

The Little Eagle at Ginninderry Status Report 1 November 2018

Introduction

This report provides information on the Little Eagle (*Hieraaetus morphnoides*) relative to the Ginninderry development in West Belconnen. The species is listed as “vulnerable” under the ACT Nature Conservation Act and the NSW Threatened Species Conservation Act, and consequently has been accorded specific attention as the development proposal has progressed through planning and environmental research, assessment and approval processes. A pair of Little eagles has been recorded nesting adjacent to the development area.

Background

Field research aimed at identifying bird species that occurred on the proposed Ginninderry development site were conducted in 2009 and 2013¹. The species was known to have occupied a nest on a nearby property (Pegasus Riding for the Disabled) and it was assumed that the development site would provide potential habitat for the bird. Whilst none were sighted during the field survey periods, the potential for their presence was recognised.

In December 2013 Riverview was advised that a pair of Little eagles had occupied the Strathnairn Arts nest. In response to the receipt of this advice the Riverview project team contacted the ACT Government Wildlife Research Unit to seek advice as to the most appropriate course of scientific research to enable a sound evaluation of the implication of the presence of the eagle both for the project and for the species. A discussion group (which later evolved into a more formally constituted research panel) including Riverview, Dr David Shorthouse the Riverview project environmental science peer reviewer, raptor experts and key wildlife research unit personnel was convened.

In early 2015, the discussion group formed the following conclusions:

- a) the proximity of the Strathnairn Arts nest to what will become the 'Conservation Corridor' in the Ginninderry development provided extensive foraging area for the Little Eagle and that it was the potential loss of foraging area, and not a specific or potential breeding tree, that would be significant to a particular bird or birds;
- b) development of the area within the Ginninderry project site to the South West of the Strathnairn Arts Nest, which fell within the foraging area that at that time had been identified by Mr Olsen (an amateur raptor expert who had provided input to ACT Wildlife Research), should be delayed (by many years - potentially forming Stages 8 to 10 of the broader Ginninderry development) pending the outcome of further research.;
- c) a "buffer zone" of 200m within which no development would be permitted was considered to be appropriate to protect the nest site at Strathnairn Arts. The discussion group agreed that the buffer zone adequately protected the Strathnairn Arts Nest and for that reason the Discussion Group determined that it should be expressly provided for in the proposed variation to the Territory Plan. The buffer zone was then incorporated into Territory Plan Variation #351.

¹ January 2009, Kevin Mills & Associates, “Flora and Fauna Assessment - Preliminary Assessment Land at West Molonglo and Ginninderra Creek NSW ACT” ; July 2009, Kevin Mills & Associates, “Further Flora and Fauna Studies - Land at West Molonglo and Ginninderra Creek NSW ACT”; September 2013, Kevin Mills & Associates, “West Belconnen Project ACT and NSW Land Targeted Bird Surveys”

Inclusion in Territory Plan

On 23 October 2015, Territory Plan Variation #351 was approved by the ACT Minister for Planning. A rezoning of the National Capital Plan (Amendment 85/86) was implemented concurrently. The Variation came into effect on 21 November 2016 when the National Capital Plan amendment process was finalised.

The Territory Plan specifically identifies the "buffer" (clearance zone) required around the Little Eagle Nest. The "West Belconnen Concept Plan" is the relevant "precinct code" for the purposes of the Planning and Development Act 2007. On page 13, the West Belconnen Concept Plan provides:

| 23. Little Eagle Clearance Zone | |
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| R44 <i>This rule applies to development outside Strathnairn but still within the 200m Little Eagle clearance zone: No development including infrastructure and construction related activities will be permitted outside Block 132 or successor (Strathnairn Arts Precinct), within the 200m Little Eagle clearance zone indicated in Figure 2²</i> | C44 <i>Development is not permitted until such time as research on the Little Eagle has been completed and the Conservator of Flora and Fauna confirms that the area is suitable for development.</i> |

EPBC assessment

From May to June 2016, an EPBC (Commonwealth Environment Protection and Biodiversity Conservation Act) Assessment report was publicly notified. The EPBC report was prepared in accord with the requirements of the EPBC Act. The Act requires that an assessment process be undertaken where a proposed development may impact on matters of National Environmental Significance (MNES). In this case this requirement was triggered by the presence on the West Belconnen site of Box Gum Woodland, Pink Tailed Worm Lizard and Golden Sun Moth, which are listed species or, in the case of the woodland, an ecological community, for the purposes of the Act.

In addition to the MNES which were of Commonwealth interest, a number of other species occurred, or may have occurred, on the site that were listed under relevant ACT legislation (the Nature Conservation Act 2014) or the (then) (NSW) Threatened Species Conservation Act 1995, and which may have triggered the requirement for an environmental assessment under the ACT Planning and Development Act. It was agreed between the Agencies and Riverview that a single combined assessment report would be prepared to include all listed species and ecological communities of interest to each of the jurisdictions. It was considered that, as well as being a more efficient use of resources, this would assist the public in their review of the environmental impact of the proposal, with one report to examine rather than three.

On 21 July 2016, the Commonwealth Department of Environment and Energy referred a draft of the EPBC Report to the ACT Conservator for comment.

On 12 August 2016, the ACT Conservator replied to the Commonwealth's consultation request. The Conservator suggested the inclusion of additional text relating to the Little Eagle and, relevantly, provided the view that *'the proposal is unlikely to result in the loss of essential foraging habitat'*. An extract of the substantive text of the Conservators letter is at Attachment A.

This advice, taken together with the fact that the actual nest tree and the group of trees of which it is a part, and a 200 metre buffer area would be undisturbed, led to the conclusion that the impacts of the Ginninderry development on the Little Eagle would not be significant.

² Figure 2 appears on page 18 of the West Belconnen Concept Plan.



Phase 1 research report

Riverview has contributed to the funding of studies into the Little Eagle after learning of the existence of the Strathnairn Arts Nest. The studies are ongoing and are configured and oversighted by the research panel. The outcome of the early research is set out in a report authored by Renee Brawata and Bernd Gruber. This report was published in July 2016.

The purpose of the research which led to the creation of the report was to monitor movements of a pair of Little Eagles that had recently occupied the Strathnairn Nest (referred to in the report as the “Molonglo pair”).

The study found that:

The home range of the male Little Eagle from the Lower Molonglo pair was monitored from late October 2015 through to the end of January 2016. The home range during this period extended from south of Strathnairn, to the east of the Murrumbidgee River, across to Wallaroo in the north and the CSIRO lands in the east and encompassed two known nesting sites (Strathnairn and CSIRO lands).

The foraging area of the Little Eagle identified in the Brawata/Gruber report was quite different to the area suggested by Jerry Olsen referred to above.

Estate Development Plan 1

Estate Development Plan 1 (EDP1) was the first development application lodged for the Ginninderry project and included roads, servicing and subdivision of land to create the first 350 blocks. The Development Application was lodged on 2 March 2017 with a public consultation period from 14 March to 10th April 2017.

For timing reasons, and having regard to the social objectives of the project which include the delivery of affordable housing, EDP1 was located on a part of the site that did not contain any species or listed ecological communities and was configured so that it would not cause any significant adverse impact on any species or ecological communities listed by either the Commonwealth or ACT legislation; it was located outside the 200m clearance zone.. For this reason it was able to be lodged and processed through the “merit track” development application process without the need for an accompanying environmental assessment. This meant that it could proceed prior to the finalization of the environmental assessment discussed above. Both the Commonwealth and Territory agencies agreed to this prior to the lodgment of the DA. The Development Application was lodged On 2 March 2017 in the "Merit track".

The EDP1 development proposal was approved by the Planning and Land Authority on 31 July 2017.

ACT Civil and Administrative Tribunal outcomes

An appeal against the approval was lodged in the ACT Civil and Administrative Tribunal (ACAT) by the Environmental Defenders Office on behalf of Robyn Coghlan as president of the Ginninderra Falls Association on 4 September 2017.

The appellants claimed that the EDP1 proposal would have an unacceptably adverse impact on two species, the Scarlet Robin and the Little Eagle. The appellant retained expert ornithological advice to assist with their case, as did Riverview. On reviewing the material provided by Riverview the appellant, in consultation with their experts, withdrew their appeal on 16 February 2018, shortly before the scheduled hearing date. As part of this process Riverview has agreed to certain undertakings however these do not substantively alter the Ginninderry project proposals or the protection measures that are in place related to the Little Eagle. The agreed undertakings are summarised below:

- a) The ACT Little Eagle Research Panel is to restate its earlier invitation to Dr Steven Debus (the ornithological expert retained by the GFA to assist them in this matter) to join the ACT Little Eagle Research Panel
- b) Riverview and the GFA agreed to the following conditions:
 1. the GFA may submit as part of any DA for Stage 8 - 10 a list of questions to be answered by the Party Joined about the little eagle and scarlet robin. The answers to those questions are to be submitted with the DA regardless of the track in which it is lodged or if it is called in by the Minister;
 2. an area of land approximately 2.4ha on Stockdill Drive at the extreme south of the development area will not be the subject of a development application pending a determination by the Conservator about the need for the retention of and the extent of the impact of any development in



that area on the Little Eagle or the Scarlet Robin. Each party to have the opportunity to provide written submissions;

3. Resident meetings facilitated by Riverview to include environment and sustainable living components

The agreement citing these conditions was signed by Ms. Robyn Coghlan on behalf of the GFA, Mr. Maxwell on behalf of Riverview Projects (ACT) Pty Ltd and Mr. Webb on behalf of the Suburban Land Agency.

The outcome of the ACAT process therefore was firstly, an affirmation that the protection measures put in place for the Little Eagle were adequate and secondly that the Ginninderra Falls Association and their president Ms. Coghlan agreed to this.

Further research

The Little Eagle Research Panel continues to be operational. Since the publication of the Brawata/Gruber report discussed above a number of additional nesting pairs of eagles have been located both in the ACT and in nearby NSW, cameras have been placed on nests and a number of satellite tracking devices have been attached to birds, with more planned. A second paper by Brawata and Gruber is anticipated shortly.

Attachment A

Extract of letter dated

On 12 August 2016, the ACT Conservator reply to the Commonwealth's consultation request on the draft EPBC report

3.2.3 Fauna

Little Eagle

The following additions as detailed by the italicised text should be made to Pages 43 and 44.

Additionally and subsequent to the surveys discussed above, a pair of little eagles was recorded nesting in a pine tree at the Strathnairn Arts Association property (KMA 2014). Little eagles are listed as vulnerable in the ACT and NSW, although are not uncommon elsewhere in Australia. In the ACT between 1988 and 2011, the number of known Little Eagle breeding territories with active nests declined from 13 to one, with up to three pairs breeding in more recent years. The species breeds only in the low elevation part of the ACT and requires an extensive hunting area of open woodland and grassland. The decline is thought primarily to be due to loss and fragmentation of habitat with Canberra's growth into open woodlands. Competition with Wedge-tailed Eagles and secondary poisoning from Pindone are also suspected of being factors of decline.

The nest site is adjacent to the WBCC and the urban development component of the Program includes a 200 metre buffer to protect the site from development impacts. The buffer to urban development was determined on the basis of agreement with ACT Government wildlife research personnel. A research program including scat analysis and radio tracking to determine foraging area and diet has also been initiated.

The food pellet and remains analysis found that rabbit (over 50% of diet biomass) and common medium sized birds (magpies, rosellas, starlings) (30%) were the major food

item of the Strathnairn pair. All major food items were common widespread species suggesting that foraging could occur over much of the landscape.

Little Eagles do not breed every year and the Strathnairn pair did not breed in 2015, the year in which a radio transmitter was attached to the male over a three month period. Nevertheless much valuable information was obtained. Over the period of tracking, the average daily distance travelled by the eagle was just under 10km with a maximum daily flight of 28km. Its home range covered about 65km², ranging from west of the Murrumbidgee River in the south, through to Wallaroo (NSW) in the north and across to the end of the CSIRO lands at William Slim Drive and the Barton Highway to the east. Localities such as Strathnairn, Gooromon Ponds, Dunlop Reserve and CSIRO lands were frequently visited during the monitoring period.

13% of the time was spent within the proposed Riverview conservation area and 8% within the proposed development area. The Little Eagle mainly utilised open woodland habitat, followed by grassland, but often flew high over urban areas to access foraging grounds that were separated by up to 20km. There was repeated use of a corridor of open woodland/rural habitat that extends from the proposed development area along the ACT/NSW border into both Gooromon Ponds and CSIRO lands. These areas provided large trees for roosting and shelter as well as foraging habitat.

Given the wide ranging nature of the Little Eagle, its non-specialised diet and that less than 10% of the male's time was spent within the Riverview development area, the proposal is unlikely to result in the loss of essential foraging habitat. The Strathnairn pair is known to have nested in six different locations in the Lower Molonglo area since 2001, so these other nest locations may be favoured once development occurs. Maintaining a treed movement corridor is probably a key mitigation action, which will require specific consideration within estate development.