

1 May 2018

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**Objection to the Application for EIS Exemption for Ginninderry  
Project Stages 2, 3, 4, 5, 5A, 6, 7, 8, 9, 10, 11, 12, 13, 24, 28, 29 –  
EIS exemption number DA201800010  
(notifiable instrument number NI2018-164).**

**Objection to the EIS Exemption application**

This submission is in response to the Application(s) for an EIS Exemption for the Ginninderry Project in West Belconnen, EIS Exemption 201800010 made by Knight Frank Town Planning on 8 February 2018. The application consists of one overarching Form 1M, 23 further Form 1Ms, a Ginninderry Planning Report for the purposes of section 211 exemption and its appendices.

The application seeks an exemption from the requirement to include an EIS in the development application for proposal for 32 blocks or part thereof and three roads. The proponent has applied for an exemption for the same time period as the EPBC approval, that is, till 30 June 2067.

The Ginninderra Falls Association objects to the EIS exemption for what constitutes an EIS exemption for the entire ACT portion of the Ginninderry development. In doing so, it brings to the Minister's attention the following:

1. The environmental impact of the development proposal is not addressed by the studies submitted by the proponent. In particular, these studies fail to address impacts on (see 2.1):
  - a. Biodiversity;
  - b. Reserve;
  - c. Heritage;
  - d. Contaminated land;
  - e. Fire risks;
  - f. Climate change;
2. There has not been sufficient public consultation throughout these studies (see 2.2);
3. A number of reports relied upon are more than 18 months old (and are not accompanied by the necessary statement) (see 2.3); and,
4. There are procedural defects with the EIS exemption application (see 2.3).

## 1. Legislative framework

### 1.1 EIS requirements in the *Planning and Development Act 2007*

The *Planning and Development Act 2007* (PD Act) provides the legislative basis for planning and development in the ACT. The PD Act provides some provisions for the protection of the environment, including native vegetation and listed vulnerable species and ecological communities (in the ACT and Commonwealth jurisdictions). These provisions contain the very basic environmental protections in the planning and development process, characterised by some consideration to the likely environmental impacts through the planning and development process.

Where proposed developments are likely to have a significant impact on the environment, provision is made under section 123 of the PD Act details to lodge such an application in the impact track. This requirement includes the provision of an Environmental Impact Statement to detail the likely impacts of a development on the environment as well as proposing avoidance, mitigation and offset measures. An EIS is prepared by a proponent to enable decision makers to understand the environmental consequences of a proposed development. The EIS must include sufficient information to ensure that all environmental, social and economic impacts associated with the proposal have been identified and assessed, and any adverse impacts are avoided, minimised, mitigated or as a last resort, offset.

The proponent has acknowledged that the development proposal is likely to cause a significant impact on the environment and identified the following items in Schedule 4.3 in Schedule 4 as applying to the Ginninderry proposal, such that an EIS is required:<sup>1</sup>

- Column 1, Item 1: This is a proposal likely to have a significant adverse environmental impact on 1 or more species listed. The requirement in Schedule 4 is that an EIS is required unless the conservator of flora and fauna provides an environmental significance opinion to indicate that the proposal is not likely to have an adverse environmental impact;
- Column 1, Item 3: This is a proposal that includes development in a reserve, and the requirement in Schedule 4 is that an EIS is required unless the conservator of flora and fauna provides an environmental significance opinion that the proposal is not likely to have a significant adverse environmental impact, or that proposal is for minor works;
- Column 1, Item 6: This is a proposal that is likely to have a significant adverse impact on the heritage significance of a place or object registered under the *Heritage Act 2004*. The requirement is that an EIS is required unless the Heritage Council produces an environmental significance opinion that the proposal is not likely to have a significant adverse impact;
- Column 1, Item 7: This is a proposal involving land included on the register of contaminated sites under the *Environment Protection Act 1997*. An EIS is required unless the authority produces an environmental significance opinion indicating that the proposal is not likely to have a significant adverse environmental impact.

If these significant impacts were not to take place in the development proposal area, then the application would be assessed under the merit track.

### 1.2 EIS exemption legislation

Division 8.2.1 of the PD Act sets out circumstances where an application can be made to exempt the requirement to include an EIS in the development application for the proposal. Section 211B was added to the PD Act 2014.

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<sup>1</sup> These sections above have been quoted in each of the EIS exemption (Form 1M) applications.

We specifically highlight that in 2016, the following note was added with regards to EIS exemptions: “*there has been a common misconception that if an ‘exemption’ under section 211B is granted then the proposal does not have to address environmental matters. The note clarifies that this is not the position*”.<sup>2</sup> The 2016 amendments were added to emphasise that an EIS exemption is required to address the environmental issues that would otherwise be addressed by a recent EIS. It is our strong submission that the reports annexed to the EIS exemption application does not address environmental issues that would otherwise be addressed by a recent EIS.

Section 211B(a) states that an EIS exemption applies “*if the expected environmental impact of a development proposal has been addressed by a recent study, whether or not the recent study relates to the particular development proposal*” (emphasis added). For the reasons discussed in Part 2 of this submission, the studies annexed to the EIS exemption application, including but not limited to the Ginninderry Planning Report for Section 211 Exemption (hereafter “Ginninderry Planning Report”) (Knight Frank Town Planning, February 2018), the West Belconnen Project Strategic Assessment Report (hereafter “Strategic Assessment Report”) (Umwelt, March 2017), the Urban Development At West Belconnen Program Report (hereafter “Program Report”) (A T Adams Consulting, 18 April 2017), the EPBC Consultation Report (hereafter “Consultation Report”) (April 2017) and the other attachments to the application, do not adequately address the expected environmental impact of the development proposal.

Section 211H grants the Minister discretion to allow an EIS exemption for a development proposal. Specifically, section 211H(2) states:

*“The Minister may grant an EIS exemption for the proposal if satisfied that the expected environmental impact of the development proposal has already been sufficiently addressed by a recent study, whether or not the recent study relates to the particular development proposal” (emphasis added).*

Section 211H(3), details the considerations that the Minister must address when deciding whether the environmental impact of the development has been sufficiently addressed by recent studies:

<b>Section</b>	<b>Factor that must be considered by the Minister</b>	<b>Issues discussed in this submission in Part 2</b>
211H(3)(a)	Whether the recent study was conducted by an appropriately qualified person with relevant expertise and experience in relation to the environmental values of the land in the proposal	See 2.4 below.
211H(3)(b)	If the recent study does not relate directly to the proposal— whether there is sufficient detail to allow assessment of the environmental impacts likely to occur if the proposal proceeds; and	See 2.1 below.
211H(3)(c)	Whether the part of the recent study relevant to the proposal required public consultation through a statutory process or as part of a government policy development	See 2.2 below.
211H(3)(d)	If the recent study is more than 18 months old—whether the Minister is	See 2.3 below.

<sup>2</sup> Per 2016 Amendment Explanatory Memorandum:

	satisfied that the information in the study is current; and	
211H(3)(e)	any submissions received during the consultation period for the EIS exemption application.	

The submission will address section 211H(3)(a) – (d) below.

## 2. Objections to the EIS exemption application

### 2.1 Section 211H(3)(b): The recent studies do not directly relate to the proposal, and there is insufficient detail in the studies to allow assessment of the environmental impacts likely to occur if the proposal proceeds.

In making a decision to grant an EIS exemption, the Minister must be satisfied that any likely significant adverse impact on species and ecological communities is addressed by the studies provided by the proponent in sufficient detail.

An adverse environmental impact is ‘significant’ if the cumulative or incremental effect of a proposed development might contribute to a substantial adverse impact on an environmental function, system, value or entity (section 124A(1) PD Act). An EIS is required where a proposal is likely to have significant adverse environmental impacts on 1 or more of the listed species/ecological communities, unless the Conservator of flora and fauna provides an environmental significance opinion indicating that the proposal is not likely to have a significant adverse environmental impact. The conservator has not given an environmental significance opinion detailing that any proposed development will not have a significant impact as per Part 4.3, Item 1 and Item 3. Any likely impacts on the species set out in Schedule 4, Part 4.3 Item 1 will be significantly impacted by the proposed development and an EIS is necessary.

#### 2.1.1 Reports offered only address Commonwealth-listed species and not species considered under PD Act Schedule 4, Part 4.3, Item 1:

##### *2.1.1.1 Objectives of the Strategic Assessment Report*

The development proposal is likely to have significant adverse impacts on species and ecological communities which are not sufficiently addressed by existing studies, as the Strategic Assessment Report does not sufficiently address ACT-listed species.

The Objective of the Strategic Assessment Report is noted at 1.1 of the report as:

*“to assess the **impacts to and outcomes for matters of national environmental significance** (MNES)... from the ‘Urban Development at west Belconnen’... in relation to the **requirements of the Commonwealth Environment Protection and Biodiversity Conservation Act 1999**.*

*It should be read in conjunction with the Program Report (AT Adams Consulting 2016) which set out the proposed development and commitments, associated works and actions, and management and funding arrangements that are included in the Program to achieve **appropriate outcomes for matters protected under the EPBC Act**<sup>3</sup> (emphasis added).*

The purpose of the Strategic Assessment Report is to assess the impacts of the development proposal on Commonwealth-listed species set out in the EPBC Act. This is consistently stated throughout the Strategic Assessment Report and the Program report, including at page 4 where it states at 1.1:

<sup>3</sup> Strategic Assessment Report, (Umwelt, March 2017) page 1.

*“The focus of the agreement is to assess the potential impacts from development of the West Belconnen project area (referred to as “the development” in this report), on Matters of National Environmental Significance (MNES) protected under the EPBC Act”.*

Whilst the Strategic Assessment Report notes that it includes species and ecological communities listed under Commonwealth, NSW and ACT legislation, in order to “achieve the best environmental outcomes”,<sup>4</sup> ACT and NSW-listed species are not considered in sufficient detail to allow assessment of the environmental impacts. Additional reports have only been provided with respect to one ACT listed species (the Little Eagle) – and these reports do not set out environmental impacts likely to occur.

#### *2.1.1.2 Impacts to ACT-listed species to be considered with Territory approval processes*

Whilst “an endorsed policy, plan or program under the *Environment Protection and Biodiversity Conservation Act 1999*” might be an example of a report that sufficiently addresses the expected environmental impact of a development proposal, with respect to vulnerable species in Part 4.3 Item 1, the Strategic Assessment Report only deals with Commonwealth-listed species in sufficient detail. The Ginninderry Planning Report states that the Strategic Assessment Report considers all species and ecological communities within the Commonwealth, ACT and NSW jurisdictions<sup>5</sup> and provides sufficient protection for ACT species and ecological communities though this is simply not true.

ACT-listed species and ecological communities such as the regent honeyeater, golden sun moth, little eagle, scarlet robin, varied sittella, white winged triller, perunga grasshopper, superb parrot, swift parrot, painted honeyeater, spotted tail quoll, pink-tailed worm lizard, yellow box/red gum grassy woodland and natural temperature grasslands will be significantly impacted by the development proposal.

Yet, it is clear that the authors of this report did not intend that the Strategic Assessment Report be considered a sufficient impact assessment for the purpose of Schedule 4 of the PD Act. For example, the Strategic Assessment Report acknowledges with respect to several vulnerable species such as the Little Eagle, Rosenberg’s goanna and the perunga grasshopper, that the report is not intended to address the impacts on such species.<sup>6</sup> For example, at 6.1.2.9 of the report, it states that ‘*A full assessment of impacts to little eagle will be included within State and Territory approval processes as appropriate.*’<sup>7</sup>

Whilst the Strategic Assessment Report considers Commonwealth listed species in depth, addressing each over multiple pages assessing impact according to nine criteria, ACT and NSW listed species are discussed in one half to two thirds of a page *at best*. A report that seeks to address environmental impacts with respect to vulnerable and endangered species and ecological communities cannot sufficiently address the impacts and mitigation measures in such a limited way. The very fact that these species are listed as vulnerable or endangered means that extra care must to be taken to ensure that these species are protected from further harm. The differences between the way the Strategic Assessment Report addresses Commonwealth-listed species as opposed to ACT-listed species illustrates that the Strategic Assessment Report was never intended to provide more than a cursory discussion on the impacts of the project on the ACT-listed species.

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<sup>4</sup> Strategic Assessment Report, (Umwelt, March 2017) page 6.

<sup>5</sup> Strategic Assessment Report, (Umwelt, March 2017) Page 6.

<sup>6</sup> Strategic Assessment Report, (Umwelt, March 2017) 6.1.2.9 (Little Eagle); 6.1.5.1 (Perunga Grasshopper); 6.1.7.1 (Rosenberg’s Goanna).

<sup>7</sup> Strategic Assessment Report, (Umwelt, March 2017) 6.1.2.9 (Little Eagle).

Indeed, an independent assessment by leading experts of potential impacts on species with proximity to development in the Ginninderra Falls area has shown that a significant number of ACT, NSW and Commonwealth-listed species are predicted to be adversely affected by the development<sup>8</sup>. Independent experts predict that the potential impact on species with a close proximity to development in the NSW portion of the development and species on the ACT side are likely to be similarly impacted. For example, a recent report indicates species such as the Scarlet Robin and Speckled Warbler, whose habitat occurs in the ACT section of the development, are expected to decline as a result of the development even kilometres away from development.<sup>9</sup> However, the current Strategic Assessment Report avoids ACT-listed species in any detail, simply using the creation of the West Belconnen Conservation Corridor (WBCC) to justify and/or offset any impacts of the development. This is highly problematic, because the WBCC isn't planned to be an untouched nature corridor for such species to find a reprieve from encroaching development. Instead, it too will be developed as a tourist attraction, with infrastructure such as a sewer tunnel, recreation and tourist facilities. In addition, the reserve is long, narrow and not big enough for the large-home range species that occur in the area. Therefore, it does not comply with well-established ecological principles of good reserve design.<sup>10</sup> Potential impacts on species are glossed over, ignored or to be "further researched" with no definitive discussion on the impacts on flora and fauna species, nor mitigation measures.

The decline of vulnerable and endangered species in the ACT has largely been as a result of the impacts of development and other forms of habitat destruction or disturbance on habitat. The decline of species such as the Scarlet Robin is not inevitable, and could be halted in part by ensuring appropriate habitat is protected, including much larger areas within future reserves for favourable habitat, as well as significantly improving reserve design (e.g. increasing reserve size and reducing perimeter to area ratio) and increasing the distance between vulnerable species and development (see Soule and Simberloff 1986 and Rayner *et al* 2015). These mitigating measures are, however, likely to result in a reduction in land for residential development – and are therefore not favoured. A thorough, independent EIS is required for ACT-listed species such as the Little Eagle, Scarlet Robin, Speckled Warbler and box gum to ensure that all likely impacts are researched and sufficient mitigation measures are put into place. ESD principles such as the precautionary principle must be applied here, to ensure that no further destruction of habitat, and therefore decline of this species, continues. As well as habitat protection, significantly increasing the distance between development and threatened species habitat is required in order to effectively conserve threatened species (see Rayner *et al* 2015).

#### *2.1.1.3 The impacts on large home range species have not been addressed*

The impacts on large home range species such as the Little Eagle have not been addressed by the studies provided. Whilst the Strategic Assessment Report discusses the impacts of the project on the Little Eagle, it fails to take into consideration the cumulative and incremental impacts of the development on its habitat and foraging areas. For example, Stage 1 of the Ginninderra project is now commencing right on the northern edge of the 200 metre buffer zone of the Little Eagle's nest (at Strathnairn) and the Little Eagle has used most of the development area. Stage 8 is planned for the area encompassing the exclusion zone if the little eagle does not return to the nest in two consecutive years. Construction in Stage 1 and other stages will continue during this two-year period and heavy vehicles will continue to use the major road being built barely 250m from the nesting tree. These conditions are not conducive to the return of the Little Eagle. When Stage 8 proceeds, followed by Stage 10, this

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<sup>8</sup> Analysis of expert comments, September 2017 (Appendix A); Yass Tribune 8 September 2017 <https://www.yasstribune.com.au/story/4910691/ecologists-scrutinise-yass-valley-settlement-strategys-no-development-zone-on-nsw-act-border/?cs=1554>

<sup>9</sup> Laura Rayner et al; 'Avifauna and urban encroachment in time and space' (2015) 21(4) *Diversity and Distributions* 428-440.

<sup>10</sup> Soule, M. E. and Simberloff, D. (1986). What do genetics and ecology tell us about the design of nature reserves? *Biological conservation*, 35(1), 19-40.

will cut across the foraging grounds and open access routes for wildlife. The planned new 330kV power line associated with the proposed new substation in the area [ActewAGL DA 201732400 & DA 201732485] will also cut across the foraging areas. The cumulative effect of this is a significant impact that has not been addressed in the Strategic Assessment Report in any detail at all. An EIS for each stage of the development is therefore essential.

In addition, contrary to the bulk of academic and on-site studies, the proponent has claimed that the Little Eagle will not be impacted because of the 200m clearance buffer around the nesting site.<sup>11</sup> However, the 200m clearance buffer established has been based on an erroneous interpretation of studies not directly related to the little eagle. The following are anomalies in the information provided by the proponent:

- The information presented as evidence to demonstrate adequate research into the Little Eagle is selective and contradictory. To justify the small, 200m buffer around Little Eagle nests, the proponent has relied on a 2005 report by Stephen Debus for ACTPLA in late 2005<sup>12</sup> which referred to a buffer figure in the “range of 200 to 800 m (average 570 m)” for surrogate overseas species of similar size and/or ecology, in the absence of data on Australian species. However, subsequent reports by the author stating that his research had been inappropriately used have not been included. For example:
  - o in September 2008 Debus stated that his 2005 paper had been inappropriately used to justify development. He noted that: *“Both of my papers [from 2005 and 2006] are tempered in several places with caveats about the need for adequate foraging habitat around nest sites. For instance, in 2005, I said “The more sensitive species retreat from expanding suburbia, as it does not provide their prey, foraging habitats, nest sites or security from disturbance” [my emphasis], and “the development proposal will remove the foraging habitat ... of ... one or more pairs of Wedge-tailed Eagles and Little Eagles, and so displace [effectively eliminate] some pairs.”*<sup>13</sup>
  - o In August 2017 Debus further stated that the 2005 paper discussed buffers solely in relation to the *‘avoidance of acute, direct human disturbance, intrusion or presence on raptors nesting in otherwise natural or semi-natural situation, not the preservation of nesting populations in the face of major landscape-changing developments such as urbanisation’*.<sup>14</sup>
- Ginninderry Planning Report used purported advice from Jerry Olsen and David Shorthouse in 2015 to justify a small buffer for Little Eagle nests.<sup>15</sup> However, Jerry Olsen has repeatedly stated that the 200m buffer the proponent has allocated is insufficient to protect the Little Eagle.<sup>16</sup> In particular:
  - o In 2014 Olsen stated that buffer zones are of *‘little use ... because they don’t consider the size of the whole home range’*.<sup>17</sup>

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<sup>11</sup> Ginninderry Planning Report for Section 211 Exemption (Knight Frank Town Planning, February 2018), page 24.

<sup>12</sup> Stephen Debus, *Potential impacts of Proposed Urban Development on Raptors in the Molonglo Valley, ACT: Report to ACT Planning and Land Authority*, 10 Feb 2005.

<sup>13</sup> Stephen Debus, ‘Raptors and the Proposed Central Molonglo Development’ (2008) 33(2) Canberra Bird Notes 82.

<sup>14</sup> Stephen Debus, ‘Little Eagles in the ACT’ (Paper, 5 August 2017).

<sup>15</sup> *Ginninderry Planning Report for Section 211 Exemption*, Knight Frank Town Planning, page 24.

<sup>16</sup> Jerry Olsen and Susan Trost, ‘Little Eagles in the ACT during Two Breeding Seasons: 2015 and 2016, and the Myth of ‘Buffers’ and ‘Corridors’ (2017) *Australasian Raptor Association News*.

<sup>17</sup> Jerry Olsen and Susan Trost, ‘Little Eagles in the ACT during Two Breeding Seasons: 2015 and 2016, and the Myth of ‘Buffers’ and ‘Corridors’ (2017) *Australasian Raptor Association News*.

- In 2017 Olsen stated that “None of the ‘buffers’ observed by ACT real estate developers and planners are based on science. They are arbitrary and always too small.”<sup>18</sup>
  - In August 2017, Olsen stated that Little Eagles “were never seen foraging within 200 m of their nest.”<sup>19</sup>
- Though the proponent has sought to rely on the work of Debus to justify impact mitigation measures, it also submitted, as part of its EIS exemption application, a 2017 report by Olsen (P) and Rae, seeking to discredit the work of Olsen (J) and Debus, despite the proponent’s earlier reliance on their work. Only one academic research report was included in the EIS exemption documents that supports the proponent’s position.<sup>20</sup> Other expert studies that have been omitted that justify a more cautious approach for the protection of the Little Eagle include:
- Jerry Olsen, Mark Osgood and Geoffrey Dabb, ‘Little Eagles in the Australian Capital Territory in 2014’ (2015) 40(3) *Canberra Bird Notes* 208
  - Jerry Olsen, ‘Little Eagles in the ACT’ (paper dated 24 July 2017)
  - Stephen Debus, ‘Little Eagles in the ACT’ (Paper, 5 August 2017).
  - Stephen Debus, ‘Raptors and the Proposed Central Molonglo Development’ (2008) 33(2) *Canberra Bird Notes* 81-83
  - Jerry Olsen and Susan Trost, ‘Little Eagles in the ACT during Two Breeding Seasons: 2015 and 2016, and the Myth of ‘Buffers’ and ‘Corridors’ (2017) *Australasian Raptor Association News*.
  - Stephen Debus, ‘Little Eagles and Development in the ACT’ (Media Release, 10 May 2017).

It is clear that the efficacy of buffers, the 200m clearing zone and what constitutes sufficient protections for the Little Eagle is clearly a contested academic area. The approach currently considered disregards the need to retain suitable nesting trees, foraging areas and open access routes into the future so that it will be possible for Little Eagles to return to the area after construction activities have ceased and suburbia has settled down. A precautionary approach, set out in ESD principles in the PD Act, is not being followed. Continual removal of suitable open grassy woodland habitat (including grazing land) is driving this species out of the ACT as they only inhabit areas in the vicinity of water courses and have to compete with larger raptors. Indeed, the Little Eagle report provided by the proponent (Olsen and Rae) notes the "absence of rigorous data" regarding Little Eagle breeding pairs in the ACT. The report concludes that "there is a pressing need for a reliable, scientifically robust study of the status of the eagle in ACT."

In this regard, it is relevant to examine the protections set out in the *Nature Conservation (Threatened Ecological Communities and Species) Little Eagle Action Plan 2013 (No 1)*, prepared by the ACT Conservator of Flora and Fauna under *Nature Conservation Act 1980*, section 42 and created on 7 November 2013 (Instrument no DI2013–276). The Action Plan for the Little Eagle relevantly notes that “Protecting nest trees e.g. placing a buffer around them, is not necessarily sufficient for conservation. Foraging areas also need to be protected. Nesting and foraging areas may be disjunct, with foraging areas several kilometres away from the nest tree, which is typically located in woodland”.<sup>21</sup> How has this worked in practice? The Ginninderra Estate development, immediately north of Ginninderry Stage 1, commenced in early 2017, 600m from the Strathnairn little eagle nest. A pair of birds appeared in this nest in

<sup>18</sup> Jerry Olsen, Susan Trost and Geoffrey Dabb, “Little Eagles in the Australian Capital Territory during two breeding seasons: 2015 and 2016”, *Canberra Bird Notes* 42(2) (2017): 134-139.

<sup>19</sup> Jerry Olsen and Susan Trost, Reports & News, *Journal of the Australasian Raptor Association*, Vol. 35(1), August 2017, page 4.

<sup>20</sup> Penny Olsen and Stuart Rae, “Invalid Evidence for Purported ‘Collapse’ in the Number of Breeding Little Eagles in the ACT,” *Canberra Bird Notes* 42(3) (2017): 245-249.

<sup>21</sup> Nature Conservation (Threatened Ecological Communities and Species) Little Eagle Action Plan 2013 (No 1) 35 page 3.

2017, but did not nest there. It is unclear as to why the birds did not settle in that nest, though disturbance from works in progress is unlikely to have encouraged much activity, particularly given the academic research and legislated Action Plan that clearly sets out the issues. Any future EISs will need to address impacts and mitigation measures in conjunction with Action Plans for species developed by the ACTG. The fact that Action Plans have been largely ignored is assessing the impacts of these species is a major oversight.

Criterion 44 of the West Belconnen Concept Plan relates to the Little Eagle Clearance Zone and provides that *“Urban development is not permitted until such time as research on the Little Eagle has been completed and confirms that the site is suitable for development”*.<sup>22</sup> By the time research has been completed, it is likely that Stage 1 development will have changed the landscape and discouraged Little Eagles from the area altogether. The selection of an area close to the Little Eagle’s known nesting tree as the first stage of the Ginninderry development, despite acknowledgment of inadequate research to date, was contrary to C44. Whilst we cannot address the inadequacies of the Stage 1 process now, we can ensure that moving forward with the rest of the development, adequate surveys and environmental impact statements record the likely impact of the development on this and other species, and ensure that sufficient mitigation measures are put into place to avoid significant impact.

Comparing the Strategic Assessment Report with the Biodiversity Report for ActewAGL’s DA 201732500 is instructive. The Biodiversity Report includes measures to mitigate impact of development on the Little Eagle such as: *“No clearing of breeding habitat or trees or shrubs within 800 m of nests. Only foraging habitat would be impacted. The likelihood of electrocution on new lines would be minimised with line marking.”*<sup>23</sup> It is evident that a larger clearance for Little Eagle nests to allow for short-range foraging is not regarded as unreasonable or unachievable for other developments. This development must take a similar approach.

#### *2.1.1.4 Proposed offsets will not address likely environmental impact*

The proponent argues that concerns for biodiversity highlighted above have been addressed through offsets. This is highly problematic. Firstly, the logic of offsets is highly flawed generally but, in particular, in this instance such that there is an ultimate loss of habitat (and species) and the habitat now claimed as an “offset” has long been earmarked for conservation within a special purpose reserve prior to rezoning – so there are no actual gains. Instead, there is an expectation that all vulnerable and endangered species will migrate or co-exist in the WBCC, having foregone a large area of its habitat and territory for development, even though the WBCC will be developed further down the track.

Secondly, the destruction of habitat “offset” by the already-existing nature reserve directly contravenes the ACT Government’s own Action Plan for the protection of a vulnerable species. As set out in Table 1, in the case of the Pink-tailed Worm-lizard, 16 football fields worth of habitat<sup>24</sup> is earmarked for destruction (a large area for any species, let alone a small, vulnerable species). The ACT Government’s Action Plan for the Pink-tailed Worm-lizard<sup>25</sup> undertakes to conserve all populations within the Murrumbidgee and Molonglo River Corridors as well as high and moderate quality habitat outside these corridors. The habitat earmarked for destruction is habitat of high and moderate quality outside, and linked with, the Murrumbidgee River Corridor.

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<sup>22</sup> West Belconnen Concept Plan (ACT Government Environment and Planning, July 2016) page 12.

<sup>23</sup> TransGrid and ActewAGL, *ACT Second Electrical Supply Project: Biodiversity Impact Assessment*, February 2018, page 78.

<sup>24</sup> Canberra Times 2 April 2018: <http://www.canberratimes.com.au/act-news/riverview-applies-for-eis-exemption-for-ginninderry-with-act-planning-authority-20180330-h0y5s8.html>

<sup>25</sup> Nature Conservation (Pink-tailed Worm-lizard) Action Plan 2017  
<http://www.legislation.act.gov.au/di/2017-67/current/pdf/2017-67.pdf>

**Table 1: Key Objectives, Actions and Indicators taken directly from the Pink-tailed Worm-lizard Action Plan.**

Objective	Action	Indicator
1. Conserve all populations that occur in large conservation corridors (Murrumbidgee and Molonglo River Reserves) and all habitat outside these corridors that is moderate to high quality or medium to large area.	1a. Apply formal measures to ensure all populations that occur in large conservation corridors and all habitat outside these corridors that is moderate to high quality or medium to large area, are protected.	1a. All populations that occur in large conservation corridors, and all habitat outside these corridors that is moderate to high quality or medium to large area, are protected by formal measures.
Protect all other populations from unintended impacts (unintended impacts are those not already considered through an environmental assessment or other statutory process).	1b. Protect all other populations from unintended impacts.	1b. All sites where other populations occur are protected by appropriate measures from unintended impacts.

Given the Strategic Assessment Report does not sufficiently take into consideration adequate protections for the pink worm-tailed lizard, particularly when an aspect of the development directly contradicts the ACT Government's Action Plan drafted to protect this species, it is essential that an environmental impact assessment be prepared to properly address significant issues of habitat loss.

### 2.1.2 Proposed reserve does not address environmental impacts required under PD Act Schedule 4, Part 4.3, Item 3

The Minister must exercise its functions in a way that gives effect to the precautionary principle, as encompassed in sustainable development (section 12(3)(a) and section 9 PD Act). The precautionary principle sets out that when there is a plausible risk of potential impacts of actions, then a precautionary approach should be taken. There is good evidence to suggest that a much more precautionary approach should be taken, namely:

- Proximity to development is known to have impacts on a range of threatened bird species (Rayner *et al.* 2015)
- Large home range species, that require large reserves with low perimeter to area ratio are present in the area (see Soule and Simberloff 1986)

The proposed reserve fails to implement ecological principles, including reserve design principles and the precautionary principle. It fails to take a holistic approach to conservation planning in the area. Independent assessment by leading experts (see APPENDIX A for list of the experts consulted) has shown the planning to be deficient in the NSW section. This is a clear signal for further scrutiny in the ACT section as well. There should be a concerted attempt made to ensure that such scrutiny is thoroughly independent and not controlled by the proponents. The reserve does not adequately cater for large home range species such as Little Eagle and Rosenberg's Goanna, nor does it adequately take into account species sensitive to proximity of urbanisation (e.g. Scarlet Robin, Speckled Warbler, and a range of other woodland birds) all listed as vulnerable or endangered species in ACT legislation.

By way of example, the entire proposed reserve is smaller than the life home range of a single Rosenberg's Goanna based on work in Kangaroo Island<sup>26</sup> and local work underway is also recording very large movements for this species<sup>27</sup> While this species is a NSW listed species, a holistic and precautionary approach should not neglect these issues (and indeed, the issue of the migratory nature of the Rosenberg's goanna was noted by the ESD itself, as set out in the Consultation Report discussed at 2.2 below. There are also a range of raptors including the ACT listed Little Eagle that have large home ranges and are losing much of their foraging land as a result of this development.

The Minister must be satisfied that any reports discussing the impact of the development on a reserve must contain sufficient detail to allow assessment of the environment impacts likely to occur if the proposal proceeds. It is clear that there insufficient reports discussing the impact on a reserve – and that an EIS must be produced in order to assess these impacts.

#### 2.1.3 Proposed studies do not address Heritage impacts required under PD Act, Schedule 4, Part 4.3, Item 6

The Ginninderry Planning Report states that:

*“The project site has been surveyed and this, together with detailed research, has enabled all matters of significance related to European heritage to be identified. These are recorded in two reports by Eric Martin and Associates which also include recommendations for the treatment of matters of heritage significance as the project proceeds. These reports have been endorsed by the ACT Heritage Council... The project site has been surveyed and this, together with detailed research, has enabled all matters of significance related to aboriginal heritage to be identified. These are recorded in a report by Biosis Pty Ltd which also includes recommendations for the treatment of matters of heritage significance as the project proceeds. These reports have been endorsed by the ACT Heritage Council.”*

The West Belconnen European Cultural Heritage Report identified items of European heritage that should be retained. The Aboriginal Cultural Values Assessment on the Ginninderry Area identified eight places of cultural heritage significance, five of which are within the project area and made several recommendations, including that an Aboriginal Cultural Management Plan be produced and implemented. And, whilst the 2018 Report maintains that the project is not proposing to impact on any of these sites, it is difficult to ascertain whether or not this is likely to be the case, given there is little information on the project and where it intersects with these sites.

The Minister should note that reports endorsed by the ACT Heritage Council do not fulfil the criteria set out in Part 4.3 Item 6 of the PD Act, that *the heritage council produces an environmental significance opinion that the proposal is not likely to have a significant adverse impact*. An EIS is therefore ordinarily required under the PD Act.

#### 2.1.4 The studies do not address the impacts of contaminated land in the proposed development required under PD Act, Schedule 4, Part 4.3, Item 7

The Ginninderry Planning Report states that *“An auditor, accredited by and approved by the ACT Environment Protection Authority (EPA) has been appointed to oversight all aspects of the project and ensure that, where required, matters related to contamination will be the subject of audit processes and resolved to the satisfaction of the EPA. This will occur*

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<sup>26</sup> Ginninderra Catchment Group (2016). [https://ginninderry.com/wp-content/uploads/2016/08/GCG Biodiversity Report Ginn Falls Area FINAL 2016 06 15.pdf](https://ginninderry.com/wp-content/uploads/2016/08/GCG_Biodiversity_Report_Ginn_Falls_Area_FINAL_2016_06_15.pdf)

<sup>27</sup> Monitoring the Monitor, (NPA Bulletin, March 2018)  
[http://ginninderra.org.au/sites/default/files/Rosenberg%20Study\\_NPA%20Bulletin\\_Mar2018.pdf](http://ginninderra.org.au/sites/default/files/Rosenberg%20Study_NPA%20Bulletin_Mar2018.pdf)

*progressively as the project proceeds. This process meets the requirements of the EPA and obviates the need for an EIS.*"<sup>28</sup>

However, the process described above, mandatory through the EPA is unrelated to the requirement for an EIS under the PD Act. This is the reason why there is a specific section within Part 4.3 Item 7 that specifically deals with proposals involving land included on the register of contaminated sites under the EPA. The auditor was appointed by the EPA for the purpose of identifying and remediating contaminated land contained in the *Environment Protection Act*.<sup>29</sup> This is a different process from the EIS required under the PD Act. In order to dispense with the EIS requirement under the PD Act, the EPA must provide an *environmental significance opinion indicating that the proposal is not likely to have a significant adverse environmental impact* (part 4.3 item 7). This has not occurred.

The Ginninderry Planning Report prepared for the EIS exemption states that the Ginninderry development area includes a number of sites that are on the register of contaminated sites under the *Environment Protection Act*. Furthermore it states that a number of sites have not been investigated and require further research. In particular *"there are a number of sites present within the Ginninderry project area which have been identified as having the potential for contamination and require further investigations to occur. These blocks include 1469, 1606, 1607, 1632 and 1633"*.<sup>30</sup>

The Minister can only provide an EIS exemption where the Minister is satisfied that the environmental impact of a development study has been addressed by a recent study. By the proponent's own admission, that study has not taken place, and in fact further investigations need to occur. It is appropriate for the EIS exemption application be refused, and that these further investigations occur in the context of a proper EIS. Given that the proponent has lodged an EIS exemption for the whole development, including contaminated sites, without an accurate understanding of the contamination risks, it is only appropriate that the exemption be refused and a proper EIS be formulated.

In particular, our concerns include (but are not limited to):

#### *2.1.4.1 Belconnen Waste Disposal Site (Tip)*

The tip is currently still being used for disposal of household rubbish. It has been used for decades and is a "hot spot". Methane gas is being produced and monitored and every so often the tip smoulders and, on occasions, fire trucks are required to control fire flare-ups. There are many other disposal sites in the Tip area, such as for cardboard, paper and oil, which will need to be remediated and monitored for safe habitation. The tip will need to be continuously monitored for OH&S concerns in perpetuity, even after it is closed and remediated. This area requires a proper assessment of the impacts its operations will have on the community that emerges around it, including an assessment that no hazard is presented by increasing activities around it.

#### *2.1.4.2 "Mr Fluffy" Building Rubble Disposal Site*

Building rubble, contaminated by loose-fill asbestos and wrapped in plastic (150,000 tons) from 1,024 ACT homes, is being "layered" (not buried) in clay gullies at a separate site within the Tip. This will produce a "Mr Fluffy" mound which is proposed to be "capped" and grassed for sporting activities. Other such "Mr Fluffy" capped and grassed areas in Melbourne and Sydney have not been successful – over time, carcinogenic asbestos fibres have found their

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<sup>28</sup> Ginninderry Planning Report for Section 211 Exemption (Knight Frank Town Planning, February 2018).

<sup>29</sup> Statutory site audit notification form (Environmental Protection Authority, 2017).

<sup>30</sup> Ginninderry Planning Report for EIS Exemption (Knight Frank Town Planning, February 2018) page 27.

way to the surface. It is essential that any future environmental impact assessment addresses these potentially dangerous risks.

#### *2.1.4.3 Commercial Egg Farm*

The Parkwood Eggs site is located in very close proximity to the proposed new residential development. The major concerns with Poultry Farms are the aroma (residents in West Belconnen currently complain about the smell), vermin, insects (especially mosquitoes) and feral animals (foxes). For these reasons, State Authorities have strict regulations concerning the distance of residential development from Poultry Farms, viz: Minimum Distance: NSW – 3.5 to 4 km (which would exclude all of the proposed NSW residential development in nearby Parkwood); and South Australia – 1.5 km.

Despite this, the proposed residential development has homes encroaching to within 750m of the farm. The farm will eventually be resumed so that further development can occur on the farm site. It is expected that the lease will not be renewed after the end of 2033.<sup>31</sup>

#### *2.1.4.4 Very high tension power lines and substation*

A Transgrid substation is located in the north-eastern section of the Ginninderry area. Two 330 kV powerlines from Lower and Upper Tumut in the Snowy Mountains Scheme bring power into the substation. A 330 kV line stretches from the substation to Yass, one to Williamsdale in the south and one to the north. Five 132 kV lines radiate from the substation to various parts of Canberra, including one running south along the eastern side of the new Ginninderra Estate, formerly part of the golf course. It is proposed to run another 330kV line parallel to this latter and closer to the residences, southwards to a new substation near where the Williamsdale line crosses Stockdill Drive.<sup>32</sup> It is not obvious that any research has been done on the combined effects of such a concentration of very high tension power lines in a residential area.

The new substation is proposed for an area opposite where the southern part of the conservation corridor meets Stockdill Drive. The new 330kV power line running down from the existing substation in the north will enter the new substation along with the 330kV power line to Williamsdale coming in from the west, thus encircling the area known to be frequented by little eagles. These lines will cross their flight path to foraging areas in the Pegasus and Lands End vicinities south of Drake Brockman Drive.

#### 2.1.5 Reports provided do not take into consideration other impacts on the environment

The Ginninderry Planning Report helpfully considers a number of other environmental considerations that are not triggers for an EIS under the PD Act, upon request of the Environmental Protection Authority. These environmental considerations include air quality (from wood-fire heaters, vehicular transport and odours from bushfires) and a green waste clearance zone.

There are, however, a number of other environmental considerations that are either not dealt with, or dealt with in a cursory manner. It is important to remember that whilst these items listed are not a trigger for an EIS in the PD Act (like air quality above), they are extremely important considerations when assessing the function of an EIS to identify all environmental, social and economic impacts related to a proposal, and an assessment to ensure that adverse impacts are avoided, minimised, mitigated or, as a last resort, offset.

These considerations are discussed below.

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<sup>31</sup> Egg farm odour will hit residents of West Belconnen, says Parkwood owner (Canberra Times, 2015) <http://www.canberratimes.com.au/act-news/egg-farm-odour-will-hit-residents-of-west-belconnen-says-parkwood-owner-20151113-gkycj7.html>

<sup>32</sup> ActewAGL, DA 201732500.

### 2.1.5.1 Impacts of potential fire not addressed by the studies

The Ginninderry Planning Report and its attachments omit any detailed discussion on mitigating the risks of potential hazardous fires in the region.

On page 28 of the Ginninderry Planning Report, it is acknowledged:

*“Bushfires are a known hazard in the ACT due to the dry summers and flammable vegetation. Severe, damaging fires occur on a regular basis, generally every 6-27 years. The most serious fires occurred in 2003, and affected the Molonglo and Mount Stromlo areas, just south of the proposed development.*

*The risk of bushfires occurring is most prominent when strong winds from central Australia are directed towards Canberra. The most dangerous wind direction for Canberra and its surrounding regions (north-west) is also a common wind direction for the area (ACTPLA, 2007). Mitigation measures to address the above concerns have been provided under ‘6.9 Management of Air Quality & Odour’.<sup>33</sup>*

Further, in Table 7 of the Ginninderry Planning Report, mitigation measures from odour produced by bushfires is addressed as follows: *“From air quality assessments, current legislation has been identified as being sufficient to address any potential odour issues associated with bushfire emissions.”<sup>34</sup>* Mitigation measures to address bushfire concerns cannot be located at ‘6.9 Management of Air Quality & Odour’, because this sub-section cannot be found. Perusing the *West Belconnen Strategic Environmental Assessment Air Quality Review – 2018 Update*, it too does not address the bushfire risk, only similarly quoting the paragraphs above, and commenting on bushfires as an air pollution issue only.

This response does not sufficiently address likely fire dangers asserted by fire experts. A report entitled “Risk Implications of Dynamic Fire Propagation, A case study of the Ginninderra region, Preliminary Report”<sup>35</sup>, was commissioned by the GFA in April 2017 and publicised on 20 June 2017 through a media release which was circulated to all relevant bodies including Riverview and Yass Valley Council (YVC). In that report, UNSW bushfire scientist Dr Jason Sharples asserted that the relevant Australian Standard that applies for this development (AS 3959), is inadequate for the following reasons:

- a. AS 3959 does not adequately address the risk of fire from ember attack (Sharples, 2017 pp8, 18-19);
- b. AS 3959 does not adequately address new research about the effect of steep slopes on fire spread (Sharples, 2017 pp 9-12, 16-17, 20-24).

There are currently proposed changes to AS3959 to address gaps in the standard<sup>36</sup>

The GFA acknowledge that the developer has added a 10 metre buffer zone to the Asset Protection Zones around the proposed residential area to assist in defending against fire. However, expert information assesses this buffer zone as insufficient in addressing risk of fire from ember attack, particularly with respect to steep slopes, characteristic in the area. The reports provided by the proponent do not address this risk. Given the impact of the recent

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<sup>33</sup> Ginninderry Planning Report for EIS Exemption (Knight Frank Town Planning, February 2018), page 28.

<sup>34</sup> Ginninderry Planning Report for EIS Exemption (Knight Frank Town Planning, February 2018), pages 28 and 66.

<sup>35</sup> Incorporating ember attack in bushfire risk assessment: a case study of the Ginninderry region (Melanie E. Roberts, Jason J. Sharples, Andrew A. Rawlinson, 2017) was provided to YVC on 3 Nov 2017 and has been publicly available since December 2017 on the web at <https://www.mssanz.org.au/modsim2017/H10/roberts.pdf>.

<sup>36</sup> Seeking comments on early-stage analysis of the impacts associated with draft changes to AS 3959, Construction of buildings in bushfire-prone areas (Standards Australia, September 2017) <https://www.standards.org.au/news/seeking-comments-on-early-stage-analysis-of-the-impacts-associated-with-draft-changes-to-as-3959,-construction-of-buildings-in-bushfire-prone-areas>

Tathra fires, the impacts on families and communities in Canberra as a result of the 2003 fire, a specific EIS is required to appropriately address fire risks.

#### *2.1.5.2 Impacts of this development on climate change and the ACT's emission reduction targets*

The object of the PD Act is to *provide a planning and land system that contributes to the orderly and sustainable development of the ACT* (section 6). ACTPLA must exercise principles of sustainable development, as defined in section 9 (section 12 (3)(a)). This includes ensuring that climate change impacts are addressed in major developments such as Ginninderry.

There has been no study included in the report that addresses, or seeks to address, the impact of this development on ACT's overall commitment to net zero emissions target, set out in the *Climate Change Act 2010* (ACT). The large-scale nature of land clearing in this project, and the development of infrastructure (a population of 30,000 with approximately 11,500 dwellings across the ACT and NSW) is likely to have significant impacts on the ACT's interim emission reduction targets. The Ginninderry Planning Report acknowledges that there will be air quality impacts from wood fire heaters, diesel buses and potential fires once the development is in place, yet there is no discussion of this impact on the ACT's obligations to reduce its emissions.

The ACT Climate Strategy Discussion Paper (2018) notes the importance of sustainable land use, including designing cities that increase the natural uptake of carbon, and limiting deforestation through greenfield development. The ACT Greenhouse Gas Inventory 2016-2017 indicated that last year was the first time that land use in the ACT was a net contributor to GHG emissions,<sup>37</sup> partially due to land clearing for development. An EIS would allow for the climate impacts of development proposal to be addressed. Further information on this issue will be provided as an annexure to this submission.

## **2.2 Section 211H(3)(c): The part of the recent study relevant to the proposal required public consultation through a statutory process or as part of a government policy development**

There have been no public consultations with respect to impacts of the development on ACT-listed species for any part of the Ginninderry project. The process of lodging an application in the impact track elicits public consultation through the drafting of an EIS, unless, of course, the proponent applies for an EIS exemption. As Stage 1 of the development was erroneously lodged in the merit track, there was no formal opportunity for the public to comment on a number of these matters at all at the ACT level, given no EIS was lodged or considered as part of the development proposal. An EIS is required to ensure that the public has opportunity to comment to the development proposal.

The Consultation Report has been submitted as part of the EIS exemption process in an attempt to prove that public consultations relevant to the current EIS exemption application have been completed. Whilst it is true that public consultations were held for the Strategic Assessment Report and the Program Report on 19 and 21 May 2016, these consultations gave the public the opportunity to comment on Commonwealth-listed species only. There have been no opportunities for public consultation on ACT-listed species. This is evident in the questions and concerns posed by members of the public, and the proponent's responses, set out in Table 3.2 of the Consultation report. Whilst the Ginninderry Planning Report attempts to conflate the assessment with respect to Commonwealth, ACT and NSW-listed species, the Consultation report makes it clear that the author's intentions were to discuss Commonwealth-listed species only. A number of examples below illustrate this point:

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<sup>37</sup> ACT Greenhouse Gas Inventory 2016-2017 (October 2017) section 3.7.

2.2.1 The concern raised at A5 of the report that the report “only really considers 3 endangered species and ignores others”

The following response was given:

*“The **Strategic Assessment Report assesses in detail all EPBC Act listed threatened species and communities likely to occur.** The report also discusses the potential presence of all other matters of national environmental significance as determined from a search of the EPBC protected matters search tool. The species that have not been assessed in detail are discussed in the assessment report with reference to the specialist ecological reports... Further, locally important species listed under the National Conservation Act, Threatened Species Conservation Act or Fisheries Management Act have been discussed in section 6.1 of the Strategic Assessment Report”<sup>38</sup> (emphasis added).*

It is clear from this response that only Commonwealth-listed species were dealt with in sufficient detail in the Strategic Assessment Report.

2.2.2 Concern was raised by 6 parties at C1 relating to the known occurrence of the Rosenberg Goanna and insufficiency of reserve size.

Whilst this relates to a NSW-listed species and is not directly relevant to this submission, it illustrates the point being made. The following response was given:

*“Rosenberg’s monitor is not listed under the EPBC Act therefore it **did not warrant specific consideration as part of the Strategic Assessment Report process.** Some discussion on Rosenberg’s monitor and its occurrence is provided in section 6.1.7.1 of the Strategic Assessment Report”<sup>39</sup> (emphasis added).*

2.2.3 Concern was raised at C9 that there is insufficient distance from urbanisation for species sensitive to disturbance.

The following response was given:

*“The Program (section 3) describes an overall footprint that is inclusive of services, transport, dwellings and other components of an urban development such as open space. Detailed design for each stage of the proposal **will require consideration of adjacent ecological values** and in order to meet with commitments established under the Program will include design responses that avoid and mitigate indirect impacts. The distance of the WBCC to urbanisation is discussed in section 2.6.2 of the Strategic Assessment Report”<sup>40</sup>*

It is appropriate that “detailed design for each stage of the proposal” includes a detailed EIS, as per the usual process for all developments lodged in the impact track, to ensure that adequate consideration of adjacent ecological values are taken into account.

2.2.4 Concern was raised at C10 that Commonwealth endorsement should be conditional upon an ACT assessment of ACT listed threatened species (particular reference to the little eagle).

The following response was given:

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<sup>38</sup> EPBC Consultation Report (Knight Frank Town Planning, April 2017) pages 10-11.

<sup>39</sup> EPBC Consultation Report (Knight Frank Town Planning, April 2017) pages 15-16.

<sup>40</sup> EPBC Consultation Report (Knight Frank Town Planning, April 2017) pages 18.

*“...the Minister may attach conditions to an approval however these must relate to matters protected by Part 3 of the Act (matters of national environmental significance).*

***As little eagle is not protected by Part 3, it is inappropriate for conditions to be put upon the project under the EPBC Act in relation to this species.***

***Regardless of any potential approval under the EPBC Act, consideration of the little eagle must still occur under the Planning and Development Act 2007 (PD Act) in the ACT and under the Environment Planning and Assessment Act 1979 (EP&A Act) in NSW. As little eagle is listed in both these jurisdictions, development cannot occur unless outcomes under State and Territory legislation satisfies the regulator in those jurisdictions”*** (emphasis added).

The effect of a successful EIS exemption by the proponent is that consideration of the little eagle will not occur under the PD Act, despite the fact that it hasn't really been considered, by the developer's own admission, through this consultation process.

2.2.5 Concern was raised at D5 that there appeared to be a general view that concerns brought by the community had not been addressed.

The following response was given:

*“This is not correct. Whilst some matters are still subject to discussion and the possibility that an “agree to disagree” position may be the final outcome, a generally expressed view from all stakeholder groups and individuals is that the engagement process and responsiveness of the West Belconnen project has been exemplary...”*<sup>41</sup>

An “agree to disagree” position is never the best outcome when applied to the assessment of impacts on vulnerable and critical species. Species listed as critical and vulnerable are listed for a reason – and they require special protections to ensure their status is not further compromised. We have sought to provide and rely on scientific findings to support and inform our view that stronger protections ought to be in place for, not only the Commonwealth listed species, but the ACT and NSW listed species also. Indeed, Ecologically Sustainable Development principles that underpin the PD Act, necessitate a precautionary approach be taken, particularly where it applies to the conservation of biodiversity and ecological integrity.

2.2.6 The ACT Environment and Planning Directorate (EPD)'s comments with respect to Rosenberg's goanna.

In particular, the EPD specifically stated that the Rosenberg's goanna is a “*wide ranging species, with individuals from Ginninderra Falls likely to move into the ACT at times, and the river corridor being an important habitat link connecting the NSW animals to a wide population across the northern areas of Namadgi and the Lower Cotter Catchment*”.

The following response was given:

***“Noted. Commentary on the Rosenberg's Monitor has been included in Section 6.3.7.1 where the Strategic Assessment Report identifies a full assessment of impacts to the Rosenberg's goanna will be included within State and Territory approval processes as appropriate”.***

Again, further evidence that the EPBC-related processes, both in terms of the consultation, but also with respect to the ultimate Strategic Assessment Report was never intended to address ACT-listed species in any depth.

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<sup>41</sup> EPBC Consultation Report (Knight Frank Town Planning, April 2017) pages 19-20.

## **2.3 Section 211H(3)(d): Some of the recent studies are more than 18 months old and draw on dated data**

The Minister must be satisfied, per section 211H(3)(d) of the PD Act, that that the “recent study” relied upon is current – and if more than 18 months old, include a statement from an appropriately qualified person with no current professional relationship with the proponent, verifying that the information in the recent study is current. As set out in 2.1 above, the reports relied upon are insufficient for the purposes of assessing the impacts of development on ACT-listed species. Where these reports do comment on ACT-listed species, there are a number of issues:

### 2.3.1 Strategic Assessment Report and the Program Report

The Strategic Assessment Report notes, at 1.1, that it should be read in conjunction with the Program Report (AT Adams Consulting 2016). The footnoted reference to this report gives the full reference as “*AT Adams Consulting (2016) Urban Development at West Belconnen Program Report, prepared for The Riverview Group, Canberra (January 2015)*”.

However, the report uploaded for the purposes of the EIS exemption application is not the report quoted in the Strategic Assessment Report. The Program Report uploaded is dated 18 April 2017, a month after the Strategic Assessment Report was produced. The 2017 Program Report is almost identical to the report submitted for EPBC consultation, dated 12 May 2016. It is effectively the same report as one submitted over 18 months ago for EPBC Consultation. The only changes to the 2017 Program Report from the 12 May 2016 Program Report are small sentence changes, formatting, and the addition of content copied from the Umwelt report. In particular, the two reports are identical except for:

1. an additional sentence on page 38;
2. an additional word on page 44;
3. one additional sentence on page 45, and one sentence removed;
4. two sentences removed on page 46, and one word changed (from ‘should’ to ‘may’);
5. one sentence added on page 47;
6. one sentence removed on page 49;
7. one sentence removed on page 50;
8. two additional items on pages 52-53;
9. Additional pages 58-66 are added. These are identical to the content of the Umwelt report.

These changes are highlighted in the attached report at Appendix A.

Either the 2017 report was erroneously uploaded as supporting documentation when the 2016 document (as quoted in the Strategic Assessment Report) was the most appropriate. The 2016 report would have required a statement from an appropriately required person with no current professional relationship with the proponent, verifying that the information in the recent study is current. Instead, the 2017 report was submitted, though it is almost identical. The changes made to the 18 April 2017 cannot be considered an update. The 2017 report is then, in effect, more than 18 months old and a statement is required under section 211B(3)(d). The Minister must take this into account when considering section 211H(3)(d) of the PD Act.

### 2.3.2 Movements of the Little Eagle report, 2016

The report entitled “Movements of the Little Eagle (*Hieraaetus morphnoides*) surrounding the proposed Riverview Development Area” by Brawata and Gruber was published in 2016, with no specific indication as to the month of publication. This report is likely to be more than 18 months old, and yet there was no statement required under section 211B(3)(d) attached.

### 2.3.3 Target surveys relied upon are dated

The Strategic Assessment Report relies on targeted surveys of species that were undertaken up to 13 years ago. Whilst reports commenting on these target surveys are more recent, and it is necessary to assess incidences of fauna and flora over time, it raises concerns that the reports to which this data relates does not sufficiently capture the vulnerability of these species, and instead judges the inevitability of decline as opposed to the value of habitat protection:

#### *Birds*<sup>42</sup>

- KMA (2013c) West Belconnen Woodland Project ACT and NSW Land Targeted Bird Surveys;
- KMA (2014) Ecological Studies West Belconnen Australian Capital Territory;
- KMA (2013a) West Belconnen Project NSW Land Flora and Fauna Studies;
- KMA (2009b) West Belconnen Project ACT and NSW Land Flora and Fauna Studies; and
- Geoff Butler and Associates (2000) The Revegetation of Ginninderra Creek Between Barton Highway and Macgregor, ACT.

#### *Fish*<sup>43</sup>

No targeted survey research quoted.

#### *Amphibians*<sup>44</sup>

No targeted survey, although data used from preliminary frog survey through KMA (2009b).

#### *Golden sun moth*<sup>45</sup>

- Rowell, A. (2013) West Belconnen Golden Sun Moth Surveys, October to December 2012, prepared for The Riverview Group, Canberra;
- Biosis (2015) Golden Sun Moth Monitoring Report – Jarramlee Nature Reserve, prepared for Territory and Municipal Services Directorate, Canberra;
- Braby, M.F. (2005) Distribution and Provisional Management Plan of the Golden Sun Moth *Synemon plana* (Lepidoptera: Castniidae), in Remnant Grasslands of Macgregor West, ACT, prepared for the Australian Capital Territory Planning and Land Authority, Canberra;
- Rowell A (2015) Riverview Project: Ginninderra Drive extension Golden Sun Moth Surveys, prepared for Umwelt Pty Ltd (February 2015).

#### *Pink-tailed worm lizard*<sup>46</sup>

Information for the assessment of impacts to pink-tailed worm-lizard predominantly used data from targeted surveys conducted by Osborne and Wong (2013).

#### *Flora*

- KMA (2014) Ecological Studies West Belconnen Australian Capital Territory;
- KMA (2013a) West Belconnen Project NSW Land Flora and Fauna Studies;
- KMA (2009a) Further Flora and Fauna Studies: Land at West Molonglo and Ginninderra Creek New South Wales Australian Capital Territory;
- KMA (2009b) West Belconnen Project ACT and NSW Land Flora and Fauna Studies
- David Hogg Pty Ltd (2013) West Belconnen Woodland Areas: Confirmatory Ecological Assessment; and

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<sup>42</sup> Strategic Assessment Report (Umwelt, March 2017) part 4.5.1

<sup>43</sup> Strategic Assessment Report (Umwelt, March 2017) part 4.5.2

<sup>44</sup> Strategic Assessment Report (Umwelt, March 2017) part 4.5.3

<sup>45</sup> Strategic Assessment Report (Umwelt, March 2017) part 4.5.4

<sup>46</sup> Strategic Assessment Report (Umwelt, March 2017) part 4.5.5

- Geoff Butler and Associates (2000) The Revegetation of Ginninderra Creek Between Barton Highway and Macgregor, ACT.

The targeted surveys were conducted between three and twenty years ago. Surveys are a snapshot in time and changes can occur to habitat over time. Additional surveys may identify species that were not recorded in the original surveys or areas of habitat that have subsequently recovered. It is therefore imperative that a proper environmental impact statement be undertaken so as to ensure a proper survey of affected species, including likely impacts as a result of the development and a proper mitigation program to address these impacts.

## **2.4 Section 211H(3)(a): Concerns that the surveys and reports are not completely independent**

In general, across all developments in the ACT, there are serious concerns with the independence of the planning and assessment process with respect to assessing environmental impacts. The general process is highly flawed given that the Minister in most cases relies on reports commissioned and overseen by the proponent in order to make its decisions. This provides the opportunity for proponents to influence the terms of reference and scope of reports, to engage consultants likely to be more favourable to development, and to expert shop if results of reports are likely to adversely affect development.

In this case, as has been demonstrated above, a Little Eagle study justifying a certain measure (e.g. 200m buffer zone) has been quoted, favourable to the development, despite the breadth of reports indicating otherwise. This is a clear indicator that an independent EIS is required.

## **3 Procedural issues with the EIS exemption application**

In addition to the substantive issues outlined below, there are several procedural issues in EIS application(s). For example:

- (a) A number of Form 1Ms appear to be unsigned in several places;
- (b) A number of Form 1Ms have insufficient descriptions of the land to which the EIS exemption applies. Specificity is required when applying for an EIS exemption (otherwise, how can anybody providing an opinion or object turn their mind to whether or not an EIS exemption is appropriate or not?).

Where an application is made on an EIS exemption, unless a block of land is considered in its entirety, applications for blocks "in part" or for roads, must include GPS coordinates of the area to which the EIS exemption relates.

<b>Block number</b>	<b>Defects in 1M form</b>
1540 Belconnen	Government custodian signature not dated
1582 Belconnen	No ACN number for company included
1599 Belconnen	Details not included, written 'as previous'
1600 Belconnen	Signature is unclear (signed electronically?)
1607 Belconnen	Lessee signature signed 'as above'
1469 Belconnen	Lessee signature signed 'as above'
1621 Belconnen	Lessee signature signed 'as above'
1620 Belconnen	Lessee signature signed 'as above'
Drake-Brockman Drive	No precise location given
Studio Road	- No precise location given - No zone given - No lessee or custodian details filled in - No signature

Parkwood road	- No precise location given - No zone given - No lessee or custodian details filled in - No signature
Drake-Brockman Drive	No certainty as to what portion of the road this application relates.
Studio Road	- No certainty as to what portion of the road this application relates. - Lessee signature signed 'as above'
Parkwood road	- No certainty as to what portion of the road this application relates. - Lessee signature signed 'as above'
7 (part) Macgregor	No certainty as to what portion of the block this application relates to.
2 (part) Dunlop	- No certainty as to what portion of the block this application relates to. - Lessee signature signed 'as above'
1	Lessee signature signed 'as above'
856	- 2 third lessee signatures? - There have been 2 sites signed for, but only one site identified in the form
860	Lessee signature signed 'as above'
857	Lessee signature signed 'as above'
Exemption to DA application	Refers to attached forms only

In addition, the procedural requirements set out in section 211B (3) have not been fulfilled. Section 211B(3) requires that the EIS exemption application:

- a. be in writing;
- b. Include information about the development proposal;
- c. Identify the recent study;
- d. If the recent study is more than 18 months old, include a statement *from an appropriately qualified person with no current professional relationship with the proponent verifying that the information in the recent study is current.*

Our concerns relate to section 211B(3) (b), (c) and (d) above. I note that section 211B(3)(d) is addressed above at 2.3 above.

In particular, the EIS exemption application must include information about the development proposal as per Section 211B(3)(b). This clause was originally inserted into the Act to assist the public, because “*without information about the development proposal it is difficult to establish if the environmental impact of a proposal has been sufficiently addressed in a recent study*”.<sup>47</sup> In the current EIS exemption application, there is no information provided that outlines the nature of development in each of the blocks the EIS exemption applications relate to. Indeed, the defects in the Form 1Ms are such that there is no certainty as to what part of the blocks the EIS exemption relates (as per the table above). If the locations cannot be identified with any certainty, it is difficult to prove that any documentation provided to support an EIS exemption addresses the impacts on particular blocks of land.

Section 211B(3)(c) requires that a recent study must be included in the application to provide evidence that environmental impacts have been considered and will be addressed. However, because of the haphazard nature of the application and the bundle of documents attached, it is not clear as to which reports apply to which blocks. Whilst a large-scale approach has been taken in terms of assessing impacts (for Commonwealth-listed species), this has a real impact

<sup>47</sup> *Planning and Development (Efficiencies) Amendment Bill 2016, Explanatory Statement.*

on the ground and detail needs to be paid attention to in order to ensure harms are realised and mitigation measures are in place.

## **Conclusion**

The application for an overarching EIS exemption for a 50-year period, for an entire 16-stage development over at least 32 blocks to take place over the next 37 years is egregious to begin with. What's more the application for an exemption is unjustified, given the criteria for the Minister to grant an EIS exemption has simply not been satisfied. In the pages preceding, evidence has been provided that:

- the primary documents relied upon to satisfy PD Act Schedule 4, Part 4.3 with respect to biodiversity protection, heritage protection, reserve protection and contamination of land do not sufficiently address the likely impacts of the development on vulnerable and endangered ACT-listed flora and fauna or have not begun investigations into the nature of contamination;
- reports have been selectively submitted with respect to species such as the Little Eagle, as a means to an end, rather than providing an accurate, well-rounded assessment of the impacts to the species and the best practices to mitigate harm;
- the threat of bushfires, noted as a specific risk, have not been sufficiently addressed in or as part of an EIS, despite experts articulating significant risk;
- there has been no consideration of the impacts of the development on climate change, or the ACT's emission reduction targets;
- there have been no public consultations on the development with respect to the ACT-listed species and ecological communities;
- Some of the reports and data drawn upon are either older than 18 months (and are not accompanied by a statement from an independent person) or contain survey data that is dated;
- Procedural requirements have not been met in that forms and other documents provided do not set out the nature of the impact of the development on each block, its impacts on ACT-listed flora and fauna, or a clear indication as to where the reports relate.

The large-scale nature of this project means that impacts on ACT-listed flora and fauna will be cumulative and incremental. This project requires ongoing monitoring, assessment and mitigation of environmental impacts on protected species at each stage of the project. Such is our concern about the inappropriateness of this application that we are seeking expert legal advice on this issue. It is appropriate for any decision on this matter to be delayed until this legal advice is received (within the next two weeks).

Yours faithfully,