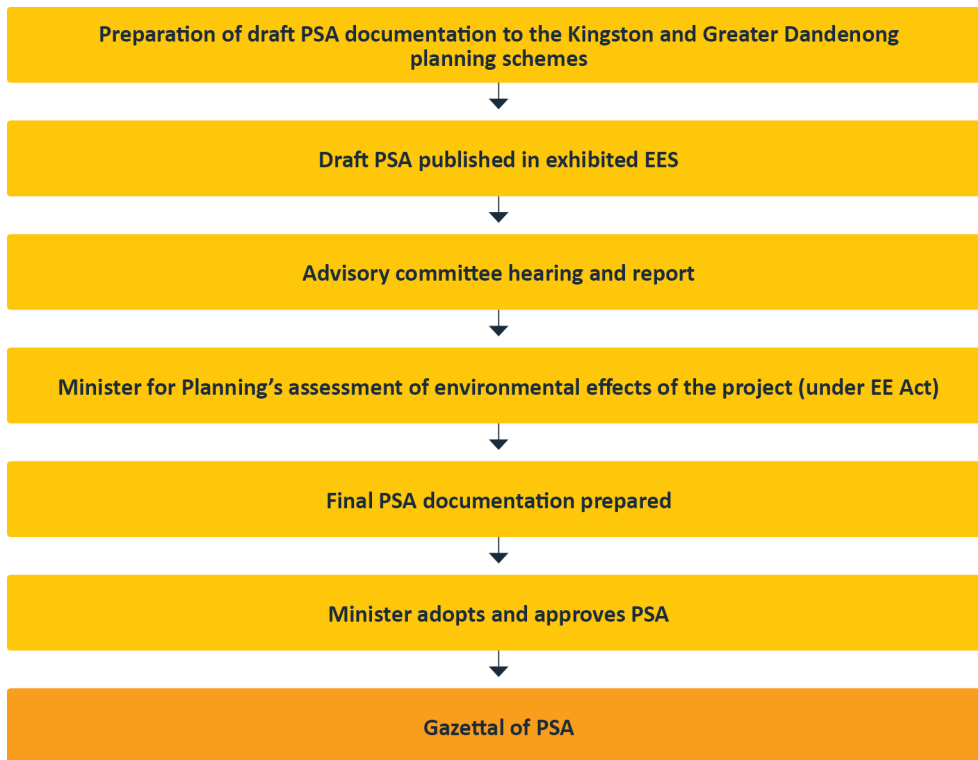
The PSA will also apply to the Public Acquisition Overlay (PAO) to facilitate the acquisition of land required for the project that is not already subject to a POA or owned by VicRoads. This approach is common for major projects in Victoria and is an appropriate use of the Victorian Planning Provisions.

The draft PSA is included as Attachment II: *Draft planning scheme amendment.*

The exhibition of the draft PSA with this EES gives the public the opportunity to comment on the draft PSA.

Once the EES process is completed, the PSA would be approved by the Minister for Planning under section 20(4) of the P&E Act. Therefore, there may be no further opportunity for public comment on the amendment beyond the EES process.

The stakeholder engagement and consultation process undertaken for the project is outlined in Chapter 7: *Consultation and stakeholder engagement.* A summary of the PSA process for the project is provided in Figure 3.2.



**Figure 3.2 Planning scheme amendment process**

### 3.3.3 *Aboriginal Heritage Act 2006*

The *Aboriginal Heritage Act 2006* and associated regulations require a project-specific cultural heritage management plan (CHMP) to be prepared for the project. Any project that is required to prepare an EES also requires the preparation of a CHMP.

Chapter 14: *Aboriginal cultural heritage* and Appendix H: *Aboriginal cultural heritage impact assessment* describe the project's potential impact upon Aboriginal heritage values.

Under the *Aboriginal Heritage Act 2006*, registered Aboriginal parties are the cultural heritage decision-makers for a designated area and are determined by the Victorian Aboriginal Heritage Council. As there are no registered Aboriginal parties for the project area, CHMP approval processes will be carried out by Aboriginal Victoria and the Traditional Landowners. The relevant Traditional Owner groups are the Wurundjeri Tribe Land and Compensation Cultural Heritage Council Aboriginal Corporation, the Boon Wurrung Foundation, and the Bunurong Land Council Aboriginal Corporation. Relevant traditional owner groups and Aboriginal Victoria were consulted during the cultural heritage process for the project.

The *Aboriginal Heritage Regulations 2018*, which specify the circumstances that call for a CHMP, require desktop, standard (ground surface survey) assessment, and complex (subsurface) assessment. These assessments have been prepared and the results are presented in Appendix H: *Aboriginal cultural heritage impact assessment*. A CHMP has been drafted and would be submitted to Aboriginal Victoria for evaluation and approval. Figure 3.3 outlines the CHMP process in relation to the EES approval process.



**Figure 3.3 CHMP process**

### 3.3.4 Heritage Act 2017

The *Heritage Act 2017* regulates the protection and conservation of places listed on the Victorian Heritage Register and archaeological sites and relics listed on the Victorian Heritage Inventory. Chapter 15: *Historical cultural heritage* and Appendix I: *Historical heritage impact assessment* describe the project's potential impact upon historic heritage values.

Under the *Heritage Act 2017*, a Heritage Permit is required to change any place or object listed on the Victorian Heritage Register under Part 5 of the Act. Consents are required to interfere with places on the Victorian Heritage Inventory under section 124 of the Act. Working closely with Heritage Victoria, MRPA would seek permits and consents as soon as possible following the Minister for Planning's assessment under the *Environment Effects Act 1978* to appropriately manage potential impacts on heritage or archaeological values.

## 3.4 OTHER RELEVANT LEGISLATION AND APPROVALS

Stakeholder engagement has had a key role in the production of the EES and reference design. Chapter 7: *Consultation and stakeholder engagement*, documents the requirements for consultation with stakeholders and the public, how this has been completed throughout the EES process and summarises the consultation outcomes and project responses. Engagement has been undertaken in accordance with the following legislation and guidelines:

- *Transport Integration Act 2010 (Vic)*
- *Environment Effects Act 1978 (Vic)*
- *Accessible Communications Guidelines 2014*
- *Public Participation in Government Decision-Making Guide 2015*.

All other statutory approvals required for the project would be obtained by MRPA or the contractor under the relevant legislation after the Minister for Planning has released the assessment of this EES. As outlined in Section 3.1, these include approvals, consents and licences under the:

- *Flora and Fauna Guarantee Act 1988 (Vic)* (FFG Act)
- *Water Act 1989*
- *Wildlife Act 1975*
- *Catchment and Land Protection Act 1994 (Vic)* (CaLP Act)
- *Road Management Act 2004*.

MRPA and its contractor must also comply with the requirements of the:

- *Catchment and Land Protection Act 1994* (Vic) (CaLP Act)
- *Environment Protection Act 1970* (and relevant State Environment Protection Policies).

Compliance obligations under these acts are addressed in the Environmental Management Framework for the project as outlined in Chapter 23: *Environmental management framework*.

### 3.5 RELEVANT LEGISLATION, POLICY AND GUIDANCE FOR THE EES

The EES has been undertaken in consideration of, and where applicable in accordance with, the legislation, policy and guidance listed in Table 3.1. This is presented against the key matters of EES evaluation objectives and regulatory requirements as provided in the EES Scoping Requirements (section 3.5, May 2018). Each technical chapter of the EES also states the relevant legislation, policy and guidance for that discipline, with discussion as to how this has informed the effects assessment and/or been met by the project.

**Table 3.1 Relevant legislation, policies and guidelines**

EES Scoping Matters to be addressed		Relevant legislation, policies and guidelines applied to the EES
Overall EES	Legislation	<ul style="list-style-type: none"> <li>• <i>Environment Effects Act 1978</i> (Vic)</li> <li>• <i>National Environment Protection Council Act 1994</i></li> <li>• <i>Land Acquisition and Compensation Act 1986</i></li> <li>• <i>Climate Change Act 2017</i>.</li> </ul>
	Key policies and guidelines	<ul style="list-style-type: none"> <li>• <i>Ministerial Guidelines for assessment of environment effects under the Environment Effects Act 1978</i></li> <li>• <i>National Water Quality Management Strategy 1994</i></li> <li>• <i>National Environment Protection (Assessment of Site Contamination) Measure (NEPC 2013)</i></li> <li>• <i>Climate Change Framework</i></li> <li>• <i>Plan Melbourne 5 Year Implementation Plan</i></li> <li>• <i>Environmental Guidelines for Major Construction Sites – Publication 480 (EPA Victoria, 1996)</i>.</li> </ul>
Transport efficiency, capacity and safety	Legislation	<ul style="list-style-type: none"> <li>• <i>Transport Integration Act 2010</i></li> <li>• <i>Road Management Act 2004</i></li> <li>• <i>Planning and Environment Act 1987</i> (P&amp;E Act).</li> </ul>
	Key policies and guidelines	<ul style="list-style-type: none"> <li>• <i>Victoria the Freight State – The Victorian Freight and Logistics Plan 2013</i></li> <li>• <i>Towards Zero – Victoria’s Road Safety Strategy and Plan 2016–2020</i></li> <li>• <i>Principal Bicycle Network, Victorian Cycling Strategy 2018–28</i></li> <li>• <i>Cycling into the Future 2013–23</i></li> <li>• <i>Plan Melbourne 2017–2050 – Metropolitan Planning Strategy</i> (Plan Melbourne)</li> <li>• <i>Planning for the Monash Employment and Innovation Cluster 2017</i></li> <li>• <i>Kingston Road Safety Strategy 2011–2015</i></li> <li>• <i>VicRoads SmartRoads Framework, 2012</i></li> <li>• <i>Victoria’s 30-year Infrastructure Strategy 2016</i>.</li> </ul>
Biodiversity	Legislation	<ul style="list-style-type: none"> <li>• <i>Flora and Fauna Guarantee Act 1988</i> (FFG Act)</li> <li>• <i>Planning and Environment Act 1987</i> (P&amp;E Act)</li> <li>• <i>Wildlife Act 1975</i></li> <li>• <i>Conservation Forests and Lands Act 1987</i></li> <li>• <i>Environment Protection Biodiversity Conservation Act 1999</i> (Cth) (EPBC Act)</li> <li>• <i>Catchment and Land Protection Act 1994</i> (CaLP Act).</li> </ul>
	Key policies and guidelines	<ul style="list-style-type: none"> <li>• <i>Guidelines for the Removal, Destruction or Lopping of Native Vegetation 2017</i></li> <li>• <i>Protecting Victoria’s Environment – Biodiversity 2037</i></li> <li>• <i>City of Kingston Biodiversity Strategy 2007–2012</i></li> <li>• <i>City of Kingston Green Wedge Plan 2012</i>.</li> </ul>



EES Scoping Matters to be addressed		Relevant legislation, policies and guidelines applied to the EES
Water, catchment values and hydrology	Legislation	<ul style="list-style-type: none"> <li>• <i>Environment Protection Act 1970</i></li> <li>• <i>Water Act 1989</i></li> <li>• <i>Catchment and Land Protection Act 1994 (CaLP Act)</i></li> <li>• <i>Environment Protection Biodiversity Conservation Act 1999 (Cth) (EPBC Act).</i></li> </ul>
	Key policies and guidelines	<ul style="list-style-type: none"> <li>• State Environment Protection Policies (SEPP): <ul style="list-style-type: none"> <li>- SEPP (Groundwaters of Victoria)</li> <li>- SEPP (Waters of Victoria)</li> </ul> </li> <li>• <i>City of Kingston Integrated Water Cycle Strategy 2012</i></li> <li>• <i>Australian and New Zealand Guidelines for Fresh and Marine Water Quality (ANZECC 2000)</i></li> <li>• <i>Australian Guidelines for Water Quality Monitoring and Reporting 2000</i></li> <li>• <i>The Framework for Marine and Estuarine Water Quality Protection 2002</i></li> <li>• <i>Australian Rainfall and Runoff Guideline Document (Engineers Australia, 1987 and revisions) (ARR)</i></li> <li>• <i>Australian Runoff Quality: A Guide to Water Sensitive Urban Design (Engineers Australia, 2006)</i></li> <li>• <i>Victoria Floodplain Management Strategy, Department of Natural Resources and Environment, 2016</i></li> <li>• <i>Healthy Waterways Strategy, Melbourne Water (2013).</i></li> </ul>
Land contamination and acid sulfate soils	Legislation	<ul style="list-style-type: none"> <li>• <i>Environment Protection Act 1970</i></li> <li>• <i>Water Act 1989</i></li> <li>• <i>Planning and Environment Act 1987 (P&amp;E Act)</i></li> <li>• <i>Catchment and Land Protection Act 1994 (CaLP Act).</i></li> </ul>
	Key policies and guidelines	<ul style="list-style-type: none"> <li>• State Environment Protection Policy: <ul style="list-style-type: none"> <li>- SEPP (Prevention and Management of Contaminated Land)</li> </ul> </li> <li>• <i>Environment Protection (Industrial Waste Resource) Regulations 2009</i></li> <li>• <i>Industrial Waste Resource Guidelines (IWRGs)</i></li> <li>• <i>EPA Victoria (2009c) Publication IWRG 621: Industrial Waste Resource Guidelines – Soil Hazard Categorisation and Management</i></li> <li>• <i>EPA Victoria (2009d) Publication IWRG 702: Soil Sampling</i></li> <li>• <i>EPA Victoria (2010) Publication IWRG 600.2: Waste Categorisation EPA Victoria Classification of Wastes (Publication 448, May 2007</i></li> <li>• <i>Australian Standard AS4482.1-2005 Guide to the investigation and sampling of sites with potentially contaminated soil – non-volatile and semi-volatile compounds</i></li> <li>• <i>Australian Standard AS4482.2-1999 Guide to the sampling and investigation of potentially contaminated soil – volatile substances</i></li> <li>• <i>Industrial Waste Management Policy (Waste Acid Sulfate Soils) Special Gazette S125 published on 18 August 1999.</i></li> </ul>
Cultural heritage	Legislation	<ul style="list-style-type: none"> <li>• <i>Aboriginal Heritage Act 2006 (amended 2016)</i></li> <li>• <i>Aboriginal Heritage Regulations 2018</i></li> <li>• <i>Heritage Act 2017</i></li> <li>• <i>Traditional Owners Settlement Act 2010</i></li> <li>• <i>Native Title Act 1993 (Cth).</i></li> </ul>

EES Scoping Matters to be addressed		Relevant legislation, policies and guidelines applied to the EES
Amenity and environmental quality	Legislation	<ul style="list-style-type: none"> <li>• <i>Environment Protection Act 1970</i></li> <li>• <i>Planning and Environment Act 1987 (P&amp;E Act)</i></li> <li>• <i>Road Management Act 2004</i></li> <li>• <i>Public Health and Wellbeing Act 2008</i></li> <li>• EPA Victoria Protocol for Environmental Management</li> <li>• <i>Transport Integration Act 2010.</i></li> </ul>
	Key policies and guidelines	<ul style="list-style-type: none"> <li>• State Environment Protection Policies <ul style="list-style-type: none"> <li>- SEPP (Air Quality Management)</li> <li>- SEPP (Ambient Air Quality)</li> <li>- SEPP (Control of Noise from Commerce, Industry and Trade)</li> </ul> </li> <li>• <i>EPA Noise Control Guidelines for Management of Construction Noise (Publication 1254)</i></li> <li>• <i>EPA Environmental Guidelines for Major Construction Sites (Publication 480)</i></li> <li>• <i>VicRoads Traffic Noise Reduction Policy</i></li> <li>• <i>Kingston Planning Scheme</i></li> <li>• <i>Greater Dandenong Planning Scheme</i></li> <li>• <i>Kingston Green Wedge Plan 2012</i></li> <li>• <i>Sand Belt Open Space Development Plan 1994</i></li> <li>• <i>Mordialloc Pride of the Bay: A Structure Plan for the Future</i></li> <li>• <i>Kingston Biodiversity Strategy 2008</i></li> <li>• <i>Kingston Open Space Strategy</i></li> <li>• <i>Kingston Public Health and Wellbeing Plan 2017–2021</i></li> <li>• <i>City of Greater Dandenong Green Wedge Management Plan 2017</i></li> <li>• <i>The Guidelines for Landscape and Visual Impact Assessment, Third Edition (2013), (GLVIA) developed by the Landscape Institute and Institute for Environmental Management (United Kingdom).</i></li> </ul>
Social, land use and infrastructure	Legislation	<ul style="list-style-type: none"> <li>• <i>Planning and Environment Act 1987 (P&amp;E Act)</i></li> <li>• <i>Land Act 1958</i></li> <li>• <i>Crown Land (Reserves) Act 1978</i></li> <li>• <i>Public Health and Wellbeing Act 2008.</i></li> </ul>
	Key policies and guidelines	<ul style="list-style-type: none"> <li>• <i>Living Links - Port Phillip and Westernport Catchment Management Authority</i></li> <li>• <i>Kingston Cycling and Walking Plan 2009–2013</i></li> <li>• <i>City of Greater Dandenong, Places for People: Open Space in Greater Dandenong 2009</i></li> <li>• <i>Greater Dandenong Sustainability Strategy 2016–2030</i></li> <li>• <i>Kingston Planning Scheme</i></li> <li>• <i>Greater Dandenong Planning Scheme.</i></li> </ul>