

## **REVIEW OF THE ENVIRONMENTAL PROTECTION AND BIODIVERSITY CONSERVATION ACT**

### **Introduction**

The Ginninderra Falls Association (GFA) was formed in 2010 and incorporated in 2011 for the purpose of encouraging the creation of a national park along the Murrumbidgee River to the west of Canberra. On 10 June 2016, GFA lodged a submission to the Commonwealth Department of the Environment in relation to EPBC SAO24 West Belconnen/Parkwood Development, now known as Ginninderry which is located adjacent to the Murrumbidgee.

This submission expressed concerns about what appeared to be inadequate consideration of the environmental effects of creating a new suburban development in this area. The outcome highlighted perceived failings in the Environment Protection and Biodiversity Conservation Act (the EPBC Act) and its operation. Our conclusion was that an overarching object of this Act should be to protect Australia's environment and biodiversity for the long-term wellbeing of its people. The time has come for more serious consideration of nature as an essential component of human existence rather than just an interesting and enjoyable object. The Act already provides for this approach in Section 3A:

- (c) the principle of inter-generational equity – that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.

Over the past century, Australia's population has increased from 5.5 million to 25.5 million. This growth has followed the traditional pattern of settlement mainly in the eastern coastal areas of Australia. This reflects the fact that two-thirds of Australia's landmass suffers from inadequate water supply, poor soils and extreme temperatures. Consequently, the more environmentally-favourable locations have had to accommodate the population growth, with all capital cities now accounting for 17.1 million people or 67% of the national total.

This has inevitably applied pressure to the natural environment and its biodiversity, with houses, other buildings, roads and other hard surfaces covering the land and reducing the conditions favourable to various species for growth, foraging and raising young. Furthermore, the locations preferred for urban development are often the preferred habitat of vulnerable species, creating a conflict between the needs of flora/fauna species and people. Land clearing for industrial purposes to support this increased population adds to this loss of habitat, as well as loss of trees for carbon control.

The application of the EPBC Act has failed to acknowledge this fact, being focussed on endangered species with no consideration of reducing the loss of habitat that will cause further species to become endangered. Land-clearing is mainly regulated by the states and territories, with limited effectiveness or strategic oversight. It can only be referred to the Commonwealth if the clearing action is likely to have a significant impact on a listed matter of national environmental significance.

A further consequence of these activities is the increase in carbon emissions caused by the loss of natural forests and other vegetation. In urban areas, loss of vegetation results in the absorption of solar radiation by the increased areas of hard surface, making cities hotter, and also significantly reduces absorption of rainwater into the ground. A contributing factor is current state and territory building standards that are designed to increase urban density but result in loss of space for trees and other greenery in urban areas. All of these factors emphasise the need for better control of developments to protect and support the environmental characteristics necessary for the survival of the Australian people.

Such control is reflected in Section 3 of the Act by the following objects in clause (1):

- (b) to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources; and
- (d) to promote a co-operative approach to the protection and management of the environment involving governments, the community, land-holders and indigenous peoples.

### **Case study: Ginninderry and EPBC**

Ginninderry is a greenfield urban development that is an extension of the city of Canberra. It straddles the ACT/NSW border, a fact that highlights the need for uniform environmental impact assessment processes across jurisdictions, as recommended in the Hawke review report (2009). Without this, EIS assessment is unnecessarily complex for developers.

The development area was formerly zoned as a natural buffer in the ACT and for E3 Environmental Management in the NSW portion. Despite having been largely cleared and used for grazing, it supported many species of flora and fauna and provided a wide wildlife corridor along the river. Only the steep slopes unsuitable for residential development will now be included in a narrow conservation corridor that does not comply with good reserve design principles. The EPBC application defended this on the basis that “the E3 zone is not based on any strategic studies or empirical research that might have justified the applying of the zone.” Section 3A of the EPBC Act stipulates, however:

Decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations;

If there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;

#### Little Eagle and listed species

The Little Eagle was not considered in the Ginninderry EPBC assessment because it is only listed as vulnerable in NSW and the ACT, and the development was assessed under the EPBC Act. This caused a delay in development approval when it was realized that assessment should have been done under NSW and/or ACT law.

The EPBC process should consider state and territory species listings, to avoid species becoming regionally threatened and to avoid the necessity of duplicate state/territory assessment processes.

### Cumulative Effects

There have been a series of developments in woodland and farmland fringing Canberra in recent years, which have steadily reduced the habitat area for the Little Eagle. The EPBC Act should assess the cumulative effect of previous developments, together with proposed new developments. Regional assessment, as recommended by the Hawke review, would facilitate understanding and mitigation of cumulative effects.

### Connectivity

There is no assessment of impact on wildlife corridors or regional ecological connectivity in the Act. The Murrumbidgee forms an important corridor, crossing state/territory borders and, therefore, should be of national interest. Ecosystems of national significance, as recommended by the Hawke review, would include those providing a connectivity function.

### Offsets

The assessment process relies on the use of offsets to compensate for development incurring loss of threatened species' habitat. Ginninderry includes offset areas for the golden sun-moth and Pink-tailed Worm Lizard. There is no monitoring of the effectiveness of offsets or evidence that they work. For example, isolated offset fragments are no substitute for a continuous area of habitat and are more likely to become degraded with time.

There seems to be confusion between offsets for previous developments and the Ginninderry development.

Environmental performance audits, as recommended by the Hawke review, could have checked the effectiveness of offsets.

### **Holistic Assessment**

The Act has no specific assessment of the significance of a place's biodiversity (number of species per unit area), despite having the word in its name. It considers species individually, not the significance of the overall species diversity of a place. Ginninderra Falls has an outstanding assemblage of species in a scenically-important place (e.g. 164 plant species) and that place is worth more than the sum of its parts. Although many of its species are not listed as threatened or vulnerable, their occurrence together is significant. The Act, however, has no holistic assessment process. The Hawke Review recommended a shift of emphasis from species to regional and ecosystem assessments, which would facilitate assessment of a place's overall values, especially biodiversity and connectivity.

### **Independent Review**

There is no independent review, including field validation, of EPBC assessments. We have only the developer's commissioned reports to rely on to assess the impact of the Ginninderry development. The Hawke review recommended an EIS review process, which would ensure that environmental impact studies are independent, adequate and accurate. GFA strongly supports the need to establish a system for the accreditation of consultants and experts who prepare Environmental Impact Assessment reports.

## **Reactive or Proactive**

The Act is essentially reactive, in that it responds to development proposals, rather than identifying ecological values first and then guiding development to avoid conflict. There has been no overall assessment of the value of the Ginninderra Falls area to the region (biodiversity + connectivity + cultural + recreation etc), prior to the decision to allow urban development.

The Hawke review recommended strategic and bioregional planning, which would consider the environment first and avoid the conflicts which usually arise with the current system.

## **Conclusion**

It is essential that the State, Territory and Commonwealth Governments work together to implement a national process to guarantee a continuing richly-endowed environment that will support the Australian people.

We have read the submission by the Environmental Defenders Office and support it entirely.



**Robyn Coghlan**  
President,  
Ginninderra Falls Association Incorporated  
Ph. (02) 6254 0487  
Mob. 0435 534 998

17 Apr 2020