

### 3. Project Approval Requirements

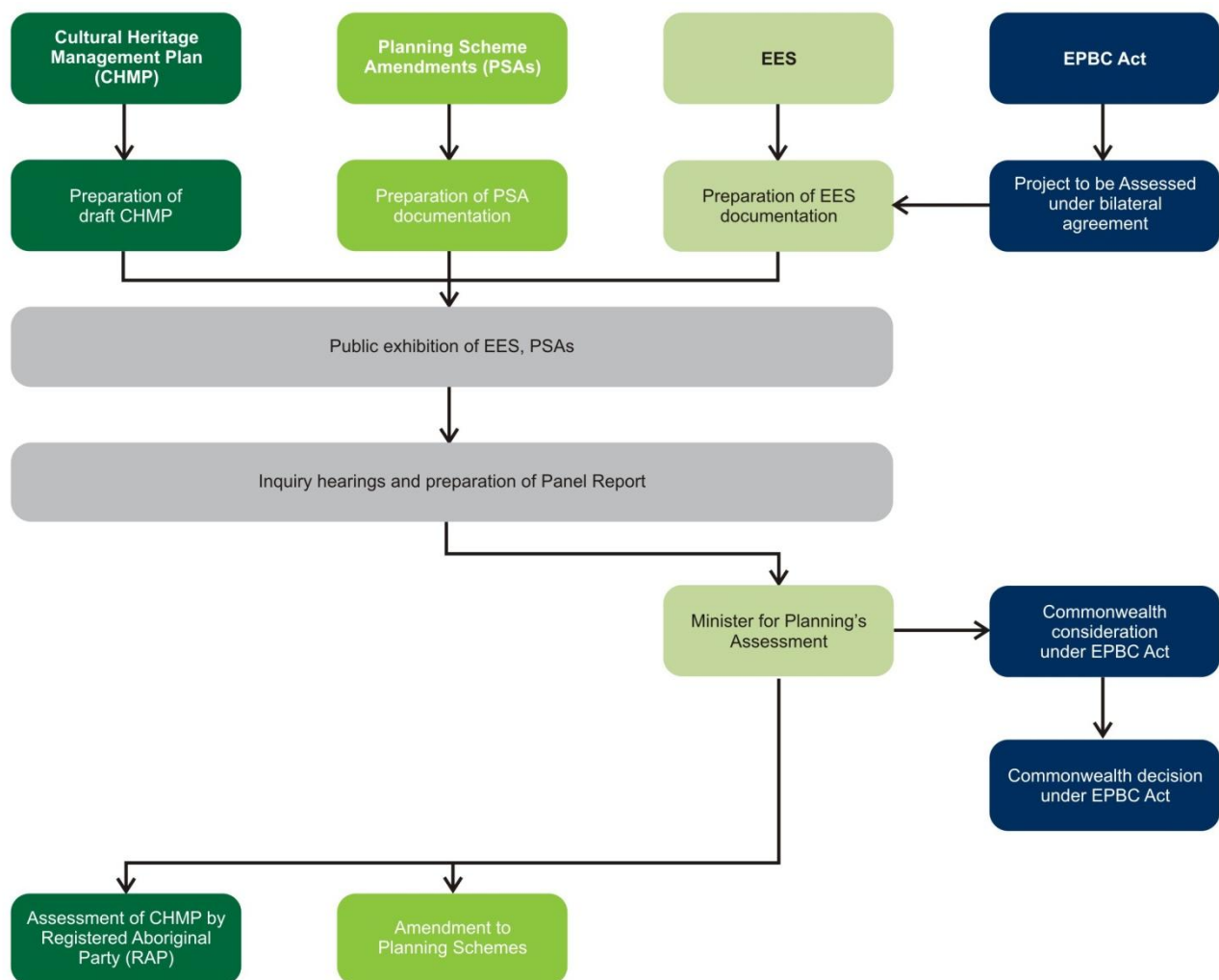
This section outlines the approvals process for the Project identifying the key approvals required in the context of relevant legislation.

As previously discussed in Section 1.2.2 of Chapter 1 (Introduction), the Project requires assessment under the *Environment Effects Act 1978*. In addition to this assessment, the Project also requires approval under the *Commonwealth Environment Protection and Biodiversity Conservation Act 1999*,

amendments to relevant local Planning Schemes under the *Planning and Environment Act 1987*, and the preparation of a Cultural Heritage Management Plan under the *Aboriginal Heritage Act 2006*.

The relationship of these approvals to the EES is shown in Figure 3-1 and further described in Sections 3.1 and 3.2.

Several other approvals would be required for specific components of the Project as listed in Section 3.2.4, but the principal approval requirements are those shown in Figure 3-1 and described below.



**Figure 3-1 Approvals Process**

#### 3.1 Commonwealth Approval Requirements

##### 3.1.1 Environmental Protection and Biodiversity Conservation Act 1999

The Project was referred to the Commonwealth Government under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) by VicRoads.

The delegate for the Minister for Sustainability, Environment, Water, Population and Communities, determined the Project to be a controlled action that requires assessment and approval under the EPBC Act on 17 December 2010.

The relevant controlling provisions for the Project under the EPBC Act are:

- Threatened species and ecological communities (Sections 18 and 18A).

The EES process is to be applied as an accredited process under the EPBC Act in accordance with the bilateral agreement between the Commonwealth and Victoria. This means that the Commonwealth Minister for Sustainability, Environment, Water, Population and Communities will make a decision whether to approve the Project under the EPBC Act, based on the EES and not a separate assessment process.

## 3.2 Victorian Approval Requirements

### 3.2.1 Environment Effects Act 1978

The *Environment Effects Act 1978* (EE Act) provides for the assessment of projects that are capable of having a significant effect on the environment. The EE Act does this by enabling the Minister for Planning (the Minister) to decide that an EES should be prepared for a Project.

The Ministerial Guidelines for assessment of environmental effects under the EE Act specify criteria under which a project must be referred to the Minister for Planning, for a decision on the need for an EES.

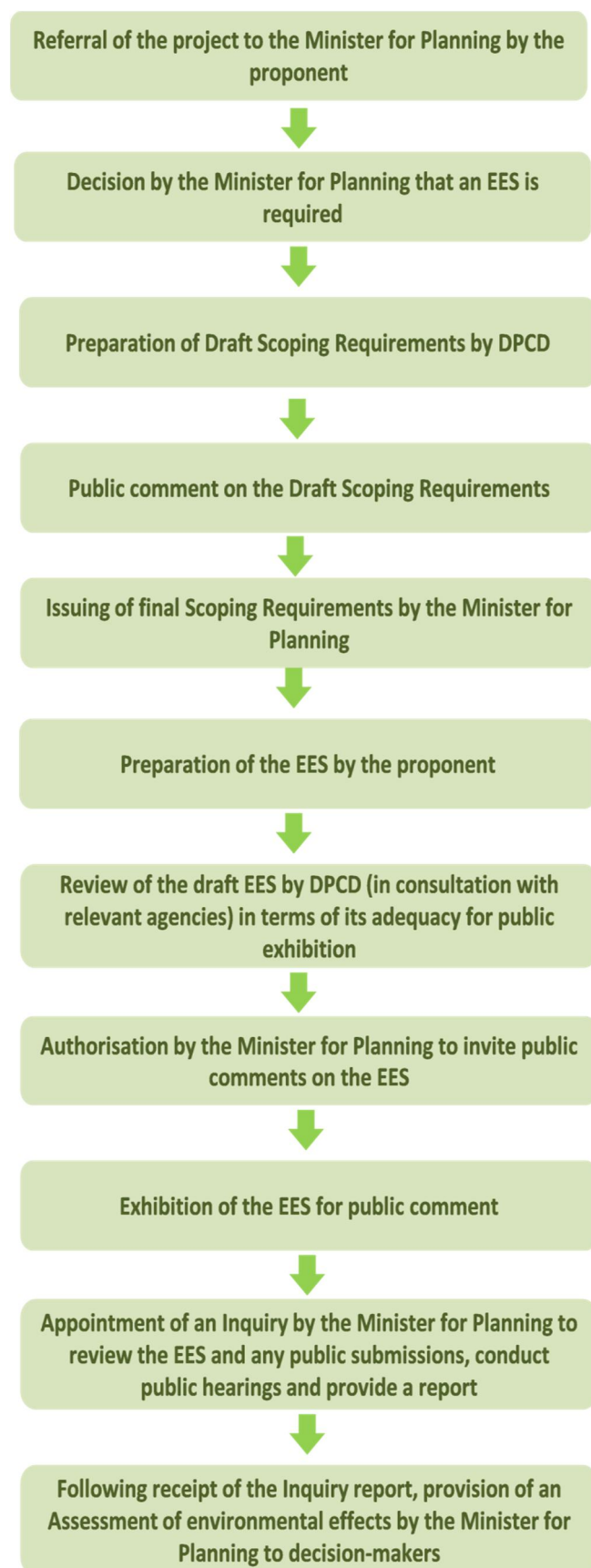
As the Project met several of these referral criteria, a referral for the Project was submitted to the Minister. A decision was made by the Minister on 27 October 2010, requiring VicRoads to prepare an EES under the EE Act, to document the likely environmental effects of the proposal.

This decision was made for the following reasons:

- *The project is likely to result in significant adverse effects on biodiversity, including native vegetation, listed flora and fauna species and listed ecological communities.*
- *The project could have significant effects on Aboriginal and non-Aboriginal cultural heritage.*
- *The project could have significant effects on existing land uses, infrastructure and communities, including by impacting on amenity and landscapes.*
- *The opportunity to avoid or minimise significant adverse effects through the selection of the roadway alignment and design, as well as mitigation and offsetting measures, requires further detailed investigation.*
- *An integrated assessment of environmental effects associated with alternative alignments is needed to inform decision-making.*

While VicRoads is responsible for preparing the EES, the Department of Planning and Community Development (DPCD) provides guidance on the EES process. The EES process for the Project is outlined in Figure 3-2.

The assessment of the Project under the EE Act will inform decisions whether or not to approve the Project, but does not constitute a statutory approval in its own right.



**Figure 3-2 Key steps of the Western Highway Section 2 EES process**

## EES Scoping Requirements

The EES Scoping Requirements provide the Minister's requirements on the range of environmental matters to be investigated and documented in the EES including Commonwealth requirements under the EPBC Act.

The draft EES Scoping Requirements for the Project were placed on public exhibition in May 2011 and then issued by the Minister for Planning in their final form in September 2011.

## Technical Reference Group

A Technical Reference Group (TRG) was established and chaired by DPCD. As set out in the Terms of Reference by DPCD, the role of the TRG for the Western Highway was to provide advice to the proponent (VicRoads) and DPCD, as appropriate including:

- Policies, strategies and statutory provisions, including any legislation, regulations and guidelines that apply to the Project.
- Issues warranting investigation as part of the siting, design and operation of the Project, as well as the proponent's draft responses to the issues.
- Proposed methodologies for the EES studies
- The proponent's public information and stakeholder consultation program for the EES.
- The adequacy of draft EES specialist study reports, as well as components of the draft EES main report.
- Coordination of applicable statutory assessment and approval processes.

The objective of the TRG was to enable relevant government departments and local councils to provide input and guidance to the EES process in relation to the adequacy of investigations being undertaken and also the Project's compliance with statutory requirements.

The TRG was made up of representatives from the following government departments, local councils and other organisations:

- Department of Planning and Community Development (DPCD)
- Department of Sustainability and Environment (DSE)
- Aboriginal Affairs Victoria (AAV)
- Victorian Environmental Protection Authority (EPA)
- Glenelg Hopkins Catchment Management Authority (CMA)
- Heritage Victoria
- Pyrenees Shire Council
- Rural City of Ararat

- Parks Victoria
- VicRoads Western Region

The first TRG meeting was held on 12 May 2011 and nine TRG meetings were held throughout the EES process with the last meeting held on July 12 2012.

## 3.2.2 Planning Scheme Amendments

The *Planning and Environment Act 1987* (P&E Act) establishes a framework for planning the use, development and protection of land in Victoria in the present and long-term interest of all Victorians. The P&E Act sets out the legislative basis to ensure that standard planning provisions are prepared and approved throughout Victoria.

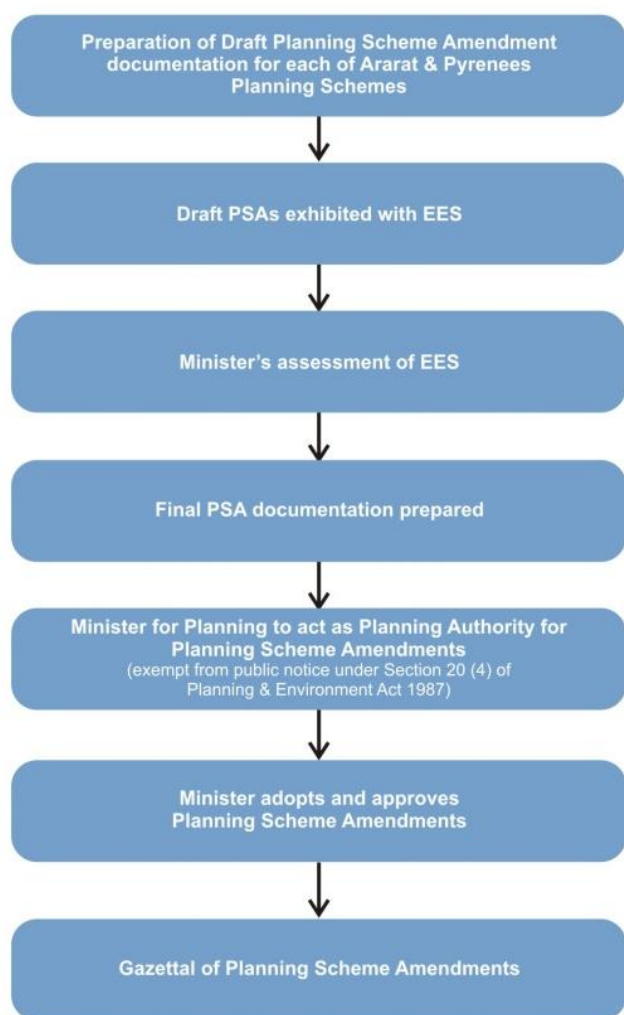
The P&E Act provides for planning control through the establishment of planning schemes. A planning scheme is a statutory document which sets out objectives, policies and provisions relating to the use, development, protection and conservation of land in the area to which it applies. A planning scheme regulates the use and development of land through planning provisions designed to achieve those objectives and policies. The Pyrenees Planning Scheme and the Ararat Planning Scheme are relevant to the Project. The Pyrenees Planning Scheme is administered by the Pyrenees Shire Council, and the Ararat Planning Scheme is administered by the Rural City of Ararat Council.

A draft Planning Scheme Amendment (PSA) for each of the Pyrenees and Ararat Planning Schemes is included in the EES (refer Technical Appendix C). Whilst the draft PSAs are being exhibited with the EES, it is not formal exhibition of the PSAs within the meaning of the P&E Act because the Minister for Planning is the planning authority for the amendments. The exhibition with the EES, however, provides the opportunity for persons to comment on the PSAs along with the EES.

It is proposed that the amendments to each of the Pyrenees and Ararat planning schemes be processed pursuant to Section 20(4) of the P&E Act 1987 (the Minister for Planning being the planning authority). This is appropriate because:

- The Minister must consider the EES
- The project is of significance to the State of Victoria
- The environmental, social and economic effects of the Project are considered through the EES process
- There has been extensive community consultation throughout the process of preparing the EES
- Relevant documents are exhibited with the EES.

A summary of the proposed PSA process for the Project is provided in Figure 3-3.



**Figure 3-3 Planning Scheme Amendment Process**

### 3.2.3 Cultural Heritage Management Plan

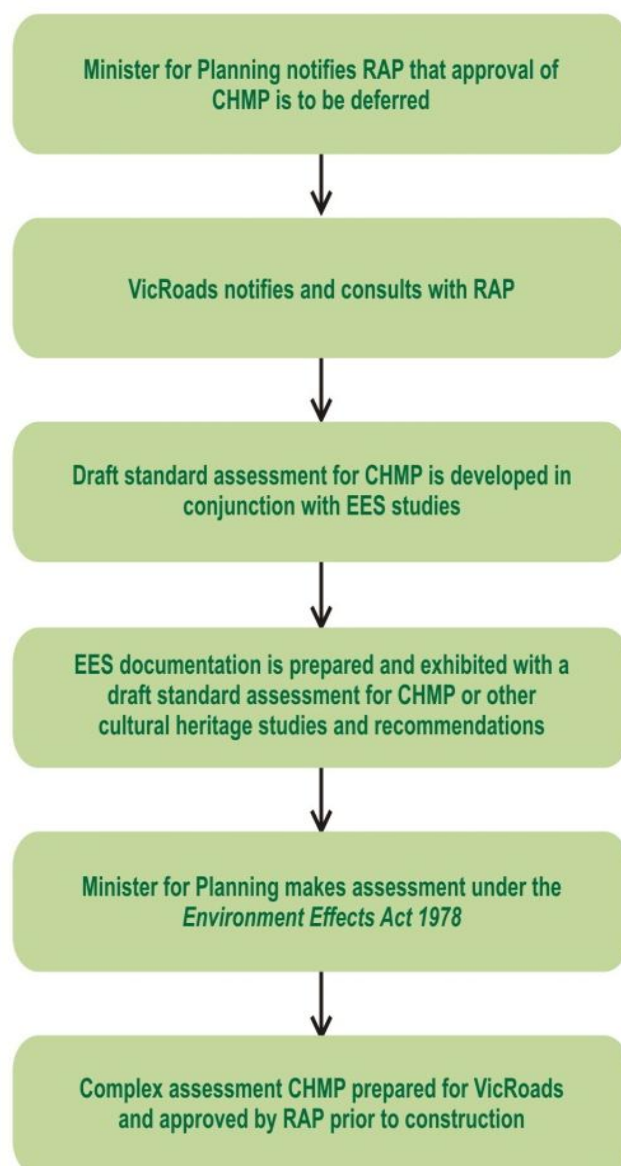
The *Aboriginal Heritage Act 2006* (AH Act) and associated regulations require the preparation of a Cultural Heritage Management Plan (CHMP) for activities which are defined High Impact Activities (activities which cause significant ground disturbance) and are within an Area of Cultural Heritage Sensitivity. Under Section 49 of the AH Act, a CHMP must be prepared prior to commencing works for any project for which an EES has been required.

Under the AH Act, Registered Aboriginal Parties (RAPs) are the cultural heritage decision-makers for a designated area and are determined by the Aboriginal Heritage Council. There are two RAPs for Section 2 of the Western Highway Project - Martang and Wathaurung Aboriginal Corporation.

*The Environmental Effects Advisory Note: Aboriginal cultural heritage and the environment effects process* (DPCD 2007) specifies that the CHMP for the Project be prepared in conjunction with the EES and assessed after the Minister for Planning makes the Assessment of the EES. The reason a draft is

exhibited for Projects such as this is because there is a higher degree of uncertainty or complexity and a range of Project options are being considered, therefore it is not prudent to pre-empt Project design or location decisions. This enables the details of a CHMP to be resolved as part of the development and assessment of an EES, in the broader context of other environmental, social and economic issues.

A standard assessment (involving surface inspection of the preferred and alternative alignment options) as required by the Aboriginal Heritage Regulations has been prepared for each of the two RAP areas within Section 2 and these assessments are appended to this EES. The complex assessment (involving sub-surface testing in areas specified in the standard assessment) and final CHMP would be completed for each RAP area subsequent to the EES process and submitted to the RAPs for evaluation and approval. Figure 3-4 outlines the CHMP process in conjunction with the EES.



**Figure 3-4 CHMP process in conjunction with EES**



### 3.2.4 Other Project Approval Requirements

There are other approvals which would be required for the Project and which would not be considered until after the Minister for Planning has released his assessment of the EES.

Such approvals include:

- Approval from the Minister for Environment and Climate Change to remove vegetation of very high conservation significance (under the provisions of 'Victoria's Native Vegetation Management: A Framework for Action' (Department of Natural Resources & Environment, 2002) coupled with the relevant Planning Scheme under the provisions of the *Planning & Environment Act 1987*.
- Licence to remove protected flora and fauna from public land under the provisions of the *Flora and Fauna Guarantee Act 1988*.
- Licence to construct works on a waterway or to construct a bore under the provisions of the *Water Act 1989*.
- Licence to take or use water from a waterway or groundwater under the *Water Act 1989*.
- Consents to disturb historical archaeology sites and/or permits to carry out works to a heritage place under the *Heritage Act 1995*.
- Permits to remove trees containing habitat or any other fauna habitat areas or fauna salvage and translocation under the *Wildlife Act 1975*.

