

STATEMENT OF REASONS

I, John Bradley, Secretary to the Department of Energy, Environment and Climate Action, provide the following reasons for my decision not to propose to make a critical habitat determination under section 20(1) of the *Flora and Fauna Guarantee Act 1988* (FFG Act).

Background

Dr Michelle Casanova, Convenor of the Committee, wrote to me on 5 April 2023 recommending that I make a critical habitat determination for an area that contributes to the conservation of the Mt Donna Buang Wingless Stonefly.

Legislative provisions

Section 20(1) provides that I may determine any area of Victoria to be critical habitat. A determination must not be made unless I consider that one (or more than one) of the conditions set out in paragraphs (a) to (c) of section 20(2) exist. For example, paragraph (a) reads, “the area significantly contributes to the conservation in Victoria of a listed taxon or community of flora or fauna”.

Section 20A(1) provides that the Committee may make a recommendation to me to make a critical habitat determination. Section 20A(2) provides that I must consider a recommendation of the Committee and decide whether or not to propose to make a critical habitat determination. Section 20A(3) provides that I must give reasons to the Committee for a decision to propose or not propose to make a critical habitat determination. Section 20A(4) provides that I must publish the decision and the reason for it on the internet.

Section 20E(1) provides that I may make guidelines in relation to areas that may be eligible for critical habitat determinations. Section 20E(2) provides that I must consult with the Committee before making any guidelines. Section 20E(3) provides that I must publish a copy of any guidelines on the internet.

Evidence or other material on which my decision was based

I considered the Critical Habitat Guidelines for identifying areas that may be eligible for critical habitat determinations (December 2023) made under section 20E(1) of the FFG Act.

The evidence I had in front of me at the time of making my decision, and on which I based my decision, was the Warburton Mountain Bike Destination, Minister’s Assessment under the Environment Effects Act 1978 (Minister for Planning, October 2022).

In the Minister for Planning’s assessment report she supported the conclusion from the Independent Advisory Committee that the proposed trails marked 1, 45, 46 and 47 as documented in the submission document would present unacceptable risk of significant effects, particularly for the Mount Donna Buang Wingless Stonefly, which is of high conservation value to the State.

The Minister further concluded that there was insufficient certainty regarding the effectiveness of the proposed mitigation measures at the time. For these reasons, the Minister recommended that Trails

1, 45, 46 and 47 should not form part of the project that is implemented due to the risk of significant unacceptable effects on these significant environmental values within the national park.

These changes are reflected in the Yarra Ranges Planning Scheme Notice of Approval of Amendment C198yran and the Victorian Government Gazette No. S 620 Thursday 23 November 2023.

Findings in relation to the statutory requirements for the decision

An analysis was undertaken against the requirements of section 20(2). I am satisfied that the area significantly contributes to the conservation in Victoria of Mt Donna Buang Wingless Stonefly, a listed taxon, as required by section 20(2).

Findings in relation to discretionary considerations

The area falls mostly within the Yarra Ranges National Park, which is managed by Parks Victoria. Some smaller areas to the north-east fall within the Marysville State Forest, which is managed by my department, the Department of Energy, Environment and Climate Action.

In October 2022, the then Minister for Planning published an assessment, under the *Environment Effects Act 1978*, for the Warburton Mountain Bike Destination project. The then Minister assessed that the majority of the proposed trails and proposed other works could proceed with acceptable environmental effects, subject to modifications and an environmental management regime. The then Minister identified which of the proposed trails would present unacceptable risk of significant effects to the Mount Donna Buang Wingless Stonefly, the Cool Temperate Rainforest, and the Cool Temperate Mixed Forest.

The Minister for Planning has approved Amendment C198yran to the Yarra Ranges Planning Scheme. The Amendment came into operation on 23 November 2023. The details relating to how the Amendment facilitates the Warburton Mountain Bike Destination Project, Southern Network, were set out in the Victoria Government Gazette (GG2023S620) -

“The Amendment facilitates the Warburton Mountain Bike Destination Project, Southern Network, by:

- applying Clause 45.12 (Specific Controls Overlay) to land required for the project to allow the use and development of land in accordance with the specific controls in the Warburton Mountain Bike Destination Project (Southern Network) Incorporated Document, October 2023
- amending the Schedule to Clause 72.01 (Responsible Authority for this Planning Scheme) to make the Minister for Planning the responsible authority for administering and enforcing Clause 45.12 (Specific Controls Overlay) of the planning scheme in respect of the Warburton Mountain Bike Destination Project (Southern Network) Incorporated Document, October 2023;
- amending the Schedule to Clause 72.03 (What does this Planning Scheme consist of?) to amend Planning Scheme Map 47SCO and introduce Planning Scheme Map 48SCO;
- amending the Schedule to Clause 72.04 (Incorporated Documents) to include the Warburton Mountain Bike Destination Project (Southern Network) Incorporated Document, October 2023.”

I am satisfied that the existing arrangements described above adequately mitigate threats to the habitat value of the area.

A handwritten signature in blue ink, appearing to read 'John Bradley', is positioned at the top left of the page.

John Bradley
Secretary, Department of Energy, Environment and Climate Action

Date: 18/01/2024