

Chapter 3

Legislation and
policy framework

3.1 Overview

The Hexham Wind Farm (the project) is being assessed via this Environment Effects Statement (EES) under the *Environment Effects Act 1978*. While the *Environment Effects Act 1978* and EES do not provide a direct avenue for approval of the project, the EES informs the Victorian Minister for Planning's (the Minister's) assessment of the acceptability of the environmental effects of the project, which in turn is provided to Commonwealth, Victorian and local decision makers to inform all applicable planning and environmental approvals. These statutory decision makers must consider the Minister's assessment in deciding whether to grant approval.

The EES considers Commonwealth and Victorian legislation including, but not limited to, the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), *Planning and Environment Act 1987* and *Aboriginal Heritage Act 2006*. The relationship between these acts and permits, consents and licences granted under those acts or other acts is also described in this chapter.

3.2 Project approvals process

The project was referred to the Minister in March 2022, in accordance with Section 8(3) of the *Environment Effects Act 1978*, to determine if an EES was required. On 19 April 2022, the Minister determined that an EES would be required due to the potential for the project to cause significant environmental effects associated with the following key matters identified in the EES scoping requirements proposed by the Department of Transport (DTP):

- biodiversity and ecological values within and near the site including native vegetation, listed flora, fauna and communities through loss, degradation or fragmentation of habitat, collision with turbines, or other ecological effects
- water environments including wetlands and Mustons Creek, as a result of direct disturbance, changes to stream flows or discharge of sediment or waste during construction, operation or decommissioning of infrastructure
- Aboriginal cultural heritage values
- historic heritage values
- landscape and visual amenity values
- amenity related to construction and decommissioning
- socio-economic environment, at local and regional scales, including effects on traffic, agriculture and other direct and indirect effects
- cumulative effects of the project, particularly on biodiversity, ecology, social and landscape values, given the proximity to other proposed, approved and operating wind farms.

The EES scoping requirements document, sets out the specific matters and evaluation objectives to be addressed through the EES. These EES scoping requirements were published in September 2024 following consideration of submissions received during the public exhibition of the draft EES scoping requirements in July 2023.

A Technical Reference Group was formed to provide technical advice to DTP and the project proponent during the preparation of the EES. The Technical Reference Group is made up of relevant state and local government representatives, as well as representatives from project approval authorities. Further information about the Technical Reference Group is provided in Chapter 7 – **Stakeholder consultation**.

Community consultation is a key part of the EES process. The EES is required to be exhibited for public comment for at least 30 business days to seek feedback from the community and other stakeholders. The proponent then responds to submissions and provides clarifications or further information where needed.

The Minister stated in their EES referral decision that an independent inquiry will be appointed to consider and report on the environmental effects of the proposal through a public hearing. It is intended that the inquiry will also be asked to consider the project's planning applications, submitted alongside the EES. In this case, it would form a joint Inquiry and Advisory Committee. The Inquiry and Advisory Committee would conduct a hearing, which provides an opportunity for those who have made submissions on the EES or planning application, to give presentations on their submissions. Following the conclusion of the hearing, the Inquiry and Advisory Committee submits its report to the Minister to inform the Minister's assessment for the project.

Figure 3.1 depicts the EES process under the *Environment Effects Act 1978* and its interplay with other legislation and the approvals required for the project.

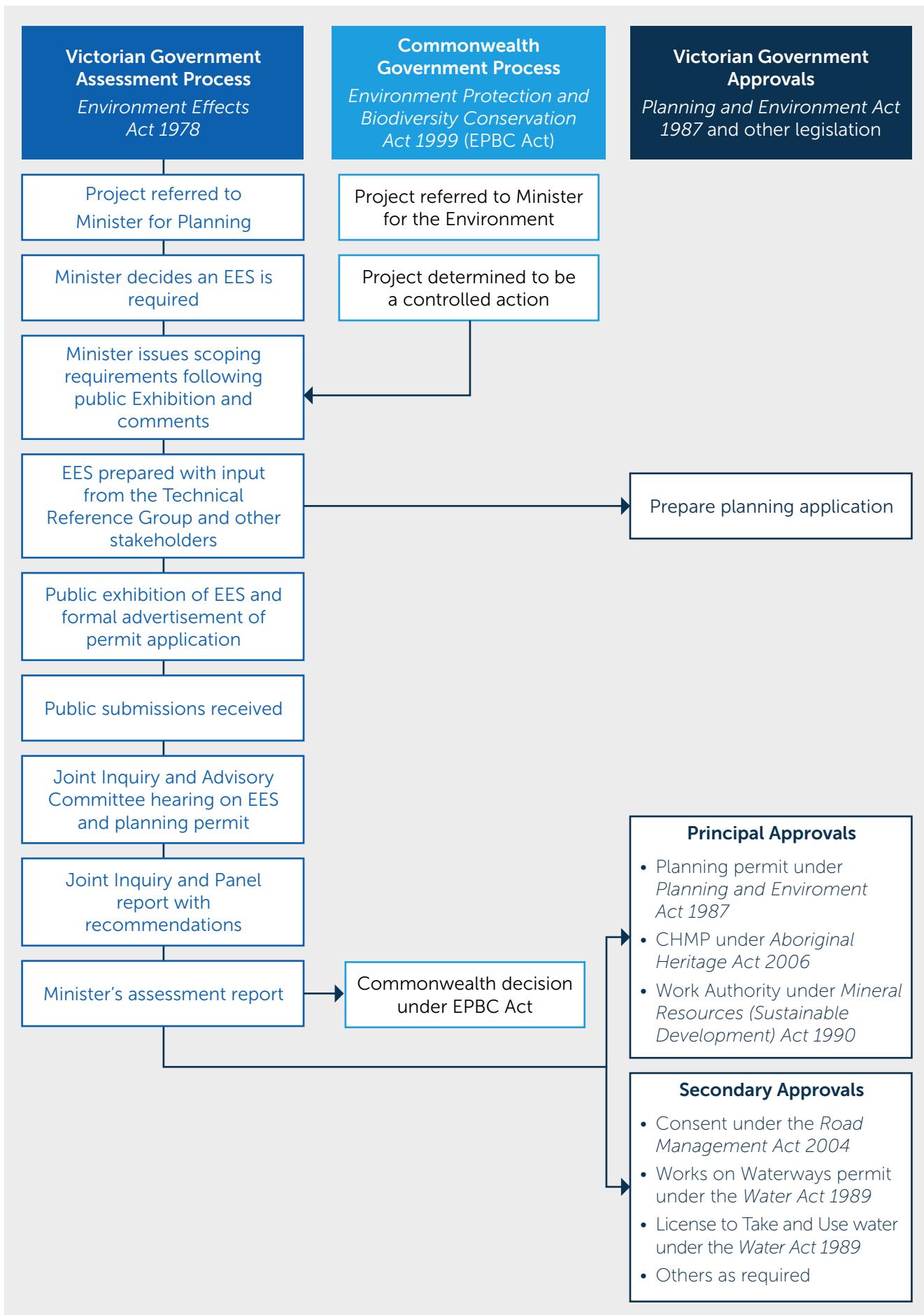


Figure 3.1 Interplay between the EES process and other statutory approvals

3.3 Principal approvals

3.3.1 Environment Protection and Biodiversity Conservation Act 1999

The EPBC Act provides a framework to protect nine defined matters of national environmental significance, which include nationally threatened species and ecological communities, migratory species and wetlands of international importance.

The project was referred to the Commonwealth Department of Climate Change, Energy, the Environment and Water (DCCEEW) under the EPBC Act on 30 April 2019. On 31 August 2022 a delegate for the Commonwealth Minister for the Environment determined the project was a 'controlled action' due to potential impacts to the following matters protected by the EPBC Act:

- listed threatened species and communities (sections 18 & 18A of the EPBC Act)
- listed migratory species (sections 20 & 20A of the EPBC Act).

Based on the information provided in the EPBC referral, the delegate for the Commonwealth Minister for the Environment determined the proposed action has the potential for significant impacts on the following matters of national environmental significance:

- Southern Bent-wing Bat (*Miniopterus orianae bessenii*)
- Grey-headed Flying-fox (*Pteropus poliocephalus*)
- White-throated Needletail (*Hirundapus caudacutus*).

The matters of national environmental significance listed above are addressed in Chapter 27 – **Matters of National Environmental Significance**.

The Commonwealth Minister for the Environment's delegate determined that "*the project will be assessed under the assessment bilateral agreement with Victoria*". Under the bilateral agreement, the Victorian Minister for Planning's assessment of the environmental effects of the project will be provided to the Commonwealth Minister for the Environment to inform the approval decision under the EPBC Act.

3.3.2 Planning and Environment Act 1987

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 *Planning and Environment Act 1987* 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 Moyne Planning Scheme is relevant to the project and is administered by the Moyne Shire Council

The project will require a planning permit in accordance with:

- Clause 35.07 (Farming Zone) for the use and development of a 'wind energy facility' and 'utility installation'
- Clause 36.04 (Transport Zone 2 Principal Road Network) if the use is not carried out on or behalf of the relevant transport manager
- Clause 52.05 (Signs) for business identification signage up to an area of 3 square metres
- Clause 52.17 (Native Vegetation) to remove, destroy or lop native vegetation, including dead vegetation
- Clause 52.29 (Land Adjacent to the Principal Road Network) to create or alter access to roads located in the Transport Zone 2 (i.e., Warrnambool-Caramut Road and Hamilton Highway)
- Clause 52.32 (Wind Energy Facility) for the use and development of the land for a 'wind energy facility' and associated infrastructure.

Planning schemes

In Victoria, planning schemes are statutory documents, prepared by the local council or the Minister for Planning, that contain objectives, policies and provisions that control land use and development (referred to as ordinance) and planning maps that show where zones and overlays apply.

Zones and overlays are explained in Chapter 20 – **Land use and planning**.

The use of land for 'earth and energy resources industry' (i.e., a quarry) does not require a permit under the Farming Zone if the conditions of Clause 52.08 (Earth and Energy Resources Industry) are met. That is, if an EES has been prepared under the *Environment Effects Act 1978*, which includes consideration of the quarry, the Minister for Planning's assessment of the EES has been submitted to the Minister for Energy and Resources, and a work authority has subsequently been granted by the Minister for Energy and Resources. Refer to Section 3.3.4 for more information about the work authority process.

The Minister for Planning is the Responsible Authority for all large energy generation facilities and utility installations, which includes wind farms. Further, the Minister also has the power to call-in any planning permit applications associated with the project under Section 97B of the *Planning and Environment Act 1987*. This includes applications for which the Minister is already the responsible authority. It is anticipated that all planning permits for the project will be called in by the Minister, enabling a combined assessment under Section 97B(1)(c) of the *Planning and Environment Act 1987*. As such, planning permit applications have been prepared and is exhibited alongside the EES.

A Bushire Management Overlay applies to a very small area in the south-east portion of the project site, however infrastructure is not proposed in this area and a planning permit is not triggered within this overlay.

The planning controls that currently apply to the land to be developed for the project are described in detail in Chapter 20 – ***Land use and planning*** and Appendix H – ***Land Use and Planning Report***.

3.3.3 Aboriginal Heritage Act 2006

In Victoria, Aboriginal cultural heritage is protected by the *Aboriginal Heritage Act 2006* and the Aboriginal Heritage Regulations 2018. Under this legislation, Aboriginal cultural heritage is protected by requiring planning permit applicants to prepare a Cultural Heritage Management Plan if and when their proposed actions pose a risk to Aboriginal cultural heritage. Under the *Aboriginal Heritage Act 2006*, actions are considered to pose a risk to Aboriginal cultural heritage, and therefore require the preparation of a Cultural Heritage Management Plan, when they are both a 'high impact activity' and occur in an 'area of cultural heritage sensitivity'.

Approval of a Cultural Heritage Management Plan is required pursuant to the *Aboriginal Heritage Act 2006* and its associated regulations. Pursuant to regulation 43(1)(a) and (b)(xxvi) of the Aboriginal Heritage Regulations 2018, construction of a wind energy project is a high-impact activity and, as such, a mandatory Cultural Heritage Management Plan is required. Section 49 of the *Aboriginal Heritage Act 2006* also states that projects assessed under the *Environment Effects Act 1978* (i.e., where an EES is required) require the preparation and approval of a Cultural Heritage Management Plan prior to commencing project construction.

Under the *Aboriginal Heritage Act 2006*, Registered Aboriginal Parties are the decision-makers for Aboriginal cultural heritage matters within a designated area, which is determined by the Victorian Aboriginal Heritage Council. The Registered Aboriginal Party for the project site is the Eastern Maar Aboriginal Corporation. A Registered Aboriginal Party was in place for the project site when notice of intent to prepare a Cultural Heritage Management Plan was submitted in May 2023. As such, Eastern Maar Aboriginal Corporation will be the responsible authority regarding evaluation of the Cultural Heritage Management Plan.

An unexpected finds protocol will be developed prior to the commencement of works and incorporated into the Cultural Heritage Management Plan. This protocol will contain contingency plans for the unexpected discovery of Aboriginal heritage places or objects during project construction. Site workers will be inducted as to the nature of unexpected finds and what action to take if any are found.

In accordance with the Section 52(1) of the *Aboriginal Heritage Act 2006*, a planning permit cannot be issued before a Cultural Heritage Management Plan is approved by the Registered Aboriginal Party.

Details of the Aboriginal heritage assessment process and outcomes are included in Chapter 18 – ***Aboriginal cultural heritage***.

3.3.4 Mineral Resources (Sustainable Development) Act 1990

The option to develop an on-site quarry to supply materials to construct internal access tracks, hardstand areas and turbine foundations (if the material is of suitable quality) is being considered. The *Mineral Resources (Sustainable Development) Act 1990* regulates mineral exploration, mining and extractive activities in Victoria, including quarrying.

The extraction of stone requires a work authority under section 77I of the *Mineral Resources (Sustainable Development) Act 1990*, regulated by Resources Victoria (part of DEECA), Victoria's regulator of quarrying activities.

To obtain a work authority, the project must prepare a work plan for the proposed quarry under section 77G of the *Mineral Resources (Sustainable Development) Act 1990*, which includes a rehabilitation plan and a community consultation plan. This work plan requires approval by Resources Victoria. The work plan must meet all prescribed criteria specified in the *Mineral Resources (Sustainable Development) Act 1990*, consider relevant requirements specified in the Minister's assessment, and include review by relevant agencies (e.g., EPA Victoria, Moyne Shire Council, First Peoples – State Relations, Eastern Maar Aboriginal Corporation, catchment and water authorities) before it is approved, and quarrying can commence. If the on-site quarry is to be developed, the preliminary project work plan provided in Attachment II – **Preliminary draft Quarry Work Plan** to meet the EES scoping requirements would be formally reviewed by Resources Victoria following the Minister's assessment (of the EES).

The use of groundwater (if extracted from an on-site quarry) requires a separate permit from Southern Rural Water to take and use that water (refer to Section 3.4.4).

3.4 Other relevant legislation and approvals

3.4.1 Environment Protection Act 2017

The *Environment Protection Act 2017* sets out the legislative framework for the protection of human health and the environment from pollution and waste in Victoria, and seeks to prevent impacts from pollution and waste from occurring.

At the centre of this act is the 'general environmental duty', which requires any person in Victoria (businesses, industry and the community) engaging in an activity that may risk harming human health and the environment from pollution and waste to minimise those risks, so far as reasonably practicable (see info box). This can be achieved by implementing appropriate controls that are proportionate to the risk (i.e., the greater the risk of potential harm, the greater the management expectation). Controls can include:

- eliminating or changing the risk source
- engineering or building controls, and/or
- training and safe site practices.

What is considered 'reasonably practicable' can change over time as the understanding of risks evolves and risk management improves through new technology and methods.

EPA Victoria Publication 1856: Reasonably practicable provides information about how to determine what is 'reasonably practicable'. A failure to comply with the general environmental duty is an indictable offence.

To determine what is considered 'reasonably practicable', the level and scale of the risk of harm from an activity should be considered. This includes:

- whether the risk can be eliminated
- chance of harm resulting
- degree of harm
- knowledge of risk
- available controls
- cost of controls.

Duties that work alongside the general environmental duty include the contaminated land duties and waste duties:

- In accordance with Part 3.5 Division 2 of the *Environment Protection Act 2017*, the duty to manage contaminated land and groundwater includes the requirement to 'minimise risks of harm to human health and the environment from the contaminated land so far as reasonably practicable'. These duties include

identifying and assessing contamination, implementing measures to minimise risk of the contamination (e.g., clean-up activities) and notifying EPA Victoria of the contamination. Contaminated soil will be managed in accordance with EPA's Waste disposal categories: characteristics and thresholds guidance (EPA Publication 1828.3).

- Duties relating to industrial waste and priority waste, outlined in Part 6.4 and Part 6.5 of the *Environment Protection Act 2017*.

include the classification of waste for storage, handling, treatment and disposal, containment of waste to prevent contamination, and consideration of alternatives to waste disposal.

If acid sulfate soil or contaminated soil is encountered during project construction, it would be managed as a priority waste in accordance with EPA Victoria Publication 1968.1: Guide to classifying industrial waste.

Subordinate legislation (i.e., tools that support the *Environment Protection Act 2017*) include the Environment Reference Standard 2021. The Environment Reference Standard identifies environmental values to be achieved and maintained, and how these values are to be assessed. It contains values, indicators and objectives for ambient air, water, ambient sound and land environments. The project proposes measures to ensure that development complies with the reference standards of ambient air, ambient sound, land and water which is outlined within the impacts assessments:

- Appendix B – *Surface Water and Groundwater Impact Assessment*
- Appendix E1 – *Environmental Noise and Vibration Assessment*
- Appendix L1 – *Air Quality Impact Assessment*.

3.4.2 Environment Protection Regulations 2021

The Environment Protection Regulations 2021 are also subordinate legislation to the *Environment Protection Act 2017*. The Environment Protection Regulations 2021 outline prescribed 'permission activities', being activities that may cause harm and require permission such as a licence, permit or regulation. In accordance with Schedule 1 of this regulation, 'Extractive industry and mining' is classified as a prescribed development and operating activity. The Environment Protection Regulations 2021 also specify the base noise limits for noise emissions in urban and rural areas from commercial, industrial and trade premises.

The Environment Protection Amendment (Wind Turbine) Regulations 2021 and 2022 made under the *Environment Protection Act 2017* provide ongoing wind turbine noise regulations which provide clarity for wind energy project operators and investors, and assurance for communities regarding the protection of human health and the environment from wind turbine noise.

Requirements for wind energy project operators include:

- compliance with noise limits in accordance with the relevant noise standard
- an upper noise limit of 45 dB(A) or background sound plus 5 dB for properties subject to stakeholder agreements
- completing a post construction noise assessment within 12 months of commencement of operations
- implementing a noise management plan, including a complaints management plan
- providing an annual statement detailing the actions taken to ensure compliance
- conducting noise monitoring every five years, from 1 January 2024.

EPA Victoria is the primary regulator for operational wind turbine noise (for both new and existing wind farms).

EPA Victoria is also the primary regulator for water discharges from mining and quarrying activities and advise Earth Resources Regulation in their assessment of the quarry work plan on air discharges, noise and waste management, and environmental management conditions related to waste and pollution.

Industrial waste: includes all waste from commercial, industrial and trade activities, and building and road construction.

Priority waste: a subset of industrial waste, priority waste refers to waste that has greater regulatory controls as it may cause harm to human health or the environment, and has the potential to be recycled or reused.

Water collected dewatering of excavations (e.g., wind turbine foundations, underground cable trenches) and the on-site quarry would be managed in accordance with the Environment Protection Regulations 2021, and approval would be sought from relevant authorities to discharge water at a suitable site.

The design and delivery of the project must comply with appropriate regulations and guidelines under the *Environment Protection Act 2017* where they apply to works and other project activities.

If infiltration from proposed retention basins, including at the quarry site, results in discharge to an aquifer, an A18 permit would be required under the Environment Protection Regulations 2021. The project will assess whether the activity constitutes a discharge of waste to groundwater and obtain appropriate permissions from EPA Victoria as required in accordance with final designs.

3.4.3 Heritage Act 2017

The *Heritage Act 2017* regulates the protection and conservation of places and objects of heritage significance listed in the Victorian Heritage Register and archaeological sites and relics listed in the Victorian Heritage Inventory.

Under the *Heritage Act 2017*, a permit is required from Heritage Victoria to carry out works and activities in relation to a registered place or registered object.

Part of one historic place in the Victorian Heritage Register is located within the project site: Stone Mileposts (H1700)(Milepost B and C). Impacts to this heritage place by project works will be avoided. As such, no approvals are expected to be required for the project under the *Heritage Act 2017*. However, in the event that the potential for a historical archaeological site is discovered, a suitably qualified archaeologist would undertake a survey in line with the *Heritage Act 2017*.

3.4.4 Water Act 1989

Victoria's *Water Act 1989* promotes the orderly, equitable and efficient use of water resources to ensure that water resources are conserved and properly managed for sustainable use for the benefit of present and future Victorians. The *Water Act 1989* regulates the impacts on and use of surface water and groundwater.

Southern Rural Water is the delegated authority under the *Water Act 1989*. A licence to take or use groundwater would be sought from Southern Rural Water under Section 51 of the *Water Act 1989* for dewatering, should the project intercept groundwater at the on-site quarry or construct a bore. The project would require approval from Southern Rural Water.

Additionally, if infiltration from retention basins results in the underground disposal of matter, a Section 76 licence may be required. This licence ensures that the disposal does not adversely affect groundwater quality or aquifer integrity. Appropriate licencing will be obtained from Southern Rural Water as required in accordance with final designs.

The project will require 56 crossings over designated waterways including Mustons Creek (two crossings), Tea Tree Creek (one crossing), Lyall Creek (one crossing) and Drysdale Creek (three crossings), associated with the transmission cables and access tracks. A licence to construct works across any designated waterway or to construct a bore would require a works on a waterway licence from Glenelg Hopkins Catchment Management Authority (CMA), pursuant to Section 67 of the *Water Act 1989*.

The *Water Act 1989* defines a '**designated waterway**' as "a natural channel in which water regularly flows, whether or not the flow is continuous".

3.4.5 Catchment and Land Protection Act 1994

The *Catchment and Land Protection Act 1994* defines requirements to avoid land degradation, conserve soil, protect waste resources, and to eradicate and prevent the establishment and spread of noxious weeds and pest animals.

The *Catchment and Land Protection Act 1994* integrates management and protection of catchments through Catchment Management Authorities (CMAs). The project is located within the Glenelg Hopkins CMA boundary. The Glenelg Hopkins Regional Catchment Strategy 2021–2027, developed by the Glenelg Hopkins CMA as a requirement of the *Catchment and Land Protection Act 1994*, is intended to be the primary integrated planning framework for land, water and biodiversity for the region.

The Glenelg Hopkins CMA also have the Glenelg Hopkins Waterway Strategy 2014–2022, which provides a framework for river, estuary and wetland management in the region.

3.4.6 Flora and Fauna Guarantee Act 1988 and Flora and Fauna Guarantee Amendment Act 2019

The *Flora and Fauna Guarantee Act* (FFG Act) provides a framework for biodiversity conservation in Victoria. The FFG Act provides for the listing of threatened species, communities of flora and fauna and potentially threatening processes. A number of non-threatened flora species are also protected under the FFG Act.

The *Flora and Fauna Guarantee Amendment Act 2019* came into effect on 1 June 2020 and strengthens the framework for the protection of Victoria's biodiversity. This includes a nationally consistent approach (using the Common Assessment Method) to the assessment and listing of threatened species, which adopts the conservation status categories and criteria of the International Union for the Conservation of Nature Red List of Threatened Species.

A permit from the Department of Energy, Environment, and Climate Action (DEECA) is required to remove species protected under the FFG Act from public land and for impacts to 'critical habitat' on private land.

An assessment of the potential effects of the project on listed threatened species and ecological communities and measures to avoid and minimise the potential adverse effects is described in Chapter 8 – ***Biodiversity and habitat***.

3.4.7 Wildlife Act 1975

Victoria's *Wildlife Act 1975* establishes procedures for the protection and conservation of wildlife, the prevention of wildlife becoming extinct and the sustainable use of and access to wildlife. The *Wildlife Act 1975* also includes procedures to prohibit and regulate the conduct of persons engaged in activities concerning or related to wildlife. Should wildlife require relocation during construction, a licence or authorisation would be obtained from DEECA.

3.4.8 Road Management Act 2004

The purpose of the *Road Management Act 2004* is to establish a coordinated management system for public roads that will promote safe and efficient state and local public road networks and the responsible use of our roads. Consent from the coordinating road authority is required for the construction of works in, on or under roads pursuant to Section 63 of the *Road Management Act 2004*. The project requires the development and upgrade of intersections and local roads to enable access to the site. There will also be the requirement for electricity transmission cables to cross roads within the project site. Consent for each upgrade and crossing will be required from the relevant authority prior to works commencing.

3.4.9 Crown Land (Reserves) Act 1978

The *Crown Land (Reserves) Act 1978* provides for the reservation and management of Crown lands. Crown land can be reserved for a range of public purposes, including public parks and gardens, the beds and banks of waterways, and railways.

Crown land, including unnamed government roads within the project site and some road reserve land will be utilised by the project and will require consent. Wind turbine generators located close to roads will result in blade overhang onto Crown land and will require consent.

3.4.10 Land Act 1958

The *Land Act 1958* deals with the sale, grants and occupation of unreserved Crown land in Victoria. Unreserved Crown land within the project site includes a number of unnamed government roads.

Works or activities that may occur on Crown land (comprising unnamed government roads) within the project site may include the creation of access to and from other roads, underground electrical infrastructure and overhead powerlines. A permit is required to impact on unreserved crown land and permission will be required.

There is an exemption in the *Land Act 1958* from the requirement to obtain a licence. A lease under the *Land Act 1958* is not required for construction of a designated road in a Crown survey boundary and section 93(1)(d) of the *Electricity Industry Act 2000* enables an electricity corporation (and a generation company) subject to the *Road Management Act 2004* to construct power infrastructure on, under or over any road.

3.4.11 Climate Change Act 2017

The *Climate Change Act 2017* provides Victoria with the legislative foundation to manage climate change risks, maximise the opportunities that arise from decisive action, and assist in the transition to a climate-resilient community and economy with net-zero emissions by 2050.

The *Climate Change Act 2017* outlines a policy framework and pathway to 2050 that is consistent with the Paris Agreement to keep global temperature rise below two degrees Celsius above pre-industrial levels. It provides a platform for subsequent action by government, community and business, and the long-term perspective and policy stability needed to drive innovation and investment.

3.5 Key policies, guidelines and strategies

There are a range of other policies, strategies and guidelines that are applicable to the elements of the project. Key documents are outlined in this section, though this is not an exhaustive list. Discipline-specific chapters of this EES refer to policies, strategies and guidelines that are directly relevant to those study aspects (refer to Section 3.6).

3.5.1 Policy and planning guidelines for development of wind energy facilities in Victoria

The Planning Guidelines for Development of Wind Energy Facilities in Victoria (the Planning Guidelines) (DTP, 2023a) are a reference document listed under Clauses 19.01 (Renewable Energy) and Clause 52.32 (Wind Energy Facility) of the Victoria Planning Provisions.

The Planning Guidelines recognise Victoria's abundant wind resources that will support the development of large-scale grid connected wind energy projects which can contribute to the sustainable delivery of Victoria's future energy needs. The purpose of the Planning Guidelines is to provide:

- a framework for a consistent and balanced approach to the assessment of wind energy projects across the state
- a set of consistent operational performance standards to inform the assessment and operation of a wind energy project
- guidance as to how planning permit application requirements might be met.

The Planning Guidelines provide advice for Responsible Authorities, proponents and applicants and the community regarding suitable sites to locate wind energy projects and to inform planning decisions about a wind energy project proposal.

The Planning Guidelines outline what information and assessment should be provided with a planning application for a wind energy project. Considerations include the following:

- Consistency with the Planning Policy Framework.
- Noise impacts – The project must submit a pre-construction noise assessment, demonstrating compliance with the New Zealand Standard NZS 6808:2010 Acoustics – Wind Farm Noise. There are mandatory conditions which must appear on any permit that may be issued.
- Landscape and visual amenity – To reduce visual impact, the wind energy guidelines suggest measures such as minimising views from areas used for recreation and for dwellings, spacing wind turbines to respond to the landscape characteristics, protecting waterways and drainage lines, minimising removal of vegetation, constructing wind turbines at a consistent height, ensuring wind turbines rotate in the same direction and limiting night lighting.
- Flora and fauna and removal of native vegetation – The Responsible Authority needs to consider the survey effort made to support the application and what efforts may be made to protect native vegetation in the future. The extent and type of native vegetation to be removed is to be considered.
- Aircraft safety – The Responsible Authority will assess whether appropriate consultation has been undertaken with the Civil Aviation Safety Authority and with any other private airstrip operators that may not be identified by Civil Aviation Safety Authority.

3.5.2 Significant Economic Development

The purpose of Clause 53.22 of the *Planning and Environment Act 1987* is to prioritise and facilitate the planning, assessment and delivery of projects that will make a significant contribution to Victoria's economy and provide substantial public benefit, including jobs for Victorians. Specifically, the purpose of the clause is to:

- prioritise and facilitate the planning, assessment and delivery of projects that will make a significant contribution to Victoria's economy and provide substantial public benefit, including jobs for Victorians
- provide for the efficient and effective use of land and facilitate use and development with high quality urban design, architecture and landscape architecture.

Clause 53.22 applies to an application under any provision of the planning scheme if the condition corresponding to Category 1 are met. Table 3.1 assesses the eligibility of the project against the requirements of Clause 53.22.

Table 3.1 Eligibility of the project under Clause 53.22

Land Use	Condition	The Project
Renewable Energy Facility	An installed capacity of 1 megawatt or greater must be proposed.	A wind energy project with approximately 741 megawatts of install capacity
Utility Installation	A utility installation used to transmit or distribute electricity or store electricity, if the installed capacity is one megawatt or greater, must be proposed.	Construction of underground and overhead transmission line from the project connecting to the National Energy Market. A battery energy storage system with an installed capacity of 200 megawatt/800 megawatt-hours

As the project would have an installed capacity of over one megawatt and would transmit electricity, it meets the eligibility criteria of Clause 53.22 and applies to the planning permit application to the Minister via the Development Facilitation Program. The application will be exempt from the decision requirements of sections 64(1), (2) and (3), and the review rights of sections 82(1) of the *Planning and Environment Act 1987*. The planning permit applications for the project will be made pursuant to Clause 53.22 of the planning scheme.

3.5.3 Guidelines for the removal, destruction or lopping of native vegetation

The Guidelines for the removal, destruction or lopping of native vegetation (DELWP, 2017c) provide a three-step approach to native vegetation:

1. Avoid the removal, destruction or lopping of native vegetation.
2. Minimise impacts from the removal, destruction or lopping of native vegetation that cannot be avoided.
3. Provide an offset to compensate for the biodiversity impact from the removal, destruction or lopping of native vegetation.

The construction of the project would require the removal of some native vegetation and is required to achieve net zero loss of vegetation. In accordance with these guidelines, as well as the EPBC Act and FFG Act, the project would use appropriate offsets where native vegetation removal cannot be avoided.

The assessment of the project's impact on native vegetation is provided in Chapter 8 – *Biodiversity and habitat*. The project's offset strategy is included within Appendix D – *Flora and Fauna Assessment*.

3.5.4 Interim Guidelines for the Assessment, Avoidance, Mitigation and Offsetting of Potential Wind Farm Impacts on the Victorian Brolga Population 2011

The Interim Guidelines for the Assessment, Avoidance, Mitigation and Offsetting of Potential Wind Farm Impacts on the Victorian Brolga Population 2011 (the Interim Brolga Guidelines) (DSE, 2012) are applicable to the project.

The Interim Brolga Guidelines were developed by the Brolga Scientific Panel and “*respond to the perceived risk posed to Brolga by the new wind industry by outlining an approach to manage the effects of both individual wind farms and the broader wind energy industry.*” They provide guidance on assessment methodology for impact assessments on Brolga and include guidance on suitable mitigation measures for the proposed development to produce a net-zero impact on the Victorian Brolga population.

The work underpinning the assessment of potential impact of the project on Brolga has been completed to satisfy the requirements of the Interim Brolga Guidelines.

The assessment of the potential impact of the project on Brolga is contained within Chapter 10 – *Brolga* and Appendix C1 – *Brolga Impact Assessment*.

3.6 Relevant legislation and guidelines for EES assessment

Legislation relating to principal approvals and other permits, consents and licences (discussed in this chapter), and how these relate to the EES scoping requirement evaluation objectives, is summarised Table 3.2 below. This table also lists other relevant legislation that was considered in the assessment of environmental effects in the EES specialist studies and discussed further in each discipline-specific chapter (Chapters 8–25).

Table 3.2 Legislation and guidelines relevant to the EES scoping requirement matters

Legislation	EES scoping requirement evaluation objective					
	Biodiversity and habitat	Catchment values and hydrology	Landscape and visual	Amenity	Cultural heritage	Land use and socioeconomic
Commonwealth						
Aboriginal and Torres Strait Islander Heritage Protection Act 1984					✓	
Civil Aviation Act 1988						✓
Civil Aviation Regulations 1988 and Civil Aviation Safety Regulations 1998						✓
Environment Protection and Biodiversity Conservation Act 1999	✓				✓	
Native Title Act 1993					✓	
Victorian						
Aboriginal Heritage Act 2006 and Aboriginal Heritage Regulations 2018					✓	
Catchment and Land Protection Act 1994	✓	✓				
Crown Land (Reserves) Act 1978						✓
Environment Protection Act 2017 and Environment Reference Standard		✓		✓		
Environment Protection Regulations 2021 (specifically Part 5.3, Division 5 – Wind Turbine Noise)				✓		
FFG Act and FFG Amendment Act 2019	✓					
Heritage Act 2017					✓	
Land Act 1958						✓
Mineral Resources (Sustainable Development) Act 1990		✓		✓	✓	✓
Planning and Environment Act 1987	✓	✓	✓	✓	✓	✓
Road Management Act 2004						✓
Road Safety Act 1986 and Road Safety (Traffic Management) Regulations 2019						✓
Traditional Owner Settlement Act 2010					✓	
Water Act 1989			✓			
Wildlife Act 1975	✓					