

WILDLIFE MANAGEMENT COMPLIANCE INFORMATION REPORT

Report Number: Management Area: Sector: Shire/ District:	1 Wildlife Management Unit Compliance
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Classification: Unclassified In-Confidence Protected

Date/Time of Information: 17/03/2014
Title/Subject of Information: Failure to comply with conditions of permit issued

Latitude: _____
Longitude: _____

Date/Time of Incident: 9/12/13 – 11/12/13 and 12/2/14 – 14/2/14
Location: Lissner Park, Charters Towers
Source of Information: 3(10)(1)(b) Confidential source of information

Submitting Officer: _____
Organisation: Department of Environment and Heritage Protection

Information:

Statement:
3(10)(1)(b) Confidential source of information resident of Charters Towers and I would like to lodge a complaint in relation to permit no. WIFF13807313 granted to the Charters Towers Regional Council (CTRC) to disperse little red flying foxes and black flying foxes from Lissner Park. My complaint is based on the grounds that CTRC is not complying with conditions PB2, PB6, PB7 and PB9 of the permit not with its own management plan. It is also breaching other weapons legislation. Below is a list of area where I have witnessed that CTRC has failed to follow the permit conditions.

Allegation 1: Permit WIFF13807313
 Activities under this permit allow CTRC to deliberately disturb and disperse flying foxes. The permit does not allow lethal means and states dispersals are to stop if an animal is killed. One of the methods used has been paintball guns. While this is not a lethal weapon if used on a human it is a lethal weapon if used on a flying fox due to their size and delicate bone structure.

DEHP response: This is a statement however officers on site did not find any corresponding evidence in relation to this allegation.

Allegation 2: Permit Condition PB2
 Condition PB2 on the permit states “Dispersal activities must be carried out in accordance with the Roost Management Plan submitted by CTRC on 16 October 2013.”
 CTRC RMP Section 1 – Roost Management Plan Details (page 9 of 15) states that helicopters will be used from day 2 onwards. On the 9th December, 2013, which was the first day of dispersal two helicopters were used.

DEHP response: The Flying Fox Roost Management Permit and associated Roost Management Plan approved the use of a helicopter to create a sound mitigating barrier to prevent flying foxes dispersing into undesirable locations. The activities described under 1. Roost Management Plan details does not comprehensively specify all dispersal activity options. For example; Day 2 of the Roost management plan details states that helicopters **can be** utilised to direct flying foxes to Gladstone Creek. Instead, this information is listed under a. Detail regarding the approved activity methods to be used (page 10). In addition to this, CTRC verbally advised DEHP that helicopters would be used for dispersal activities on Day 1 and 2.

Allegation 3: CTRC RMP Section 1 - Roost Management Plan Details (page 9 of 15) states that helicopters will be used to direct the flying foxes and permit condition PB7 states helicopters to be used as a barrier. This was not the case and on the 9th December, 2013, I witnessed the helicopters being used to muster and round up the flying foxes. Please refer to my statement in regards to permit condition PB7 for further details

DEHP response: On the 9th December 2013 DEHP Officers attended the dispersal of flying-fox's at Charters Towers. Helicopters were used by CTRC to create a sound mitigating barrier to prevent flying foxes from dispersing in undesirable locations during proposed activities. I was given hourly verbal Situation Reports of what was occurring at the site and were documented as soon as Officers returned to the Townsville Office. I also conducted a de brief with the lead DEHP Officer on site after each day and evening dispersal. At no time did DEHP Officers observe the helicopters 'rounding up' or 'mustering' flying foxes. The helicopters were used as a barrier to direct the flying-foxes to the appropriate alternative roost sites as listed in the Roost Management Plan. DEHP has not received any additional information or evidence to support this allegation.

Allegation 4: CTRC RMP Section 1 (a) page 10 of 15 - Details regarding the activity methods to be used states birdfite to be used as a last resort. In direct contradiction with this is the statement in section 1 (page 9 of 15) which says that birdfrite will be used from day 1 which it was.

DEHP response: CTRC had the authority to make the decision to use Birdfrite on Day 1 and Day 2 as a last resort dispersal technique based on the effectiveness of other approved methods.

Allegation 5: Birdfrite was used from Day 1 as stated in RMP.

CTRC RMP Section 1 (a) page 10 of 15- states paint ball guns will be used to put movement into adjacent branches. This was not the case and I witnessed paint ball guns being aimed at the flying foxes while they were in the trees and airborne.

DEHP response: The approved Roost Management Plan states that paintball guns will be used to help get the flying foxes into the air by putting movement into the adjacent branches. DEHP Officers were on site during all major dispersal activities at Lissner Park. At no time did DEHP Officers observe paintball guns being aimed directly at the flying-foxes while in the trees and when airborne. DEHP Officers observed the firing of paintballs at the trunks and branches of trees and not directly at the flying-foxes. This is consistent with Situation Reports documented by DEHP Officers. DEHP have not received any additional information or evidence to support these claims.

Allegation 6: A verbal complaint regarding this was lodged with 2 EHP officers (on Hollman Street) on the 10th December by myself and 3 others and we informed them of the animals

seen with holes in their wings and the juveniles being left behind by their mothers. We also offered to show them the video footage taken by [redacted] of information

DEHP response: DEHP officers attended dispersal on the morning and evening of 10th December.

An allegation of flying foxes with holes in their wings was received by phone, to which an EHP Officer requested that they provide DEHP with evidence to support their claim. The complainant directed the officer to a Facebook page of another person. EHP informed them that they needed to provide DEHP with the evidence directly, and they were provided with a contact email to do so. No evidence was forthcoming.

s78B(2) At approximately 19:00 Tony Frisby and Wade Kelly were approached by [redacted] and two other individuals [redacted] stated that animals were flying with holes in their wings and one of [redacted] associates showed footage of animals flying. The quality and screen size of the footage did not allow for accurate vision of the animal. The DEHP Officer advised [redacted] to submit the complaint in writing with any footage or images and DEHP would investigate.

Allegation 7: On the 13th February I also made a verbal complaint to Kelly Wade regarding paintballs being shot at the flying foxes – not just causing movement in the branches

DEHP Response: On 13th of February 2014 [redacted] contacted Wade Kelly on the DEHP Hotline to discuss the dispersal that had occurred at Charters Towers [redacted] mentioned that paintballs had been shot at the flying foxes during the dispersal. Wade Kelly advised [redacted] to submit a complaint in writing with any supporting images/footage and DEHP will investigate the matter. Senior Ranger, Tony Frisby's contact details were provided.

On 14th February 2014, [redacted] submitted the video in question to Matt Brien via electronic mail. DEHP reviewed the footage and concluded that there was no direct causal link between the firing of the paintball projectiles and the holes in the animals' wings which could have been caused by any number of events. As a result no further action was taken by DEHP.

Allegation 8: On the 9th December, 2013 I was standing outside Lissner Park near the Park Hotel with several people, including [redacted] while dispersal activities were undertaken. At one point [redacted] began shouting and said [redacted] had been hit. Prompt inspection of the immediate area resulted in us finding several burst paint balls on the bitumen.

DEHP Response: DEHP were not notified, no corresponding evidence was provided and officers present on that day do not have any recollection of this incident occurring. DEHP were notified by CTRC that this had occurred the next day and that it had been handled by the police. This is not within jurisdiction of DEHP.

s3(1) **Allegation 9:** This incident and my witnessing paint ball guns being aimed at the flying foxes indicates that the paint ball guns were not used in accordance with the permit conditions but rather in a manner which put innocent bystanders and flying foxes at risk of being hit. I believe [redacted] is also in the process of lodging a complaint in relation to this and other breaches of the permit [redacted] witnessed.

DEHP Response: No corresponding evidence was provided and officers present on that day do not have any recollection of this incident occurring. CTRC have been queried to which their response stated that staff only fired paintballs at adjacent branches below the roosts. This is not within the jurisdiction of DEHP.

Allegation 10:

-CTRC RMP Section 1 (a) page 10 of 15 – states paint ball guns will be used.

<http://www.police.qld.gov.au/programs/weaponsLicensing/fee/faqs/licencefaqs.htm> outlines the provisions of the Weapons Act 1990 (QLD) in relation to paint ball gun use and states “Paint ball weapons can only be used at paint ball ranges/fields”. For an area to be designated a paint ball range/field certain conditions need to be met – see the following link for full details

<http://www.police.qld.gov.au/programs/weaponsLicensing/crgwc/sg/skirmish.htm>

These measures include:

1. Field boundaries are to be clearly marked by either brightly coloured tape or signposted (e.g. paintball shooting range or danger keep out).
2. Buffer zones or protective barriers/screens must be used
3. When shooting is in progress the range must be clearly identifiable – i.e. adequate, well maintained fencing on all boundaries, signage, clearly visible red warning flags.

Paintball guns were used both within the park and were witnessed being used in at least one backyard. None of the above measures were in place to protect the public and therefore the operation of the paint ball guns appears to have been a breach of the Weapons Act. At least one member of the public was hit with a paint ball as stated in previous point.

DEHP response: This is not within the jurisdiction of DEHP.

Allegation 11:

-CTRC RMP Section 1 (c) Page 11 of 15 – Communications states that The Northern Miner will have a media release which will include a safety message on injured flying foxes. I obtained copies of the media releases issued by CTRC and none of them covered what the public was to do (or who they were to contact) if they found an injured flying fox. This information was not available on the Council’s website either. By failing to notify the public CTRC was putting the public at risk and not taking appropriate measures to ensure injured flying foxes were treated humanely and their welfare considered.

DEHP Response: This is not within the jurisdiction of DEHP.

Allegation 12:

-CTRC RMP Section 2 (page 12 of 15)- Flying Fox Considerations. Advice was not given either in The Northern Miner or on the council website to provide directions to Qld Health fact sheets on possible disease/issues concerning flying foxes. While the first media release dated 6th December, 2013, did give instructions on what to do if bitten or scratched (including saying that a vaccine was not available in the area) there was no mention of what the risks were to the public or reference to the Qld Health website for further information. Subsequent media releases has no information on the matter at all. By failing to notify the public, CTRC was putting the public at risk.

DEHP Response: This is not within the jurisdiction of DEHP.

Allegation 13:

Permit Condition PB6

States “a registered wildlife carer or veterinarian (inoculated against ABLV) must be on call at all times that dispersal activities are undertaken”. There is not an inoculated veterinarian in the area and as such an inoculated carer needs to be on call.

The person whom the council arranged to fill this position was not available at all times whilst the February dispersal was carried out. I tried to contact her unsuccessfully on numerous

occasions during dispersal activities from the 12/2/14 to the 14/2/14. She finally returned my call on 14/2/14. This means there was not a vaccinated carer on call at all times per requirement.

The council has a duty to ensure the carer is available during the dispersal process and they have not done so.

It is also of concern that this carer had no experience or expertise with handling, rescuing or caring for flying foxes.

DEHP Response: A veterinarian was on site/on call (9&10/12/13) during the dispersal activities however the vaccination status was unknown. There is insufficient evidence to support the claim that an inoculated carer was not on call during the dispersal.

Allegation 14:

Permit condition PB7

States “helicopters to be used as a barrier”. This was not the case and on the 9th and 10th December, 2013, I witnessed the helicopters being used to muster and round up the flying foxes.

The helicopters were flying very low and repeatedly swooping over the trees actively using the helicopters to dislodge the bats from the trees and get them airborne. These actions were performed despite the fact there was a large crowd of people in the streets below the helicopter watching the activities. These people would have been in danger if something had gone wrong. In the recent media release (Attachment H) dated 7/3/14 local ranger Bill Hussey also states that the helicopters will be used to “muster the bats out of the area” which is in direct conflict with permit condition PB7 and the CTRC RMP.

DEHP Response: On the 9th and 10th December 2013 DEHP Officers attended the dispersal of flying-fox’s at Charters Towers. Helicopters were used by CTRC to create a sound mitigating barrier to prevent flying foxes from dispersing in undesirable locations during proposed activities. I was given hourly verbal Situation Reports of what was occurring at the site and were documented as soon as Officers returned to the Townsville Office. I also conducted a de brief with the lead DEHP Officer on site after each day and evening dispersal. At no time did DEHP Officers observe the helicopters ‘rounding up’ or ‘mustering’ flying foxes. The helicopters were used as a barrier to direct the flying-foxes to the appropriate alternative roost sites as listed in the Roost Management Plan. DEHP has not received any additional information or evidence to support this allegation.

Allegation 15:

The witness statement (Attachment F) that forms part of my complaint also supports my observations that the helicopters were used to muster the animals and not just as a barrier. In addition to this a complaint has been lodged with CASA and the Minister for Environment and Heritage Protection in regards to this by Noel Castley-Wright of Oxygen Pictures who has taken video footage of the incident. I also believe a complaint is in the process of being lodged

sch3(1)(b) Confidential source of information which also covers this matter.

DEHP Response: This is not within the jurisdiction of DEHP

Allegation 16:

Permit Condition PB9

States “dispersal activities must immediately suspend (sic)....if a flying fox appears to have been killed, injured or harmed, suffering unnecessary or unreasonable stress”.

During dispersal activities on the evening of the 9th December, 2013, and the morning after I witnessed a number of juvenile black flying foxes in Lissner Park. These individuals were not

capable of independent flight due to their young age although several were carried by mothers despite the fact they were well past the age that the mother would normally be able to carry them. Many were calling desperately for mothers who were unable to reunite with them due to the dispersal activities. These animals were suffering from extreme stress. They would also have been starving and probably suffering from mild dehydration as they relied on their mother for all their nutritional requirements.

DEHP Response: This was not observed or reported by DEHP Officers on site during the dispersal, nor was it reported to DEHP. No evidence has been provided to support this allegation.

Allegation 17:

There were also some that could not be carried by their mothers as they were just too heavy. I witnessed one mother trying to carry a large baby and they fell to the ground as, despite the mother's determination, she was unable to carry the weight of her baby and remain in flight. At around 18:00 an EHP officer on site received a phone call from a lady that said 1x female black flying fox with a baby had landed on the ground outside Lissner Park and was in the hands of wildlife carers (unknown). EHP officer asked for the location, and directed the council vet to take any flying foxes into care in order to assess and treat any potential injuries. At 18:05, the EHP officer observed the council vet talking with people at the edge of the park. He then returned and informed EHP that they had a flying fox wrapped up in a blanket/towel but refused to hand it over.

DEHP Response: There is no evidence to support this allegation. In accordance with the Situation Report for 9th December 2013, DEHP Officers did not sight animal falling from the air.

Allegation 18:

The larger juvenile animals which were not capable of flight, along with the mothers that refused to leave them, were forced to remain in the trees and endure being aimed at with high pressure hoses, birdfrite, fog etc. which caused extreme stress in both the mothers and young. Other flying foxes also suffered extreme stress, especially those who were close to the fireworks and high pressure water hoses.

DEHP Response: DEHP Officers were on site during all dispersal activities. This was not observed or reported by DEHP Officers on site during the dispersal, nor was it reported to DEHP. No evidence has been provided to support this allegation.

Allegation 19:

During the evening dispersal on the 10th December, 2013, I saw a young dependent black flying fox in a backyard on the corner of Racecourse Road and Peek Street. It remained there all night and all day but had disappeared the following morning (12th December 2013). This animal would have been starving, dehydrated and extremely scared not understanding why its mother had not returned.

DEHP Response: DEHP has not been notified of this incident. No evidence has been provided to support this allegation.

Allegation 20:

I was present at both dispersals, December 2013 and February 2014, and witnessed multiple paintballs being fired into the trees where flying foxes were and also at airborne animals. During the evening dispersals on the 10th December, 2013, and the 12th February 2014 (after I had witnessed paintball guns being aimed at the flying foxes) I saw several flying foxes with

round holes in their wings of a size consistent with being hit by a paintball pellet. In some of these cases the flight of the animal was affected and the injuries would probably have resulted in the death of the animals at a later date. A video with one of the animals with holes in its wing is available at <http://vimeo.com/86496394> - this video was taken by [redacted] and will be submitted as evidence to support the complaint he lodges.

DEHP Response: The approved Roost Management Plan states that paintball guns will be used to help get the flying foxes into the air by putting movement into the adjacent branches. DEHP Officers were on site during all major dispersal activities at Lissner Park. At no time did DEHP Officers observe paintball guns being aimed directly at the flying-foxes while in the trees and when airborne. DEHP Officers observed the firing of paintballs at the trunks and branches of trees and not directly at the flying-foxes. This is consistent with Situation Reports documented by DEHP Officers. DEHP have not received any additional information or evidence to support these claims.

Allegation 21:

During the dispersal activities on 13th February 2014, I found a dead little red flying fox on the ground at Lissner Park with fractured bones. The injuries to this animal would have rendered it incapable of moving more than a few metres from where it sustained the injury and there was no cause of injury in the vicinity the bat was found. The injury is consistent with the animal being hit by a paintball. Please refer to Attachment A for photos of the animal and where it was found. If requested I am able to supply video footage and carcass of the aforementioned animal.

DEHP Response: Due to the high densities of flying foxes, natural attrition was occurring at a higher rate. DEHP Officers undertook several surveys prior to the dispersal and between five and ten deceased flying foxes were recorded on the ground in Lissner Park. Without a necropsy by a qualified person, the cause of death is speculative. DEHP was not notified of this incident occurring, no corresponding evidence was forthcoming.

Allegation 22:

On the morning of the 14th February 2014, I found another dead little red flying fox on the ground in Lissner Park which also had a fractured bone. As with the animal discovered on the 13th February 2014, the flying fox would not have been capable of moving very far from where it had sustained the injury and had an injury consistent with being hit by a paintball gun pellet. There was a broken branch near this animal but this had obviously been there for some time as all leaves had died which would not have happened in one day. Therefore the fallen branch could not have been the cause of the injury. It was obvious that the animal had only recently died as there was minimal decomposition evident. Please see Attachment B for photos.

DEHP Response: Due to the high densities of flying foxes, natural attrition was occurring at a higher rate. DEHP Officers undertook several surveys prior to the dispersal and between five and ten deceased flying foxes were recorded on the ground in Lissner Park. Without a necropsy by a qualified person, the cause of death is speculative. DEHP was not notified, no corresponding evidence was provided.

Allegation 23:

On Sunday 16th February 2014, I noticed a little red flying fox hanging under a picnic table in Lissner Park. I observed that it was alive but had a problem with one wing which appeared to be folded backwards. This injury turned out to be a complex fracture and due to the severity of the injury the animal was euthanized. The animal was very skinny indicating the injury had

been sustained a couple of days previously rendering it incapable of foraging for food and left to suffer a slow and painful death. The flying fox would not have been capable of moving very far from where is sustained the injury and the injury is consistent with being hit by a paintball gun pellet. There was no other obvious case of injury. Please see attachment C for photos. The carcass of the animal is also available.

DEHP Response: Due to the high densities of flying foxes, natural attrition was occurring at a higher rate. DEHP Officers undertook several surveys prior to the dispersal and between five and ten deceased flying foxes were recorded on the ground in Lissner Park. Without a necropsy by a qualified person, the cause of death is speculative. DEHP was not notified, no corresponding evidence was provided.

Allegation 24:

On the same day, just metres from where I had found the little red flying fox, I noticed a juvenile black flying fox hanging death on a branch in an unusual position. On the 17th February 2014, it had fallen to the ground and on examination I discovered it had a fractured wing bone which would have been the cause of death. This animal had obviously been dead for at least a couple of days. Attachment D has photos of this animal and video footage is also available on request.

DEHP Response: Due to the high densities of flying foxes, natural attrition was occurring at a higher rate. DEHP Officers undertook several surveys prior to the dispersal and between five and ten deceased flying foxes were recorded on the ground in Lissner Park. Without a necropsy by a qualified person, the cause of death is speculative. DEHP was not notified, no corresponding evidence was provided.

Allegation 25:

On February 18th 2014, I also found another juvenile black flying fox dangling from a branch which was in a state of decomposition and in the same vicinity as the two animals I had previously discovered on the 16th February 2014. I was not able to recover the body of this animal for examination until it was in an advanced state of decomposition. Attachment E has photos of the animal and video footage is available on request.

DEHP Response: Due to the high densities of flying foxes, natural attrition was occurring at a higher rate. DEHP Officers undertook several surveys prior to the dispersal and between five and ten deceased flying foxes were recorded on the ground in Lissner Park. Without a necropsy by a qualified person, the cause of death is speculative. DEHP was not notified, no corresponding evidence was provided.

Allegation 26:

Two other experienced bat carers attended the December 2013 dispersals and I have attached witness statements from them outlining the areas they witnessed which were not in compliance with the permit conditions. Attachment F- statement from [redacted] and Attachment G – statement from [redacted] Confidential source of information

Failure to comply with Charters Towers Regional Council Flying Fox Management Plan
The CTRC FFMP was submitted with the original application and RMP and its requirement for CTRC to maintain this plan. Throughout the entire management plan there are obviously conflicting statements and many areas where the conditions outlined have not been met.

Page 4 – Goals – Point 2 & Actions – Point 1 – “develop a sustainable.....campsite at Gladstone Creek” – the campsite has not been developed at this site.

I visited the site and in its present state, do not believe it is a sustainable site for the animals to relocate to.

DEHP response: The complainant is referring to the Charters Towers Regional Council Flying Fox Management Plan which was associated with a previous approved Damage Mitigation Permit. It was a condition of CTRC's FFRMP issued by EHP that CTRC follow their Roost Management Plan 2013. The permit says that activities must be carried out in accordance with the RMP. Therefore, the allegations presented below are not breaches of the FFRMP issued by DEHP.

Allegation 27:

I understand from documents obtained under the Right to Information Act that the Acting Senior Ranger at the Townsville office of EHP met with members of the CTRC on 10th October 2013. In the report of this pre lodgement meeting the Acting Ranger (Deb Hotchkiss) states "they (CTRC) agree to dig some holes in the creek and fill the holes with water....this work must be done prior to any dispersal activities". There is very little water available at the site and CTRC do not appear to have acted on this recommendation. The area is also used on a regular basis by motorcyclists at all times of the day and 4x4 vehicles both day and night and is clearly not an adequate alternative roosting site in its present state.

DEHP response: This was not a condition of their permit. As stated above, CTRC were to follow their RMP as a condition of their permit.

Allegation 28:

Page 4 – Goals – Point 2 -

"Enhance vegetation....at Gladstone Creek" - vegetation at Gladstone Creek has not been enhanced.

DEHP response: The complainant is referring to the Charters Towers Regional Council Flying Fox Management Plan which was associated with a previous approved Damage Mitigation Permit. It was a condition of CTRC's FFRMP issued by EHP that CTRC follow their Roost Management Plan 2013. The permit says that activities must be carried out in accordance with the RMP. Therefore, the allegations presented below are not breaches of the FFRMP issued by DEHP.

Allegation 29:

In the report mentioned above, the Acting Senior Ranger (Deb Hotchkiss) states "they (CTRC) agreed to clear undergrowth from under the mango and tamarin trees. It was explained that this work must be done prior to any dispersal activities". When visiting the area I noted that there was no evidence this had been done.

DEHP response: This was not a condition of their permit. As stated above, CTRC were to follow their RMP as a condition of their permit.

Allegation 30:

Page 4 – Goals- Point 4

"Increase community understanding and support for flying fox conservation" – the council has not implemented the Flying Fox Education Program which was to achieve these goals and has not made a sufficient effort to increase community understanding. In contrast CTRC has continually demonised the bats by publically referring to them as vermin, pest, etc.

DEHP response: This is not a matter for DEHP.

Allegation 31:

Page 14- 5.0 – Flying Fox Education Program Stages 1,2 & 3

Outlines the program the council will implement to educate the community on safety, ecology, flying fox habitat, feeding habits, species identification.

1. Stage 1- While there was a media release it failed to cover safety, ecology, flying fox habitat or species identification.
2. Stage 2- The fact sheet developed by council did not cover ecology, flying fox habitat or species identification. The information, while available on the council website, was not available at all council facilities or at Lissner Park.
3. Stage 3 – No signs have been erected at Lissner Park

By failing to comply with these requirements council had failed in two ways. Firstly, it has knowingly put community safety at risk especially that of children. With dispersals increasing the possibility of human/bat contact it is vital that the community are aware of the risks involved with handling flying foxes and measures to be taken in the event of someone being bitten or scratched Secondly, it has failed to educate the public of the crucial role flying foxes play in the environment and of the importance of protecting the species.

DEHP response: This is not a matter for DEHP.

Allegation 32:

Page 15-6.6 Relocation Techniques

States “birdfrite will be used as a last resort” while the amendment on the last page of the document (Flying Fox Management Plan 4/9/13) states birdfrite will be used from the first day of dispersal. Page 23 states birdfrite will not be used. These are serious inconsistencies. There is no mention of paintball guns being used in the relocation techniques only in the amendment on the last page of the document (Flying Fox Management Plan) which amends section 6.7 Dispersal Techniques however this method should be listed in 6.6.

In a memorandum form the Director of Wildlife Management to the Acting Senior Ranger dated 17th October 2013 (which was an assessment report for CTRC DMP application) it was stated that paintball guns would not be aimed at the flying foxes, however, as mentioned above, under condition PB2, I witnessed the paintball guns being aimed at the flying foxes in the trees and while in flight.

DEHP response:

This allegation is consistent with the Damage Mitigation Permit (flying-foxes) Application Form - Roost Management Plan details, Page 9, Day 1, states ‘At 5pm commence dispersal activities with water, noise, paint ball and bird frite, with the two light fire units on standby’. Page 10, Detail regarding the activity methods to be used: Firearms states ‘Birdfrite as a last resort’.

The approved Roost Management Plan states that paintball guns will be used to help get the flying foxes into the air by putting movement into the adjacent branches. DEHP Officers were on site during all major dispersal activities at Lissner Park. At no time did DEHP Officers observe paintball guns being aimed directly at the flying-foxes while in the trees and when airborne. DEHP Officers observed the firing of paintballs at the trunks and branches of trees and not directly at the flying-foxes. This is consistent with Situation Reports documented by DEHP Officers. DEHP have not received any additional information or evidence to support these claims.

Allegation 33:

Page 16

States “helicopters will remain 50m above the highest flying fox”. As mentioned above, confidential source of

sch3(10)(1)(b) Confidential source has taken video footage showing this condition was not followed and has lodged a complaint with both CASA and the Minister for Environment and Heritage Protection.

DEHP Response: This is not within the jurisdiction of DEHP

Allegation 34:

Page 19 7.0 point 4

States “dispersals will only commence if juvenile flying foxes are capable of independent flight”. This was not the case as juveniles incapable of independent flight were present at the December dispersals.

An email dated 30/10/13 from CTRC to the EHP raised issues they had regarding the permit the had been issued. One of these was in regards to when juveniles would be present and “relocation would not be possible”. The council asked for advice from EHP on the breeding season so they could plan dispersals. This indicates that both CTRC and EHP considered that dispersal’s should not take place when there were dependent young.

DEHP response: This was not a condition of their permit.

Allegation 35:

These issues were addressed in a memorandum dated 31st October 2013, from an EHP Ranger to the Director of EHP. With regards to this request the following information was considered “CTRC want to avoid a situation in which EHP would shut down dispersal.....In the current CTRC FFMP....it is outlined that ff camps in Lissner Park will only be disturbed/relocated to a new site if no female flying foxes are observed in a late stage of pregnancy and juvenile flying foxes are capable of independent flight”. The recommendation from the EHP ranger was the “EHP will provide CTRC with information on the mating and birthing seasons of both flying foxes”. This also indicates that the EHP did consider it a condition of the permit that dispersals did not happen at this time.

DEHP response: This was not a condition of their permit. CTRC requested information on mating and birthing seasons from EHP and it was provided to them as requested.

Allegation 36:

If dispersals were permitted during breeding season why did the EHP provide information instead of just stating that dispersals were permitted at this time? It is obvious from this correspondence that both CTRC and EHP were in agreement that dispersals should not be carried out while juveniles incapable of flight were present so why was the December dispersal allowed?

DEHP Response: DEHP is an advice and regulatory agency. This was not a condition of their permit.

Allegation 37:

Page 21 – 11.0

States “Council will establish a flying fox monitoring template to record flying fox movements within a 50km radius of Charters Towers”. This information was supposed to be on public record however I can find no mention of this on the council website so I assume this has not been done.

DEHP Response: This is not within the jurisdiction of DEHP

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Admiralty Rating:

Intelligence/Verifications: *(office use only)*

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Attachments:	No
Photographs:	No

RTI DL RELEASE - EHP

Evans Lucy

From: Williams Rebecca
Sent: Tuesday, 18 February 2014 9:50 AM
To: Evans Lucy
Subject: FW: Intelligence Report - Flying Foxes at Lissner Park, Charters Towers.

For filing please
Regards
Beck

From: Joyce Mike
Sent: Tuesday, 18 February 2014 9:47 AM
To: Williams Rebecca
Subject: RE: Intelligence Report - Flying Foxes at Lissner Park, Charters Towers.

Will do

Michael Joyce

Operations Manager Northern
Wildlife Operations

Ph: 4796 7787

Mobile Personal information - mobile

Email: Michael.joyce@ehp.qld.gov.au

Department of Environment and Heritage Protection

From: Williams Rebecca
Sent: Tuesday, 18 February 2014 8:45 AM
To: Morris Sally; Joyce Mike
Cc: Frisby Tony; Kelly Wade; Morris Sally
Subject: RE: Intelligence Report - Flying Foxes at Lissner Park, Charters Towers.

Thanks Sally

Mike As you would have noted I am interested to see if there is a nexus between the "unburst" paint balls and the bat (as you and your team are).

Could you have one of your team without fanfare ask the local carers have taken flying fox in their care from Lisner Park in the last week.

Thanks

Beck

From: Morris Sally
Sent: Monday, 17 February 2014 3:16 PM
To: Williams Rebecca; Joyce Mike
Cc: Frisby Tony; Kelly Wade
Subject: RE: Intelligence Report - Flying Foxes at Lissner Park, Charters Towers.

Hi Beck,

It is likely that the paintballs were shot and missed the trees or were shot too high and lost velocity resulting in a 'non burst'.

Last year Wade Kelly witnessed paintballs of the same colour and locations during the dispersal on 09/12/2013. This is where the flying foxes were roosting prior to the dispersal activities.

Thank you

Sally Morris
Wildlife Ranger, Wildlife Management
Conservation and Sustainability Services
Phone: (07) 4796 7775 **Mobile:** [Personal information] - mobile
Email: sally.morris@ehp.qld.gov.au
www.ehp.qld.gov.au

Department of Environment and Heritage Protection
PO Box 375
Garbutt East LPO
QLD 4814



From: Williams Rebecca
Sent: Monday, 17 February 2014 2:57 PM
To: Joyce Mike; Morris Sally
Cc: Frisby Tony; Kelly Wade
Subject: RE: Intelligence Report - Flying Foxes at Lissner Park, Charters Towers.

Mike

I have a couple of questions regarding the paint balls.

- Given the indication that they were in clusters and reasonably intact, did Rangers Morris and Kelly consider if they were paintballs that had missed the trees and their state was a consequence of a low velocity landing (accounting for being intact or minimal leakage)?
- Did we notice any similar pattern in the dispersal of late last year?

Regards
Beck

From: Joyce Mike
Sent: Monday, 17 February 2014 8:00 AM
To: Morris Sally; Williams Rebecca
Cc: Frisby Tony; Kelly Wade
Subject: RE: Intelligence Report - Flying Foxes at Lissner Park, Charters Towers.

Beck,

I recommend we take no further action at this stage. Without the bat there is limited opportunity for us to investigate further. We will continue to monitor the site.

Thanks
Mike

Michael Joyce

Operations Manager Northern
Wildlife Operations

Ph: 4796 7787
Mob: [Personal information] - mobile
Email: Michael.joyce@ehp.qld.gov.au

Department of Environment and Heritage Protection

From: Morris Sally
Sent: Sunday, 16 February 2014 3:03 PM
To: Joyce Mike; Williams Rebecca
Cc: Frisby Tony; Kelly Wade
Subject: Intelligence Report - Flying Foxes at Lissner Park, Charters Towers.

Hi All,

Mike – as requested, please see attached Intelligence Report for injured flying fox and paintballs sighted at Lissner Park Charters Towers yesterday at approximately 13:15.

Thank-you

Sally Morris
Wildlife Ranger, Wildlife Management
Conservation and Sustainability Services
Phone: (07) 4796 7775 **Mobile:** personal information - mobile
Email: sally.morris@ehp.qld.gov.au
www.ehp.qld.gov.au

Department of Environment and Heritage Protection
PO Box 375
Garbutt East LPO
QLD 4814



RTI DL RELEASE - EHP

Alleged Breach Report

This Alleged Breach Report in conjunction with the departments Enforcement Guidelines will assist officers in recording information which supports a decision to take enforcement action i.e. issue a Penalty Infringement Notice (PIN) under the State Penalties Enforcement Act 1999 regime. This includes offences under the Environmental Protection Act 1994, Nature Conservation Act 1992, Forestry Act 1959, Recreation Areas Management Act 2006, Marine Parks Act 2004, Waste Reduction and Recycling Act 2011, Chapter 3 of the Water Act 2000 and the Queensland Heritage Act 2000, as listed within the State Penalties Enforcement Regulation 2000.

Note: For information on writing and the management of PINs please refer to the [PIN Manual](#) or contact infringement.notices@ehp.qld.gov.au.

1. Identifying details

Issuing Officer	Wade Kelly
Reference details	Wildlife management Operations, Northern
EcoTrack Number if used	N/A
Licence/Permit number	N/A
File number	CTRC Feb, Mar 2014
Name of alleged offender	Charters Towers Regional Council
Address	12 Mosman Street, Lissner QLD 4820
ACN/ABN	Unknown
Contact details	47615300

2. Background details of incident

Please outline any historical information relevant to this incident. This information may assist with the reasoning for the decision, assist in completing a review of the PIN and may be essential should the matter be referred to the Magistrates Court.

Date the department became aware of the offence.	27th February 2014
Date(s) & time of offence	Received email from Charters Towers regional Council referring to

	an offence being committed. No particulars were given to date, time and place of the offence
Day of the week	Unknown
Location	Unknown
Permit/ Authority details	Charters Towers Currently hold a Flying-Fox Roost Management Permit
Site activity	The above permit allows Council to undertake dispersal activities within their local government area under the conditions of the permit
Vehicle/vessel details	Unknown
Compliance history	Unknown
Contact with alleged offender- have you notified them that PINS are being issued?	<p>First advice of a possible offence being committed came on the 27th of February 2014 by way of email from Charters Towers Regional Director [redacted] sch3(10)(1)(b) Confidential source of information</p> <p>See attached Email</p> <p>The Second advice was taken by way of telephone conversation between EHP officer Wade Kelly and Charters Towers Regional Council Environmental Services Manager [redacted] (1)(b) Confidential source of information on the 13th of March 2014. [redacted] Confidential source of information advised Kelly of activities undertaken by council in reference to testing of paintballs on dead Flying Foxes</p>
Possible mitigating circumstances	It is believed that Council were unaware of the section of Nature Conservation Act 1992 legislation (section 88(5))that prevented them from conducting these tests
Other information	After Conversation on the 13th March 2014 officer Kelly made a file note and submitted to Manager Michael Joyce

3. Alleged offence details

Please outline what offences are alleged to have been committed. Details include the legislation, section number, penalty units and limitation periods. Please also include the [PIN offence code](#) these can also be located on insite and Ecosteps.

Note: If there are more than three separate PIN-able offences being considered the matters should form the basis of a complaint and summons and be heard by a Magistrate.

No.	Section	PIN offence code	Legislation	Penalty Units	Statute Limitation
1	88 (5)	<INSERT details>	NCA 1992	100	12 Months

4. Elements and supporting evidence

Please outline the elements of each of the offences listed above. Provide in detail what evidence is available to satisfy each and every element of the offence(s), the source, how it is/was obtained and when it will/was obtained.

Offence No.	Elements	Type of evidence	Source of evidence	How evidence was obtained
1.	Use	admission <small>sch3(10)(1)(b)</small>	<input type="text"/> Confidential source of information	Telephone Conversation
2.	Use	Correspondence <small>sch3(10)(1)(b)</small>	<input type="text"/> Confidential source of information	Email dated 27/02/2014 and sent to EHP officer Tony Frisby

5. Alleged offender correspondence- relating to the alleged breach

Please detail correspondence related to the alleged breach that has been received from the alleged offender, or sent from the department to the alleged offender. Attach copies of the correspondence (including letters, emails, file notes of phone conversations, etc.).

Date	Type of Correspondence	Brief description of correspondence	Which alleged offence does the	Copy Attached?
------	------------------------	-------------------------------------	--------------------------------	----------------

			correspondence relate to?	
27/02/14	Email	Email correspondence	Offence 1. Use	Yes
13/03/14	Telephone Conversation	Telephone Correspondence	Offence 1. Use	Yes

6. Other enforcement options

Please detail what other enforcement options have been considered for this matter as per the departments Enforcement Guidelines.

Have other enforcement options been considered?	Yes
If yes, what are they and the reasons for using/not using them?	<p>Based on the Departments Enforcement Guidelines, the following options should be considered:</p> <p><u>Option 1. Warning Letter –</u></p> <ul style="list-style-type: none"> • It is EHP Wildlife Rangers belief that Charters Towers Regional Council were unaware that conduction tests on a dead flying-fox was a in breach of the NCA. • The way in which this incident was reported to EHP would give validity to this opinion of not intentionally trying to breach the NCA. It is our belief that Charters Towers Regional Council did not intentionally, wilfully or malice breach the NCA therefore there was no intent. • There was little or no conservation impact by the activity. • A warning letter is the primary response by the Department when dealing with minor breaches of legislation where the imposition of a financial penalty is not considered appropriate and where little or no environmental impact has occurred with a low level of culpability <p><u>Option 2. Penalty Infringement Notice</u></p> <ul style="list-style-type: none"> • Under the NCA 1992 Charters Towers Regional Council have breached section 88 (5) which can incur a Penalty Infringement Notice of 100 penalty units. • Based on the information that EHP Rangers currently

	<p>have and the level of admission by Charters Towers Regional Council there is definitely scope there to issue a Penalty Infringement Notice</p> <ul style="list-style-type: none"> Based on the enforcement guidelines this action may be considered due to the criteria surrounding the impact or risk there of although this course of action may have a detrimental effect on the relationships of the parties involved. Based on the given circumstances, the issue of a PIN would overshadow the educational benefit of the action <p><u>Option 3. Suspension/Cancellation off Permit</u></p> <ul style="list-style-type: none"> This option may be an extreme action based on the seriousness of the breach of legislation along with the impact assessment criteria within the enforcement guidelines. Due to the low conservation value of the activity along with the low culpability of the offence, this action would be excessive with a detrimental impact on working relationships of all parties involved.
If no, please advise why no other options have been considered?	

7. Recommendation

The officer is required to make a recommendation in relation to the matter under investigation.

Based on the Departments enforcement guidelines, discretion is to be taken into consideration when applying enforcement action while considering the circumstances surrounding the offence, taking into account the seriousness of the breach of the legislation. I believe that an educational approach is the best course of action due to the offence being of low impact and holding low conservation value. This is reinforced by the low culpability of the offender due to the fact that we believe council were unaware that their actions were in fact a breach of NCA. If a more serious action were to be taken, an adverse outcome would follow with a detrimental impact on all parties involved thus negatively effecting relative working relationships I believe that the likelihood of the offence reoccurring would be minimal and with all other options considered, I recommend that a warning letter be issued to Charters Towers Regional Council outlining the breach to the NCA. This action would be beneficial to both parties and would have minimal effect on the relationship between Charters Towers Regional Council and EHP. By taking this enforcement option, the Department can assess the outcome which will aid decisions if future offences occur.

8. Acknowledgement

The recommending officer and supervisor are required to sign and date below.

Recommending Officer	Supervisory Review
Signature:	Signature: <INSERT details>
Print Name: Wade Kelly	Print Name: <INSERT details>
Position: Wildlife Ranger 004	Position: <INSERT details>
Date: 19/03/14	Date: <INSERT details>

9. Endorsement

The appropriate manager or supervisor is required to either support / not support the decision and sign and date below.

Decision for recommendation	<INSERT details support/ not support>
Reasons for decision <INSERT details>eg: I support this decision for the reasons set out above and I note Mr xxxx has previously received a warning letter in relation to this matter. > <INSERT> eg: I do not approve the above recommendation as I consider it more appropriate for the Department to take an educational approach to this breach>	
Signature: <INSERT details>	Print Name: <INSERT details>
Position: <INSERT details>	Date: <INSERT details>

Please ensure that the PIN, cover letter and alleged breach report are saved into EcoTrack.

Charters Towers Timeline of Events

17/10/13 Application submitted

24/10/13 Application Approved

30/10/13 Amendment requested

05/11/13 Amendment Approved - Amendment requested to enable dispersal activities to occur between 5.00 - 7.00am and 5.00 - 7.30pm (previous condition PG3 states dispersal not to be commenced before 30min prior to sunset.

06/12/13 DMP Permit WIMP13615113, superseded by Roost Mgt Permit WIFF13807313. Dates and conditions are the same and have not been changed. For more background information on DMP please see <P:\Wildlife Operations\Flying Foxes\DMP\Dispersal DMPs\FF DMP status\2014\1311221_FF Roost Mgt Running Sheet.xlsx>.

06/12/13 New Bat Permit issued

06/12/13 770 emails petitioning against a dispersal with dependant young received and responded to by MECU. Additional emails would be received by InfoEHP.

09/12/13 Media attention from Des Boyland, Wildlife Qld to Shane Knuth MP Some media reporting conservationist are saying that there are .

09/12/13 Dispersal began in afternoon. EHP Officers Present. Car horns, paint ball guns aimed at trees; smoke/foggers. 5.55pm 2 choppers arrived: fireworks (no shells); fire hoses aimed at trees; 1 female black with young fell to ground taken in by carers, they wouldn't give it to the Council employed vet. Fire hoses were aimed too high near bats, instructed to aim lower, council complied, Paint balls aimed too close to bats, instructed to aim lower - council complied. 5 - 10 little reds dead but older than 2 days old - no fresh dead bats.

10/12/13 Same methods used. One media contingent and handful of carers present; No harm to FF apparent. EHP officers walked neighborhooding streets and no FF harmed. Less than 10% of FF remain and they are mainly Black.

12/12/13 pm Dispersal actions have ceased. The LR have left town, gone to an unknown location. There are a small number of Black with dependant young left in the creche trees. Believe that dispersal is a success. EHP will attend a debrief with council in the near future.

16/12/13 CTRC, acting under the FFRMP, will recommence dispersal activities (noise only) between 630-700am as of tomorrow (17/12/2013). This will continue each week day until they have moved on. I have asked Bill to give us a call if anything changes (they cease/change methods). There is still 500 Blacks with young near the pool which will remain untouched.

19/12/13 CTS31170/13 received from EDO on behalf of BCRQ – responded to on 17/01/14 with DMP, FFRMP.

08/01/14 RTI sch4 - Personal information

10/02/14 CTRC, gave verbal advise to EHP that it would be dispersing flying-foxes at Lissner Park shortly. 2000 LR appeared on 09/02.

13/02/14 CTRC, submitted written advise to EHP that they were dispersing that afternoon and on 13/02 and 14/02 in the afternoons after 5.30pm. Using smoke, noise and paintballs to create movement in the branches.

14/02/14 CASA investigating whether conditions of their permit for low flying was breached.

24/02/14 CTRC notified EHP intension to remove two large fig trees (dead or dying) from adjacent to the Boer War Memorial in Lissner Park Charters Towers to address Public Safety concerns. Council also intends to remove dead branches from trees adjacent to the Corner of Bridge Street and Plummer Street. To achieve this Council will attempt to relocate the flying foxes currently roosting in the trees a short distance - still in Lissner Park. Relocation activities will commence this Thursday 27 February 2014 to coincide with the removal of the trees. The situation will need to be assessed Thursday afternoon to ascertain if activities will extend to include Friday morning. Activities may extend if flying foxes settle into children's playground or swimming pool areas or re-settle around the trees being removed.

10/03/14 Media reports flying-foxes returning to Lissner Park

13/03/14 RTI13-326 Request from B(2) - Personal Information DMP, SoR, EHP Assessment and reports listing status of breeding pre and post dispersal.

30/03/14 CASA completed its investigation of the pilots who had a permit for low flying over the park. The outcomes of their investigation were not released to EHP for privacy issues.

02/04/14 Media reports that Council is engaging a historical consultant to produce a plan on how to maintain the historical significance of Lissner Park ie trees planted in Boer War Memorial; and Rotunda. Comments that in February State Govt approved for 3 trees to cut down which has occurred. Comments that State Govt prevents them from maintaining buildings and landscape currently. This plan would also allow them to conduct actions without State approval.

13/06/14 Media reports Lissner Park having 10,000 Flying-foxes in it. Surrounding area is quite dry with Charters Towers being the only green spot with available food.

RTI DL RELEASE - EHP

05897/14
08381/14
09448/14

05897/14 10/03/14 Incoming

- s78B(2) • Personal Information previously spoken with Mr Troy Collins and he assures me that if a breach occurs the Govt would act swiftly and fine any council operating outside the permits or the code of practice.
- DMP lists the use of helicopters as a 'barrier only'. Lists alleged breached of CASA specifications.
 - CASA specifications breach the DMP issued
 - Animals were injured and harmed
 - Black FF mothers isolated from their dependant young.
 - A mother and its dependent young were forced to the ground and recovered by carers.
 - The animals were shown to Matt Brien EHP Ranger and he ignored the stress and injury and the dispersal continued.
 - He stated to Confidential source of information that he had to let the dispersal continue or he would not have a job – I was recording him on a tight lens whilst my producer was repeating his words as he spoke to Confidential source of information on the phone.
 - Matt Brien was promoted immediately after the Charters Towers action and would he have been promoted if he stopped the dispersal for the breaches he must have witnessed?
 - While Matt Brien was speaking with Confidential source of information on the phone, several paintball guns were being aimed at and tracked air born FF.
 - Footage of council aiming and shooting at FF with Paintball guns and the clear injuries from this action of 50cent holes in the targeted bats. The action did not cease upon the injury of a FF
 - The Black FF with dependant young incapable of flight and too big to be carried were targeted from start to finish. The council said they were only targetting the LR.
 - These actions are inhumane (acknowledges that it is legislated in a way that prevents prosecution by RSPCA)
 - Explanation of why EHP will take no action against CTCR.
 - The breaches relating to the use of paintball guns is being forwarded to EHP by another party. (he didn't shoot this evidence).
 - No Wildlife Complaint form attached

05897/14 Response CoS to NCW 14/04/14

- CASA investigation is ongoing. EHP will consider the findings of this investigation prior to further action on the matter.
- Allegations against Matt Brien are being internally investigated. Please send footage to Sally Egan. I can assure you that the movement and promotion of the officer followed merit selection which was divorced from this matter.
- Acknowledged the link to the documentary on flying-fox dispersals in Qld.

08381/14 02/04/14 NCW to PALM and Environment (MO) – Sally accepted it FNO

- I have sent a complaint to EHP and a letter to the MO in regard to breaches by Charters Towers. I have an acknowledgement from MO that it was received but I have no response from PALM email.
- Please explain what is happening in relation to this complaint.

s78B(2) • Personal Information fwd corro dated 10/03/14 to Environment@ministerial.qld.gov.au 05381/14 a Wildlife Complaint Form dated 10/03/14 was forwarded.

09448/14 16/04/14 at 2.27pm to CoS

- Our info is out of date

- CASA has long finalised its investigation and found the operator and pilots were in breach of CASA regulations. CASA has already taken numerous regulatory actions against the pilot and operator Heliway. The aircraft operated under 100ft over people. CASA Contact Thomas McLaren Regional Manager 4042 3628
- Film shows council employees aiming/firing at FF and holes that resulted
- Footage of dead bats from the actions of CTRC
- Evidence was brought to the attention of EHP officer that a mother and baby were brought to ground injured by fire hoses and shown to the officer. He ignored and discounted the animals' clear and obvious stress and injuries which was in breach of the DMP.
- Council admitted that animals were killed the following day, yet actions continued.
- The council breached the permit by using Paintball guns in public, where an observer was shot. The council admitted this in a post-briefing (taped unknowingly)

09448/14 EHP response 08/05/14

- Rebecca Williams has contacted you in these matters
- [redacted] sent in more video – in relation to the on-ground responses by departmental officers
- CASA investigation concluded in late March – details can not be released due to Privacy Act provisions.

RTI DL RELEASE - EHP

WILDLIFE MANAGEMENT COMPLIANCE INFORMATION REPORT

Report Number: Management Area: Sector: Shire/ District:	1 Wildlife Management Unit Compliance
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Classification:	Unclassified <input type="checkbox"/> In-Confidence <input checked="" type="checkbox"/> Protected <input type="checkbox"/>
Date/Time of Information:	15 February 2014 at 13:15
Title/Subject of Information:	Flying foxes at Lissner Park, Charters Towers
Latitude:	20° 4' 18' S (decimal degrees 20.071667°)
Longitude:	146° 15' 45' E (decimal degrees 146.262500°)
Date/Time of Incident:	15 February 2014 at 13:15
Location:	Lissner Park, Charters Towers, Queensland 4820
Source of Information:	Sally Morris & Wade Kelly (DEHP Officers)
Submitting Officer:	Sally Morris
Organisation:	DEHP

Information:	<ul style="list-style-type: none"> • Person name: Unknown • Address : Lissner Park, Charters Towers • Details : • EHP Officers Wade Kelly and Sally Morris were conducting a routine flying fox population survey at Lissner Park, Charters Towers when Wade Kelly noticed what appeared to be an injured juvenile black flying fox (Figure 1) hanging alone in the lower branches of a tree approximately six metres from the ground. • After noticing the injured flying fox, Sally Morris and Wade Kelly sighted two intact paintballs on the ground a few metres away from the location of the injured flying fox (Figure 2, 3, 4 & 5). • Sally Morris and Wade Kelly moved around the immediate area and sighted up to 30 paintballs all in different stages of bursting under a number of trees. A sample of the further paintballs was taken as evidence (Figures 6, 7) • Sally Morris and Wade Kelly were unable to safely capture the injured flying on 15 February 2014 fox due to lack of equipment and PPE. • At 8am on 16 February 2014 Sally Morris and Wade Kelly travelled back to Lissner Park with all necessary safety equipment to conduct the capture however the injured flying fox had moved on.
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Admiralty Rating:

Intelligence/Verifications: *(office use only)*

Attachments: Yes – photographs
[\\townsville2\Groupdir\NQWildlife\Compliance\Intelligence\Lisner Park 15022014](#). Video footage was also taken however we are currently having technical difficulties uploading to G Drive due to file size.

Photographs:



Figure 1: Juvenile black flying fox with injury to right wing hanging from lower branches in tree at Lisner Park, Charters Towers.

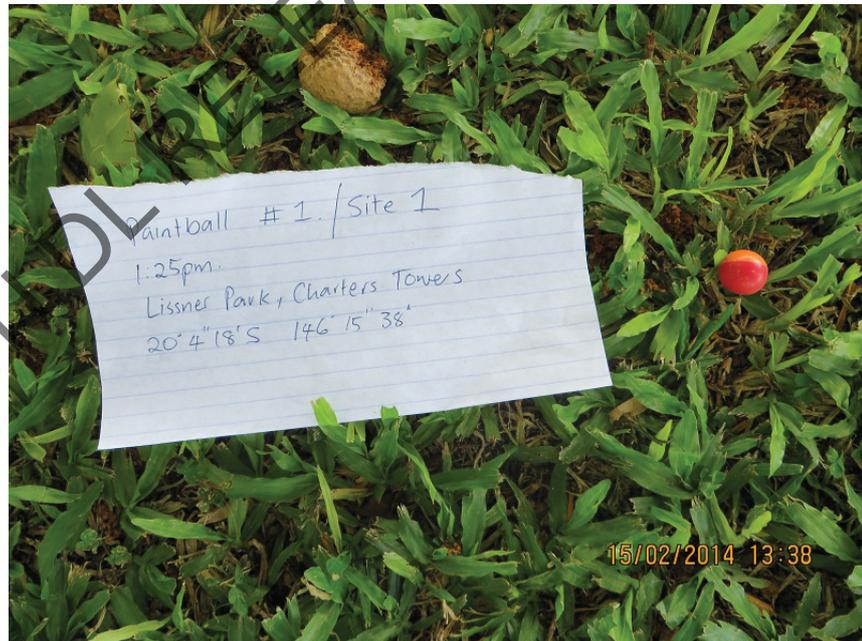


Figure 2: Paintball 1 at Site 1.

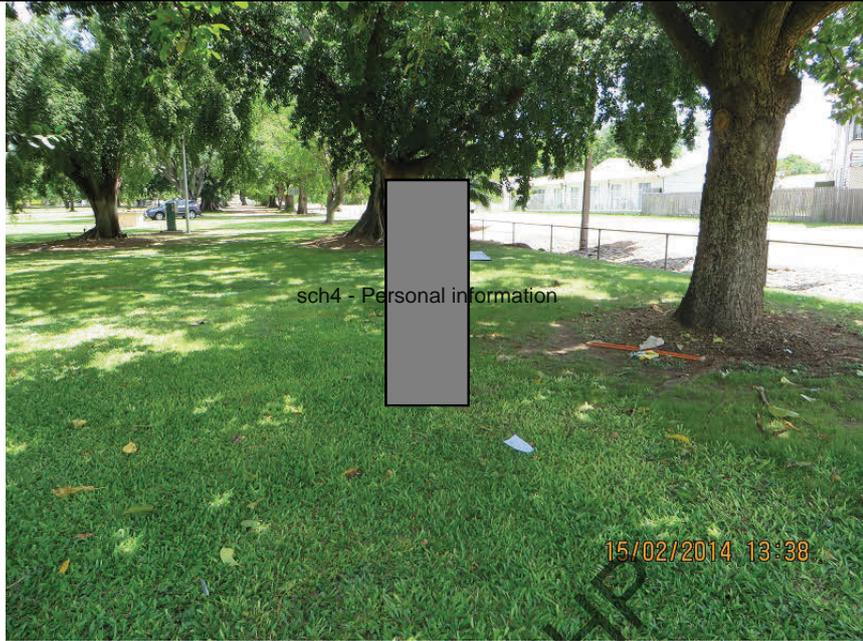


Figure 3: Landscape photograph of Paintball 1 at Site 1.



Figure 4: Paintball 2 at Site 1.

sch4 - Personal information



Figure 5: Landscape photograph of Paintball 2 at Site 1.

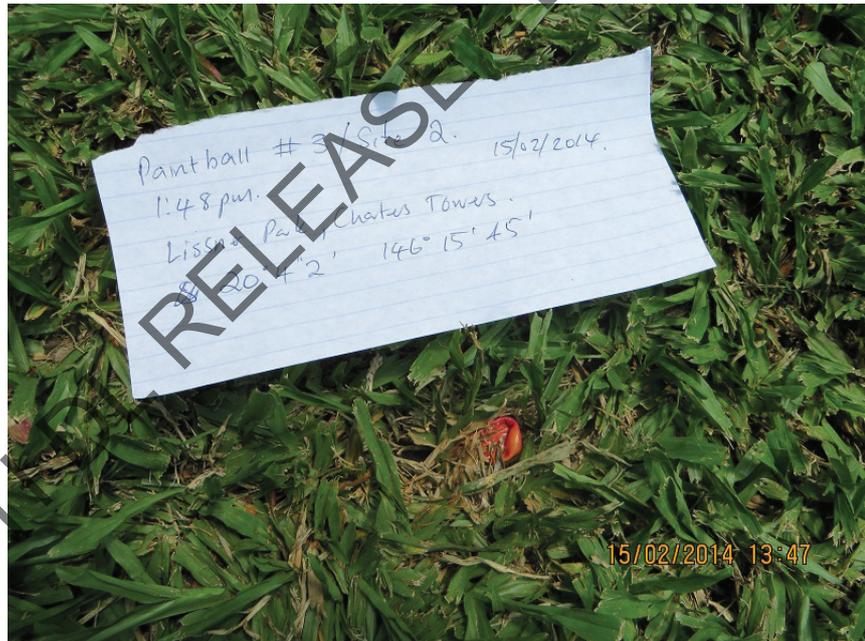


Figure 6: Paintball 3 at Site 2.



Figure 7: Landscape photograph of Paintball 3 at Site 2.

RTI DL RELEASE - EPH

From: Williams Rebecca [Rebecca.Williams@ehp.qld.gov.au]
Sent: Sunday, 2 March 2014 3:21 PM
To: Prior Katrina
CC: JOYCE Mike
Subject: RE: Bat Holes in Wings

Follow Up Flag: Follow up
Flag Status: Completed

Kat
Please file this as well
Regards
Beck

From: Williams Rebecca
Sent: Sunday, 2 March 2014 3:21 PM
To: Prior Katrina (Katrina.Prior@ehp.qld.gov.au)
Cc: JOYCE Mike
Subject: RE: Bat Holes in Wings

Kat
Could you draft a response for me please indicating:

- We note the results of the trial held by the Tolga Bat Hospital to determine the results of a paint ball hitting a flying fox. (can you get a copy of the actual report... that is important and can assist us with assessing future requests for this techniques).
- We accept that the injuries are therefore not likely to have occurred from the paint balls
- The issue about Lisner Park is that it still is operating as a roost and the removal of the limbs does not take away that it meets the definition under the Act (please quote the act)

Thanks Beck

From: JOYCE Mike
Sent: Saturday, 1 March 2014 9:32 AM
To: Williams Rebecca
Subject: RE: Bat Holes in Wings

Hi Beck,

If you mean the compliance case, no. we would not normally respond, we would say "thanks for the information we will investigate" the findings of the investigation are not detailed to anyone. I am not sure we could detail them.

This case has been completed, with no further action at this stage until further evidence comes to light. I.e. not enough evidence to do anything further at this stage.

As part of this investigation I asked Tony to discuss with council the perception that using a projectile weapon can have in the community and suggest that find some alternative solutions, which we could help them with. Tony suggest that they became quit agitated at this suggestion.

thanks
Mike

Michael Joyce

Operations Manager Northern

Wildlife Operations

Ph: 4796 7787

Mob: [redacted] - mobile

Email: Michael.joyce@ehp.qld.gov.au

Department of Environment and Heritage Protection

From: Williams Rebecca
Sent: Saturday, 1 March 2014 9:12 AM
To: JOYCE Mike
Subject: Re: Bat Holes in Wings

Mike
Have we responded to the original complaintant?
Regards
Beck

Sent from my iPhone

On 1 Mar 2014, at 8:12 am, "JOYCE Mike" <Mike.Joyce@ehp.qld.gov.au> wrote:

Hi Beck,

You will see my previous response to this. Can we please get a detailed response done up from Brisbane, being that tony and I will both be off line next week.

Thanks
Mike

Michael Joyce

Operations Manager Northern
Wildlife Operations

Ph: 4796 7787

Mob: [redacted] - mobile

Email: Michael.joyce@ehp.qld.gov.au

Department of Environment and Heritage Protection

From: Frisby Tony
Sent: Thursday, 27 February 2014 3:36 PM
To: JOYCE Mike
Subject: RE: Bat Holes in Wings

Hi Mike can you give me some advice about what to send [redacted] or do you want to respond .

Regards,
Tony

Tony Frisby
Senior Ranger – Wildlife Management Operations
Department of Environment and Heritage protection

PO Box 5597
Townsville, QLD 4810

Phone: (07) 4796 7785
Fax: (07) 4796 7705
Email: tony.frisby@ehp.qld.gov.au
<image002.jpg>

From: Ramon Jayo [<mailto:RJayo@charterstowers.qld.gov.au>]
Sent: Thursday, 27 February 2014 8:51 AM
To: Frisby Tony
Cc: Mark Crawley; Michael Langburne; Bill Hussey; Hayley G. Thompson
Subject: FW: Bat Holes in Wings

Good morning Tony,

Just following up from our discussions the other day concerning allegations that staff are shooting at bats, please find enclosed information received from the Tolga bat hospital concerning same.

I confirm that the allegations are denied. What makes it comical is that allegations against good, well meaning people can be made with no evidence whatsoever. I confirm that the aiming of the guns are specifically to ensure that shots do not hit bats but that they rather land in the intended target area, namely the adjacent foliage. As a matter of interest following on from such discussion, tests were conducted by staff to see what would transpire if a shot unintentionally did hit a bat.

The tests were undertaken using a dead bat. Shots were fired at the dead bat from varying distances. Other than for managing to get a lot of paint on the bat, no perforations could be imposed unless shots were fired from a distance of less than 5 metres. As you are aware, the bats in the Lissner park situation are no less than 10 to 20 metres from the ground. WE are happy to undertake the testing in your officers presence if you require. There is currently no shortage of dead bats as mother nature is taking its course.

As also indicated, we are experiencing significant problems in the park due to limbs and branches falling under the extreme weight of bats. I will send you photographs of the damage being sustained. Of immediate concern is that branches are falling down on the adjoining public roads from the perimeter trees and in fact are falling directly into the path of oncoming traffic. Due to significant safety concerns, Council is attending to the trimming of the trees so that they do not protrude over the roads .

The trees in the park are being systematically destroyed by the animals to the extent that it could no longer be regarded as a roost. I would be grateful to receive your advice as to what requirements your department would need to receive for purposes of determining the site as no longer qualifying as a roost.

Thank you for your time on the matter.

Regards.I

Ramon Jayo
Director Planning & Sustainable Development

<image003.png>

PO Box 189
CHARTERS TOWERS QLD 4820

P: 07 4761 5531 | **F:** 07 4761 5344

From: Mark Crawley
Sent: Monday, 24 February 2014 6:12 PM
To: Ramon Jayo
Subject: Bat Holes in Wings

Ramon

As previewed.

Regards

Mark Crawley | Chief Executive Officer

CHARTERS TOWERS REGIONAL COUNCIL

PO BOX 189 Charters Towers Qld 4820
12 Mosman Street Charters Towers Qld 4820 Australia
P 07 4761 5352 sch4 M Personal information - mobile

W www.charterstowers.qld.gov.au | E mcrawley@charterstowers.qld.gov.au

<image004.jpg> <http://au.linkedin.com/pub/mark-crawley/22/683/886/> | sch4 - Personal information - email address

 Please consider the environment before printing this mail note... thanks

Charters Towers Regional Council - Email Disclaimer

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From: Williams Rebecca [Rebecca.Williams@ehp.qld.gov.au]

Sent: Sunday, 2 March 2014 3:43 PM

To: Evans Lucy

Subject: FW: CTS 03099/14 Relevant Documents re EDO Request

Attachments: WIFF13807313 CT Permit.pdf; WIFF13807313 CT NoD.pdf; 2014-02-11 Letter EDO to DEHP re FFRMP Decision (3).pdf; DMView_1392167250428_31170-13_769704_Letter_signed_by_the_DG..pdf; DMView_1392167150605_31170-13_768688_Statement_Of_Reasons.docx; Permit WIMP13615113.pdf; Letter Charters Towers New FFRMP.pdf

Please file charters towers ffrmp

Regards

Beck

From: Prior Katrina

Sent: Wednesday, 12 February 2014 11:40 AM

To: MACKENZIE Katherine

Cc: Williams Rebecca

Subject: FW: CTS 03099/14 Relevant Documents re EDO Request

Hi Katherine

Further to our phone conversation, please find attached:

- Correspondence between the department and EDO including:
 - Letter from EDO Qld to EHP requesting Statement of Reasons (dated 11 February 2014) – CTS 03099/14
 - Response from EHP to EDO enclosing Statement of Reasons (dated 16 Jan 2014) – CTS 31170/13
 - Statement of Reasons (dated 16 Jan 2014) – CTS 31170/13
- Flying Fox Roost Management Permit (WIFF13807313), associated Notice of Decision and cover letter dated 6 December 2013
- Damage Mitigation Permit (WIMP13615113)

As discussed, the key advice we are seeking is with regard to:

- The legal validity of the FFRMP;
- The legal validity of the DMP;
- Any other advice you feel may be beneficial for our response to the EDO.

We originally had a deadline of 2pm... this is no longer valid however we would very much appreciate your advice as soon as possible today if you are able.

Please let me know if you require further information.

Kind regards

Katrina

Katrina Prior

Manager | Operational Support & Systems | wildlife Management
Department of Environment and Heritage Protection

☎ | 07 3330 5373 sc📧 | Personal information | mobile

📠 | 07 3330 5398 📧 | katrina.prior@ehp.qld.gov.au

Floor 5, 400 George Street, Brisbane Q 4000

GPO Box 2454, Brisbane Q 4001

<http://www.ehp.qld.gov.au>

🌱 Please consider the environment before printing this email.

ehp-email-signature



From: Gavin David
Sent: Wednesday, 12 February 2014 11:27 AM
To: Prior Katrina
Subject: CTS 03099/14 Relevant Documents re EDO Request

Katrina

Attached are:

- Letter from EDO Qld requesting Statement of Reasons (dated 11 February 2014) – CTS 03099/14
- Letter to EDO enclosing Statement of Reasons (dated 16 Jan 2014) – CTS 31170/13
- Statement of Reasons (dated 16 Jan 2014) – CTS 31170/13
- Damage Mitigation Permit (WIMP13615113) – original DMP
- Letter to Charters Towers granting FFRMP (dated 6 December 2013)
- Flying Fox Roost Management Permit (WIFF13807313)
- Notice of Decision – permit application (WIFF13807313)

Cheers

Dave Gavin
Senior Project Officer
Wildlife Management
Nature Conservation Services Branch
Department of Environment and Heritage Protection
T: 3330 5363
E-mail: david.gavin@ehp.qld.gov.au





EDO Qld.

Environmental Defenders Office

*Using the law to protect
our environment.*

30 Hardgrave Rd WEST END, QLD 4101

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edoqld@edo.org.au www.edo.org.au/edoqld

11 February 2014

Mr Jonathan Black
Director-General
Department of Environmental and Heritage Protection
GPO Box 2454
Brisbane QLD 4001

Sent via email: Jon.Black@ehp.qld.gov.au then post

Dear Mr Black,

Purported Grant of Flying-Fox Roost Management Permit under the *Nature Conservation (Administration) Regulations 2006 (Qld)*

We refer to:

1. our letter dated 17 December 2013 requesting a statement of reasons for the Damage Mitigation Permit (DMP) referred to in the Charters Towers Regional Council media release; and
2. your response, dated 16 January 2014, enclosing a statement of reasons for a DMP issued on 21 October 2014.

Your covering letter identifies that the DMP issued on 21 October 2014 was purportedly superseded by a new Flying-Fox Roost Management Permit (FFRMP). In particular we note your statement that:

“On 29 November 2013, the Queensland Government introduced a new framework for flying-fox management under section 88c of the Act. A new permit, the Flying-Fox Roost Management Permit, authorising non-lethal activities including disturbing a flying-fox roost, driving a flying-fox away from a roost and destroying a roost was issued to Charters Towers Regional Council dated 1 November 2013.”

As you correctly identified, the new framework for authorising flying-fox management commenced on 29 November 2013¹ and therefore the FFRMP could not have been validly issued under it on 1 November 2013.

¹ By insertion of the new *Nature Conservation (Wildlife Management) Regulation 2006*, Chapter 3, Part 4, Division 2A by operation of the *Nature Conservation and Other Legislation Amendment Regulation (No. 1) 2013* SL No. 250.

Furthermore we have obtained a copy of the FFRMP and it purports to be issued under s12(b) of the *Nature Conservation (Administration) Regulations 2006* (Qld) (NCAR) however the NCA Reg in force on 1 November 2013 (i.e. the reprint dated 18 October 2013) did not contain Flying-fox Roost Management Permits. The s12(b) of the NCAR in force on 1 November 2013 refers instead to an 'educational purposes permit'.

We fail to see how the FFRMP could be validly issued in absence of statutory provisions providing for such a permit, and the permit therefore appears on its face to be invalid.

Accordingly we ask that you urgently, and **by no later than 4pm Friday 14 February 2014**:

1. confirm that the FFRMP issued on 1 November 2013 is invalid; and
2. advise the Charters Council Regional Council that the FFRMP permit is invalid and they must cease any activities purported to be authorised by it.

Alternatively, if you disagree that the permit is invalid, we request that you:

1. urgently, and **by no later than 4pm Friday 14 February 2014**, explain to us why you hold that view; and
2. provide a statement of reasons under section 32 of the *Judicial Review Act 1991*, for the purported decision to approve Charters Towers Regional Council's application for a FFRMP under the *Nature Conservation Act 1992* to move flying foxes out of Lissner Park.

We also request that you urgently, and **by no later than 4pm Wednesday 12 February 2014** provide us with a copy of the DMP referred to in your letter dated 16 January 2014.

Yours faithfully

Environmental Defenders Office (Qld) Inc

sch4 - Personal information - signature

Sean Ryan

Senior Solicitor

Environmental Defenders Office (Qld) Inc

STATEMENT OF REASONS

Statement of reasons provided pursuant to section 33 of the Judicial Review Act 1991.

Applicant's name	Charters Towers Regional Council
Decision maker	R D Williams, the delegate of the chief executive in accordance with the delegation given under section 141 of the <i>Nature Conservation Act 1992 (the Act)</i>
Decision	Granted
Date of decision	21/10/2013

Introduction

On 16th October 2013, the Charters Towers Regional Council lodged an application for a damage mitigation permit (DMP) to enable the dispersal of the flying fox roost at Lisner Park, Charters Towers.

On 21st October 2013, after consideration of the material before me, I granted a DMP and signed a notice of decision to Charters Towers Regional Council confirming my decision.

Relevant legislation

The *Nature Conservation (Wildlife Management) Regulation 2006 (the Wildlife Management Regulation)* chapter 3, part 4, division 2 governs the grant of damage mitigation permits (DMP) for animals as follows:

S 181 Purpose of permit and div 2

(1) The purpose of a damage mitigation permit for animals is to allow a person to do an authorised act affecting a protected animal if the animal—

- (a) is causing, or may cause, damage to property; or
- (b) represents a threat to human health or wellbeing.

(2) The purpose of this division is to ensure the grant of damage mitigation permits to do authorised acts affecting animals does not adversely affect the conservation of the animals.

(3) The purpose mentioned in subsection (2) is achieved by—

- (a) allowing the chief executive to grant a damage mitigation permit to do an authorised act affecting an animal only in limited circumstances; and
- (b) limiting the activities that a person is authorised to do under a damage mitigation permit; and
- (c) regulating the activities of persons acting under a damage mitigation permit.

S 186 Restriction on grant of permit for threat to human health and wellbeing

The chief executive may grant a damage mitigation permit for a threat, or potential threat, to human health and wellbeing caused by a protected animal only if the chief executive is satisfied—

- (a) there is, or may be, a threat to a person's health and wellbeing resulting from harm caused by the animal to the person; and
- (b) action under the permit will not detrimentally affect the survival of the animal in the wild; and
- (c) the proposed way of taking the animal is humane and not likely to cause unnecessary suffering to the animal;

Section 25 of the *Nature Conservation (Administration) Regulation 2006* (the Administration Regulation) provides that in considering an application I must have regard to each of the following

- (a) The impact the activities that may be carried out under the DMP may have on the conservation of the cultural or natural resources of a protected area or native wildlife;
- (b) The effect the grant of the authority will have on the fair and equitable access to nature, having regard to, in particular, the ecologically sustainable use of protected areas or wildlife;
- (c) Any contribution the applicant proposes to make to the conservation of nature;
- (d) Any relevant Australian or international code, instrument, protocol or standard or any relevant intergovernmental agreement;
- (e) The precautionary principle;
- (f) Public health and safety
- (g) The public interest
- (h) Whether the applicant is a suitable person to hold the authority, having regard to the matters mentioned in schedule 2 of the Administration Regulation;
- (i) Any recovery plan for wildlife to which the authority applies. Nature Conservation (Administration) Regulation 1996 (NCAR)

Pursuant to section 25(2) of the Administration Regulation I may have regard to anything else I consider appropriate to achieve the object of the Act.

Material on which the findings of fact were made

In arriving at my decision I had before me the following material for consideration:

- The Act, the Wildlife Management Regulation and the Administration Regulation 2006
- Damage Mitigation Permit Application and supporting documentation submitted 16/10/2013
- Information from assessment report generated by Deb Hotchkis (A/Senior Wildlife Ranger).

Findings of fact

I assessed the application against the requirements of the legislation and made the following findings of fact: Conditions are included in the findings of fact.

Legislative requirement	Finding
Section 181 (2) of the Wildlife Management Regulation	Both species of black and little red flying-foxes are listed as least concern under the NCA with the little reds being the widest ranging of four main species of flying-foxes in Australia.
Section 181(1)(a) and S 186 (b) of the Wildlife Management Regulation	I am satisfied that the animals are causing, or may cause damage to because of the information provided in the application and the assessment (being complaints and the history of human behaviour in response to the roost) and the history of the wellbeing of the residents

	being affected.
Section 186(c)	<p>I am satisfied the proposed way of dispersing the flying-foxes is humane and not likely to cause unnecessary suffering to the animals because the applicant has proposed the following measures in the dispersal plan to minimise the likelihood of a 'take':</p> <ul style="list-style-type: none"> • The proposed method of dispersal is by sound, smoke, water and disturbance by movement in the trees by a paint ball gun. The intent is not to have direct contact with the animals. • Council has assured that the helicopter will be used only as a barrier to prevent flying-foxes from heading in an undesirable direction and will not be used to 'muster' the animals as previously described. • In the event of any accidental take dispersal activities will be suspended.

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Additional matters I have taken into account

Section 25(1)(a) of the Administration Regulation	I consider that the dispersal will have no impact on the conservation of the species. The applicant has identified 3 potential roost sites within 10km of the existing roost predominantly along the Burdekin River and Gladstone Creek therefore the likelihood of the animals relocating to a suitable location is enhanced.
Section 25(1)(b)	There will be no effect from the grant of the authority have on the fair and equitable access to nature, having regard to, in particular, the ecologically sustainable use of protected areas or wildlife.
Section 25(1)(c)	There is no contribution the applicant proposes to make to the conservation of nature;
Section 25(1)(d)	There are no relevant matters in this section.
Section 25(1)(e)	The grant of the permit has taken into account the precautionary principle.
Section 25(1)(f)	I have had regard to public health and safety in considering S 181 (1) and in condition PB6.
Section 25(1)(g)	<p>I have had regard to the public interest in understanding the situation of the township but also that granting a DMP may cause others distress and that the flying foxes may form or go to roosts that also impact on public wellbeing or economic loss. In some scenarios that impact may be greater than the current situation. Removal of trees not feasible as the trees are heritage listed and restrictions are placed on the ability for CTRC to modify or remove them. The trees have been previously pruned.</p> <p>Council refers residents to EHP information on its website.</p> <p>Council has previously dispersed flying-foxes from the park.</p> <p>On balance I believe the granting of the DMP and the safe dispersal of the roost is the best outcome in the</p>

	public interest
Section 25(1)h)	I have established whether the applicant is a suitable person to hold the authority, having regard to the matters mentioned in schedule 2 of the Administration Regulation.

5. In the main, I accepted Ms Hotckis' assessment report. Matters to note from that report are

- The public interest test, NCAR s25 (1) (g). This matter was discussed with the Mayor, and as the town's elected leader I take his advice on that matter.
- I noted the recommended conditions and in the main accepted those. I did however require changes.
- The conditions of the Permit, their rationale and legislative base are in the table below.

• Condition of Permit	• Rationale	• Legislative Base
PB1: EHP staff may direct works not to start or cease.	Gives on ground staff capacity to respond to changing conditions or breaches.	• NC(WM) RS.186 (c)
PB2: Dispersal activities must be carried out in accordance with the Roost Management Plan submitted by CTRC on 16 October 2013. Where this document and the permit conditions conflict, the permit conditions take precedence.	Direct link with proposal. If methods outside those nominated gives direct link to cease if needed. Application is basis for determining that requirements met.	• NC(WM) RS 186 (c)
PB3 Morning dispersal activities must cease by 7 am and evening dispersal activities (if undertaken) cannot be commenced until 5.30pm. Dispersal activities must not occur during the day between those times.	• Humane dispersal	• NC(WM) RS 186 (c)
PB4 EHP officers able to enter where activities occurring.	• Capacity for oversight of the operation	•
PB5 If flying foxes disperse to a location is considered on reasonable grounds to be unsuitable by either Council or EHP , the permit holder must: <ul style="list-style-type: none"> • Take reasonable action to disperse the flying foxes from the unsuitable location • Seek permission to enter the land from the relevant 	Mitigation strategy for outcome being less optimal in the public interest.	Section 25(1) (g) of the Administration Regulation

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landowners where entry to land not owned by Council is required to carry out the necessary dispersal activity.		
PB6 A registered wildlife carer or veterinarian (against ABLV) must be on call at all times that dispersal activities are undertaken.	<ul style="list-style-type: none"> If accidental harm happens then reduce the risk to the bats. If harm happens less risk in handling of bats 	NC(WM) RS 186 c Section 25(1) of the Administration Regulation
PB 7 A helicopter may be used as a barrier during dispersal activities only, where CASA has given approval for its use.	As this is a new technique aim is to minimise the potential for accidental take. CASA recognised authority.	<ul style="list-style-type: none"> NC(WM) RS 186 (c) Section 25(1) of the Administration Regulation
PB8: permit holder gives 48 hours notice prior to commencing.	Allows for staff to be organised so can oversee that action is carried out as per permit	NC(WM) RS 186 (c) Must be satisfied will be conducted humanely
PB9: Dispersal activities must immediately suspend and EHP notified if: <ul style="list-style-type: none"> flying fox killed or injured, harmed or suffering unnecessary, unreasonable stress 	Indicators that dispersal is not being conducted humanely. Allows for assessment.	NC(WM) RS 186 c

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Reasons for making the decision

I am satisfied of all the matters set out in section 186 of the Wildlife Management Regulation have been met and accordingly I was able to grant a DMP with conditions.

RD Williams
 Delegate
 Department of Environment & Heritage Protection



Department of
**Environment and
Heritage Protection**

Ref CTS 31170/13

16 JAN 2014

Ms Jo-Anne Bragg
Principal Solicitor
Environmental Defenders Office (Qld) Inc
jbragg@edo.org.au

Dear Ms Bragg

Jo-Anne

Thank you for your letter dated 19 December 2013 requesting a statement of reasons for the decision to approve Charters Towers Regional Council's application for a damage mitigation permit (DMP) to disperse a flying-fox roost at Lissner Park on behalf of the Bat Conservation and Rescue Qld Inc. (BCRQ).

In the spirit of transparency and in line with section 32 of the *Judicial Review Act 1991*, I enclose the statement of reasons enabling the dispersal of the flying-fox roost at Lissner Park.

A DMP was issued to Charters Towers Regional Council on 21 October 2013 under section 88 of the *Nature Conservation Act 1992*.

On 29 November 2013, the Queensland Government introduced a new framework for flying-fox management under section 88c of the Act. A new permit, the Flying-Fox Roost Management Permit, authorising non-lethal activities including disturbing a flying-fox roost, driving a flying-fox away from a roost and destroying a roost was issued to Charters Towers Regional Council dated 1 November 2013. This new permit supersedes, and is consistent with, the conditions of the Council's DMP issued on 21 October 2013.

The delegate was satisfied under section 186 of the Wildlife Management Regulation that all matters set out in this section were met and a permit was granted. These matters are examined in the statement of reasons.

Should your staff have any further enquiries, please contact Ms Sally Egan, A/Director, Wildlife Management Unit of the department on telephone 3330 5512.

Yours sincerely

sch4 - Personal information - signature

Jonathan (Jon) PC Black
Director-General

Enc

Level 13
400 George Street Brisbane
GPO Box 2454 Brisbane
Queensland 4001 Australia
Telephone + 61 7 3330 6297
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STATEMENT OF REASONS

Statement of reasons provided pursuant to section 33 of the Judicial Review Act 1991.

Applicant's name	Charters Towers Regional Council
Decision maker	R D Williams, the delegate of the chief executive in accordance with the delegation given under section 141 of the <i>Nature Conservation Act 1992 (the Act)</i>
Decision	Granted
Date of decision	21/10/2013

Introduction

On 16 October 2013, the Charters Towers Regional Council lodged an application for a damage mitigation permit (DMP) to enable the dispersal of the flying fox roost at Lisner Park, Charters Towers.

On 21 October 2013, after consideration of the material before me, I granted a DMP and signed a notice of decision to Charters Towers Regional Council confirming my decision.

Relevant legislation

The *Nature Conservation (Wildlife Management) Regulation 2006 (the Wildlife Management Regulation)* chapter 3, part 4, division 2 governs the grant of damage mitigation permits (DMP) for animals as follows:

S 181 Purpose of permit and div 2

- (1) The purpose of a damage mitigation permit for animals is to allow a person to do an authorised act affecting a protected animal if the animal—
- (a) is causing, or may cause, damage to property; or
 - (b) represents a threat to human health or wellbeing.
- (2) The purpose of this division is to ensure the grant of damage mitigation permits to do authorised acts affecting animals does not adversely affect the conservation of the animals.
- (3) The purpose mentioned in subsection (2) is achieved by—
- (a) allowing the chief executive to grant a damage mitigation permit to do an authorised act affecting an animal only in limited circumstances; and
 - (b) limiting the activities that a person is authorised to do under a damage mitigation permit; and
 - (c) regulating the activities of persons acting under a damage mitigation permit.

S 186 Restriction on grant of permit for threat to human health and wellbeing

The chief executive may grant a damage mitigation permit for a threat, or potential threat, to human health and wellbeing caused by a protected animal only if the chief executive is satisfied—

- (a) there is, or may be, a threat to a person's health and wellbeing resulting from harm caused by the animal to the person; and
- (b) action under the permit will not detrimentally affect the survival of the animal in the wild; and
- (c) the proposed way of taking the animal is humane and not likely to cause unnecessary suffering to the animal;

Section 25 of the *Nature Conservation (Administration) Regulation 2006* (the Administration Regulation) provides that in considering an application I must have regard to each of the following

- (a) The impact the activities that may be carried out under the DMP may have on the conservation of the cultural or natural resources of a protected area or native wildlife;
- (b) The effect the grant of the authority will have on the fair and equitable access to nature, having regard to, in particular, the ecologically sustainable use of protected areas or wildlife;
- (c) Any contribution the applicant proposes to make to the conservation of nature;
- (d) Any relevant Australian or international code, instrument, protocol or standard or any relevant intergovernmental agreement;
- (e) The precautionary principle;
- (f) Public health and safety
- (g) The public interest
- (h) Whether the applicant is a suitable person to hold the authority, having regard to the matters mentioned in schedule 2 of the Administration Regulation;
- (i) Any recovery plan for wildlife to which the authority applies. *Nature Conservation (Administration) Regulation 1996 (NCAR)*

Pursuant to section 25(2) of the Administration Regulation, I may have regard to anything else I consider appropriate to achieve the object of the Act.

Material on which the findings of fact were made

In arriving at my decision I had before me the following material for consideration:

- The Act, the Wildlife Management Regulation and the Administration Regulation 2006
- Damage Mitigation Permit Application and supporting documentation submitted 16/10/2013
- Information from assessment report generated by Deb Hotchkis (A/Senior Wildlife Ranger).

Findings of fact

I assessed the application against the requirements of the legislation and made the following findings of fact: Conditions are included in the findings of fact.

Legislative requirement	Finding
Section 181 (2) of the Wildlife Management Regulation	Both species of black and little red flying-foxes are listed as least concern under the NCA with the little reds being the widest ranging of four main species of flying-foxes in Australia.
Section 181(1)(a) and S 186 (b) of the Wildlife Management Regulation	I am satisfied that the animals are causing, or may cause damage to because of the information provided in the application and the assessment (being complaints and the history of human behaviour in response to the roost) and the history of the wellbeing of the residents

	being affected.
Section 186(c)	<p>I am satisfied the proposed way of dispersing the flying-foxes is humane and not likely to cause unnecessary suffering to the animals because the applicant has proposed the following measures in the dispersal plan to minimise the likelihood of a 'take':</p> <ul style="list-style-type: none"> • The proposed method of dispersal is by sound, smoke, water and disturbance by movement in the trees by a paint ball gun. The intent is not to have direct contact with the animals. • Council has assured that the helicopter will be used only as a barrier to prevent flying-foxes from heading in an undesirable direction and will not be used to 'muster' the animals as previously described. • In the event of any accidental take dispersal activities will be suspended.

Additional matters I have taken into account

Section 25(1)(a) of the Administration Regulation	I consider that the dispersal will have no impact on the conservation of the species. The applicant has identified 3 potential roost sites within 10km of the existing roost predominantly along the Burdekin River and Gladstone Creek therefore the likelihood of the animals relocating to a suitable location is enhanced.
Section 25(1)(b)	There will be no effect from the grant of the authority have on the fair and equitable access to nature, having regard to, in particular, the ecologically sustainable use of protected areas or wildlife.
Section 25(1)(c)	There is no contribution the applicant proposes to make to the conservation of nature;
Section 25(1)(d)	There are no relevant matters in this section.
Section 25(1)(e)	The grant of the permit has taken into account the precautionary principle.
Section 25(1)(f)	I have had regard to public health and safety in considering S 181 (1) and in condition PB6.
Section 25(1)(g)	<p>I have had regard to the public interest in understanding the situation of the township but also that granting a DMP may cause others distress and that the flying foxes may form or go to roosts that also impact on public wellbeing or economic loss. In some scenarios that impact may be greater than the current situation. Removal of trees not feasible as the trees are heritage listed and restrictions are placed on the ability for CTRC to modify or remove them. The trees have been previously pruned.</p> <p>Council refers residents to EHP information on its website.</p> <p>Council has previously dispersed flying-foxes from the park.</p> <p>On balance I believe the granting of the DMP and the safe dispersal of the roost is the best outcome in the public interest</p>

Section 25(1)h)	I have established whether the applicant is a suitable person to hold the authority, having regard to the matters mentioned in schedule 2 of the Administration Regulation.
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5. In the main, I accepted Ms Hotckis' assessment report. Matters to note from that report are

- The public interest test, NCAR s25 (1) (g). This matter was discussed with the Mayor, and as the town's elected leader I take his advice on that matter.
- I noted the recommended conditions and in the main accepted those. I did however require changes.
- The conditions of the Permit, their rationale and legislative base are in the table below.

• Condition of Permit	• Rationale	• Legislative Base
PB1: EHP staff may direct works not to start or cease.	Gives on ground staff capacity to respond to changing conditions or breaches.	• NC(WM) RS 186 (c)
PB2: Dispersal activities must be carried out in accordance with the Roost Management Plan submitted by CTCR on 16 October 2013. Where this document and the permit conditions conflict, the permit conditions take precedence.	Direct link with proposal. If methods outside those nominated gives direct link to cease if needed. Application is basis for determining that requirements met.	• NC(WM) RS 186 (c)
PB3 Morning dispersal activities must cease by 7 am and evening dispersal activities (if undertaken) cannot be commenced until 5.30pm. Dispersal activities must not occur during the day between those times	• Humane dispersal	• NC(WM) RS 186 (c)
PB4 EHP officers able to enter where activities occurring.	• Capacity for oversight of the operation	
PB5 If flying foxes disperse to a location is considered on reasonable grounds to be unsuitable by either Council or EHP, the permit holder must: <ul style="list-style-type: none"> • Take reasonable action to disperse the flying foxes from the unsuitable location • Seek permission to enter the land from the relevant landowners where entry 	Mitigation strategy for outcome being less optimal in the public interest.	Section 25(1) (g) of the Administration Regulation

to land not owned by Council is required to carry out the necessary dispersal activity.		
PB6 A registered wildlife carer or veterinarian (against ABLV) must be on call at all times that dispersal activities are undertaken.	<ul style="list-style-type: none"> • If accidental harm happens then reduce the risk to the bats. • If harm happens less risk in handling of bats 	NC(WM) RS 186 c Section 25(1) of the Administration Regulation
PB 7 A helicopter may be used as a barrier during dispersal activities only, where CASA has given approval for its use.	As this is a new technique aim is to minimise the potential for accidental take. CASA recognised authority.	<ul style="list-style-type: none"> • NC(WM) RS 186 (c) • Section 25(1) of the Administration Regulation
PB8: permit holder gives 48 hours notice prior to commencing.	Allows for staff to be organised so can oversee that action is carried out as per permit	NC(WM) RS 186 (c) Must be satisfied will be conducted humanely
PB9: Dispersal activities must immediately suspend and EHP notified if: <ul style="list-style-type: none"> • flying fox killed, injured, harmed or • suffering unnecessary, unreasonable stress 	Indicators that dispersal is not being conducted humanely. Allows for assessment.	NC(WM) RS 186 c

Reasons for making the decision

I am satisfied of all the matters set out in section 186 of the Wildlife Management Regulation have been met and accordingly I was able to grant a DMP with conditions.

RD Williams
 Delegate
 Department of Environment & Heritage Protection



Department of
**Environment and
Heritage Protection**

6 December 2013

Mr Ramon Jayo
Charter Towers Regional Council
PO Box 189
CHARTERS TOWERS QLD 4820

Dear Mr Jayo

The Minister for Environment and Heritage Protection announced on 29 November 2013 a new approach to management of flying fox roosts in Queensland.

This approach grants as-of-right authority to local governments to manage flying-fox roosts that fall within proposed Urban Flying-fox Management Areas (UFFMAs) in accordance with the *'Code of Practice – Ecologically sustainable management of flying-fox roosts'*. For flying-fox roost management activities that are not authorised as-of-right, a flying-fox management permit is required.

In accordance with this new approach, a flying-fox management permit has been granted to Charters Towers Regional Council to authorise management activities outside the Code of Practice for the flying-fox roost at Lissner Park, Charters Towers, which is located within an UFFMA. This new permit supersedes, and is consistent with the conditions of, the Council's previous Damage Mitigation Permit (flying-fox roosts). Please find the new permit attached.

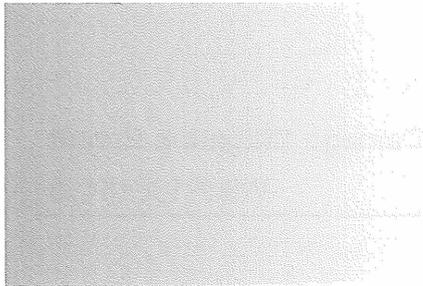
Should your staff have any further enquiries, please contact Mr Michael Joyce, Northern Operations Manager of the department on telephone 4796 7787.

Yours sincerely

sch4 - Personal information - signature

Rebecca Williams
**Director
Wildlife Management Unit**

Enc.



Permit¹

This permit is issued under the following legislation:
S12(A) Nature Conservation (Administration) Regulation 2006

Damage Mitigation Permit

Permit number: WIMP13615113

Valid from: 01-NOV-2013 to 20-OCT-2014

Parties to the Permit

Role	Name	Address
Principal Holder	Charters Towers Regional Council 67 731 313 583	12 Mosman Street CHARTERS TOWERS QLD 4820
Person In Charge	Mr Ramon Jayo	70 Mosman Street CHARTERS TOWERS QLD 4820

Permitted Location Activity Details

Location (s)	Activity (s)
Lissner Park 230 DV444 CHARTERS TOWERS REGIONAL	Dispersal of wildlife

Permit Details

Species Details

Location		Activity	
Lissner Park		Dispersal of wildlife	
Common Name	Scientific Name	Category	Quantity
black flying-fox	Pteropus alecto	Live	Unlimited Animal/s
little red flying-fox	Pteropus scapulatus	Live	Unlimited Animal/s

¹ Permit includes licences, approvals, permits, authorisations, certificates, sanctions or equivalent/similar as required by legislation.



Conditions of Approval

Agency Interest: General

- PG1 EHP staff may direct works not to commence or to cease at any time.
- PG2 Dispersal activities must be carried out in accordance with the Roost Management Plan submitted by CTCR on 16 October 2013. Where this document and the permit conditions conflict, the permit conditions take precedence.
- PG3 Morning dispersal activities must cease by 7:00 am, and evening dispersal activities (if undertaken) cannot be commenced until 5:30pm. Dispersal activities must not occur during the day between these times.
- PG4 The permit holder must ensure EHP officers can enter and remain at any location, at any time, during which dispersal activities are being undertaken.
- PG5 If flying-foxes disperse to a location that is considered, on reasonable grounds, to be unsuitable by either EHP or Council, the permit holder must:
- Take reasonable actions to disperse the flying-foxes from the unsuitable location.
- Seek permission to enter the land from the relevant landowner(s) where entry to land, not owned by Council, is required to carry out the necessary dispersal activity.
- PG6 A registered wildlife carer or veterinarian (inoculated against Australian Bat Lyssavirus) must be on call at all times that dispersal activities are undertaken.
- PG7 A helicopter may be used as a barrier during dispersal activities, only where CASA has given approval for its use.

Agency Interest: Biodiversity

- PB1 The permit holder must notify EHP at least 48 hours in advance of dispersal activities commencing, so that a conservation officer may conduct a site assessment.
- PB2 Dispersal activities must immediately cease, and EHP notified, if:
- A flying-fox appears to have been killed, injured or harmed.
- A flying-fox appears to be suffering unnecessary or unreasonable stress.

sch4 - Personal information - signature

Signed

Rebecca Williams
Delegate
Department of Environment and Heritage Protection

RTI DL RELEASE - EHP

Notice of decision - permit¹ application

This notice is issued by the administering authority to advise of a statutory decision on a permit application.

Charters Towers Regional Council
PO Box 189
CHARTERS TOWERS QLD 4820

Our reference: 381436

Dear Sir/Madam

Re: Decision made in relation to your application

Your application received on 30-OCT-2013 has been assessed and the decision in regard to your application is specified below:

Permit applied for	Permit Number	Decision
Flying-fox roost management permit under Nature Conservation (Administration) Regulation 2006	WIFF13807313	Granted

For the permit applied for that has been granted, the conditions of approval are attached. Where applicable, a Statement of Reasons is provided in relation to the decision. Please note that for the approval, this Notice of Decision and the relevant attachments constitute the permit documentation. Please retain this approval documentation for your records.

Included with this notice is advice on review and appeal processes that may be available to you. Should you seek a review or appeal, you are advised to seek independent advice before taking such action.

If you require more information, please contact Matthew Brien on the telephone number listed below.

Yours sincerely

sch4 - Personal information - signature

Rebecca Williams
Department of Environment and Heritage Protection
Date

Enquiries:

Wildlife - Savanna - QPW
PO Box 5597
TOWNSVILLE QLD 4810

Attachment - Permit/Statement of Reasons

¹ Permit includes licences, approvals, permits, authorisations, certificates, sanctions or equivalent/similar as required by legislation.



Permit¹

This permit is issued under the following legislation:
S12(B) Nature Conservation (Administration) Regulation 2006

Flying-fox roost management permit

Permit number: WIFF13807313

Valid from: 01-NOV-2013 to 20-OCT-2014

Parties to the Permit

Role	Name	Address
Principal Holder	Charters Towers Regional Council 67 731 313 583	12 Mosman Street CHARTERS TOWERS QLD 4820

Permitted Location Activity Details

Location (s)	Activity (s)
Lissner Park 230 DV444 CHARTERS TOWERS REGIONAL	Deliberately disturb flying-foxes in a roost. Deliberately disperse flying-foxes from a roost.

Permit Details

Species Details

Location		Activity	
Lissner Park		All activities relating to this permit	
Common Name	Scientific Name	Category	Quantity
black flying-fox	<i>Pteropus alecto</i>	Live	Unlimited Animal/s
little red flying-fox	<i>Pteropus scapulatus</i>	Live	Unlimited Animal/s

¹ Permit includes licences, approvals, permits, authorisations, certificates, sanctions or equivalent/similar as required by legislation.

Conditions of Approval

Agency Interest: Biodiversity

- PB1 EHP staff may direct works not to commence or to cease at any time.
- PB2 Dispersal activities must be carried out in accordance with the Roost Management Plan submitted by CTRC on 16 October 2013. Where this document and the permit conditions conflict, the permit conditions take precedence.
- PB3 Morning dispersal activities must cease by 7:00 am, and evening dispersal activities (if undertaken) cannot be commenced until 5:30pm. Dispersal activities must not occur during the day between these times.
- PB4 The permit holder must ensure EHP officers can enter and remain at any location, at any time, during which dispersal activities are being undertaken.
- PB5 If flying-foxes disperse to a location that is considered, on reasonable grounds, to be unsuitable by either EHP or Council, the permit holder must:
- Take reasonable actions to disperse the flying-foxes from the unsuitable location.
 - Seek permission to enter the land from the relevant landowner(s) where entry to land, not owned by Council, is required to carry out the necessary dispersal activity.
- PB6 A registered wildlife carer or veterinarian (inoculated against Australian Bat Lyssavirus) must be on call at all times that dispersal activities are undertaken.
- PB7 A helicopter may be used as a barrier during dispersal activities, only where CASA has given approval for its use.
- PB8 The permit holder must notify EHP at least 48 hours in advance of dispersal activities commencing, so that a conservation officer may conduct a site assessment.
- PB9 Dispersal activities must immediately suspend, and EHP notified, if:
- A flying-fox appears to have been killed, injured or harmed.
 - A flying-fox appears to be suffering unnecessary or unreasonable stress.

sch4 - Personal information - signature

Signed

Rebecca Williams
Delegate
Department of Environment and Heritage Protection

From: KELLY Wade
Sent: Monday, 17 March 2014 9:50 AM
To: JOYCE Mike
CC: FRISBY Tony; MORRIS Sally; COUPRIE Dayna
Subject: RE: Report - Phone converstaion 13/3/14 Wade Kelly / Michael Langburne
Attachments: Warning Letter - CTRC.docx

Hi Michael,

Please find attached draft warning letter addressed to the Charters Towers regional Council regarding the below conversation.

I have viewed the legislation and believe the action is a breach under NCA s88 (5) –

“A person must not keep or use an animal that is either of the following unless the person is an authorised person or the keeping or use is authorised under this Act”

“either of the following” in this case refers to a protected animal or the descendant of

I have cross referenced this infringement with the definition of ‘animal’ under the legislation and have confirmed that the definition refers to animals alive or dead.

For Becks future reference the Charters Towers postal address is:

PO Box 189
Charters Towers QLD
4820

Please provide feedback when possible

Regards,

Wade Kelly
Wildlife Ranger
Wildlife Management Operations, Northern Region
Conservation & Sustainability Services

Department of Environment & Heritage Protection
P.O Box 375
Garbutt East LPO
QLD 4814

Phone: (07) 4796 7780

Mobile: Personal information - mobile

Email: wade.kelly@ehp.qld.gov.au

hjk



From: JOYCE Mike
Sent: Saturday, 15 March 2014 8:45 AM
To: Kelly Wade; Frisby Tony
Cc: Couprie Dayna
Subject: FW: Report - Phone converstaion 13/3/14 Wade Kelly / Michael Langburne

Wade,

I would like you to draft up the letter as described below, tony will help you. Also I would like this off our desks quick, so can we say close of business Tuesday. For a draft.

Thanks
Mike

Michael Joyce

Operations Manager Northern
Wildlife Operations

Ph: 4796 7787

Mob: Personal information - mobile

Email: Michael.joyce@ehp.qld.gov.au

Department of Environment and Heritage Protection

From: Williams Rebecca
Sent: Thursday, 13 March 2014 3:07 PM
To: JOYCE Mike
Cc: Frisby Tony; CLARE Geoff
Subject: RE: Report - Phone converstaion 13/3/14 Wade Kelly / Michael Langburne

Mike

Unless I am mistaken then there is a possible breach of the *Nature Conservation Act 1992* in the actions of Council.

What I would like you to do is:

- Have a warning letter drafted up under my signature noting that without full details it would appear to be a breach (take keep use or interfere). Please refer to the section (have checked).
- Once drafted send to me and I will have sent to inhouse legal to go over for us before I send it.

Thanks
Beck

RD Williams
Director Wildlife
Environment and Heritage Protection
Telephone 07 33305512



From: JOYCE Mike
Sent: Thursday, 13 March 2014 10:49 AM
To: Williams Rebecca
Cc: Frisby Tony
Subject: FW: Report - Phone converstaion 13/3/14 Wade Kelly / Michael Langburne

Hi beck,

FY advice please.

Thanks

Mike

Michael Joyce

Operations Manager Northern
Wildlife Operations

Ph: 4796 7787

Mobile: Personal information - mobile

Email: Michael.joyce@ehp.qld.gov.au

Department of Environment and Heritage Protection

From: Kelly Wade

Sent: Thursday, 13 March 2014 10:12 AM

To: JOYCE Mike

Subject: Report - Phone converstaion 13/3/14 Wade Kelly / Michael Langburne

Hi Michael,

Please find attached report in file note format regarding our conversation earlier this morning on the subject of my phone conversation with Michael Langburne from CRTC yesterday (12/03/14)

RE: Flying – Fox Management

Regards,

Wade Kelly

Wildlife Ranger

Wildlife Management Operations, Northern Region
Conservation & Sustainability Services

Department of Environment & Heritage Protection

P.O Box 375

Garbutt East LPO

QLD 4814

Phone: (07) 4796 7780

Mobile: Personal information - mobile

Email: wade.kelly@ehp.qld.gov.au

hjk



Enquiries: Michael Joyce
Telephone 47967787
Your reference
Our reference



Department of
**Environment and
Heritage Protection**

17th March 2014

Charters Towers Regional Council
12 Mosman Street
Charters Towers Q
4820

To whom it may concern,

RE: Department of Environment and Heritage Protection (DEHP) - potential breach of the *Nature Conservation Act 1992*.

This correspondence follows a telephone conversation between Charters Towers Regional Council Environmental Services Manager Michael Langburne and DEHP Officer Wade Kelly on the 13th of March 2014.

Mr Langburne stated that Council members were range testing paintball guns on a deceased flying-fox. Information on the acquisition of the animal was not provided.

I am writing to inform you that this action is a potential breach under section 88 – subsection 5 of the *Nature Conservation Act 1992* – “A person must not keep or use an animal that is either of the following unless the person is an authorised person or the keeping or use is authorised under this Act”. This definition refers to animals both alive and deceased.

This letter does not determine innocence or guilt, but serves to remind you of your obligations and responsibilities under the *Nature Conservation Act 1992* and subordinate legislation.

If you have future uncertainties regarding your obligations under this Act, please do not hesitate to contact Wildlife Management Operations for assistance.

Yours Sincerely,

[Insert relevant delegate information]

From: WILLIAMS Rebecca [Rebecca.Williams@ehp.qld.gov.au]

Sent: Monday, 18 August 2014 4:31 PM

To: EVANS Lucy

Subject: FW: Alleged Offence Report - Charters Towers Regional Council - Feb/March 2014

Attachments: RE: Report - Phone converstaion 13/3/14 Wade Kelly / Michael Langburne; Breach report CTRC 13 03 14.docx

Lucy could you file this for me please. I signed the letter and I believe you posted for me some time ago
regards

RD Williams

Director Wildlife

Environment and Heritage Protection

Telephone 07 33305512



From: JOYCE Mike

Sent: Thursday, 20 March 2014 10:26 AM

To: WILLIAMS Rebecca

Cc: Frisby Tony; Prior Katrina

Subject: RE: Alleged Offence Report - Charters Towers Regional Council - Feb/March 2014

Hi Beck,

As discussed please find attached.

I concur with the recommendation in the breach report given the facts of the matter. I do not believe there was any wilful intent to breach the act and it would not add to the outcome by using others tools to gain compliance on the matter.

I advise that if you do decide to sign the letter it should be handed to the CEO by yourself as it may require explanation due to the complexities of the case.

Thanks

Mike

Hi Katrina,

You will find the draft warning letter attached as we discussed. I believe it will require your expert eye over it, if Beck is going to sign it.

Mike

Michael Joyce

Operations Manager Northern

Wildlife Operations

Ph: 4796 7787

Mob: Personal information - mobile

Email: Michael.joyce@ehp.qld.gov.au

Department of Environment and Heritage Protection

From: Frisby Tony

Sent: Wednesday, 19 March 2014 4:08 PM

To: JOYCE Mike

Subject: Alleged Offence Report - Charters Towers Regional Council - Feb/March 2014

Hi Mike,

Just got this from Wade and have reviewed it

I support Wades recommendation of a Warning Letter being sent based on the circumstances outlined in the attached Alleged Offence Report

Regards,
Tony

Tony Frisby
Senior Ranger – Wildlife Management Operations
Department of Environment and Heritage protection

PO Box 5597
Townsville, QLD 4810
Phone: (07) 4796 7785
Fax: (07) 4796 7705
Email: tony.frisby@ehp.qld.gov.au



RTI DL RELEASE - EHP

Alleged Breach Report

This Alleged Breach Report in conjunction with the departments Enforcement Guidelines will assist officers in recording information which supports a decision to take enforcement action i.e. issue a Penalty Infringement Notice (PIN) under the State Penalties Enforcement Act 1999 regime. This includes offences under the Environmental Protection Act 1994, Nature Conservation Act 1992, Forestry Act 1959, Recreation Areas Management Act 2006, Marine Parks Act 2004, Waste Reduction and Recycling Act 2011, Chapter 3 of the Water Act 2000 and the Queensland Heritage Act 2000, as listed within the State Penalties Enforcement Regulation 2000.

Note: For information on writing and the management of PINs please refer to the [PIN Manual](#) or contact infringement.notices@ehp.qld.gov.au.

1. Identifying details

Issuing Officer	Wade Kelly
Reference details	Wildlife management Operations, Northern
EcoTrack Number if used	N/A
Licence/Permit number	N/A
File number	CTRC Feb, Mar 2014
Name of alleged offender	Charters Towers Regional Council
Address	12 Mosman Street, Lissner QLD 4820
ACN/ABN	Unknown
Contact details	47615300

2. Background details of incident

Please outline any historical information relevant to this incident. This information may assist with the reasoning for the decision, assist in completing a review of the PIN and may be essential should the matter be referred to the Magistrates Court.

Date the department became aware of the offence.	27th February 2014
Date(s) & time of offence	Received email from Charters Towers regional Council referring to

	an offence being committed. No particulars were given to date, time and place of the offence
Day of the week	Unknown
Location	Unknown
Permit/ Authority details	Charters Towers Currently hold a Flying-Fox Roost Management Permit
Site activity	The above permit allows Council to undertake dispersal activities within their local government area under the conditions of the permit
Vehicle/vessel details	Unknown
Compliance history	Unknown
Contact with alleged offender- have you notified them that PINS are being issued?	<p>First advice of a possible offence being committed came on the 27th of February 2014 by way of email from Charters Towers Regional Director [REDACTED] s78B(2) - Confidential</p> <p>See attached Email</p> <p>The Second advice was taken by way of telephone conversation between EHP officer Wade Kelly and Charters Towers Regional Council [REDACTED] s78B(2) - Confidential on the 13th of March 2014 [REDACTED] s78B(2) - Confidential advised Kelly of activities undertaken by council in reference to testing of paintballs on dead Flying Foxes</p>
Possible mitigating circumstances	It is believed that Council were unaware of the section of Nature Conservation Act 1992 legislation (section 88(5))that prevented them from conducting these tests
Other information	After Conversation on the 13th March 2014 officer Kelly made a file note and submitted to Manager Michael Joyce

3. Alleged offence details

Please outline what offences are alleged to have been committed. Details include the legislation, section number, penalty units and limitation periods. Please also include the [PIN offence code](#) these can also be located on insite and Ecosteps.

Note: If there are more than three separate PIN-able offences being considered the matters should form the basis of a complaint and summons and be heard by a Magistrate.

No.	Section	PIN offence code	Legislation	Penalty Units	Statute Limitation
1	88 (5)	<INSERT details>	NCA 1992	100	12 Months

4. Elements and supporting evidence

Please outline the elements of each of the offences listed above. Provide in detail what evidence is available to satisfy each and every element of the offence(s), the source, how it is/was obtained and when it will/was obtained.

Offence No.	Elements	Type of evidence	Source of evidence	How evidence was obtained
1.	Use	admission	s78B(2) - Confidential	Telephone Conversation
2.	Use	Correspondence	s78B(2) - Personal Information	Email dated 27/02/2014 and sent to EHP officer Tony Frisby

5. Alleged offender correspondence- relating to the alleged breach

Please detail correspondence related to the alleged breach that has been received from the alleged offender, or sent from the department to the alleged offender. Attach copies of the correspondence (including letters, emails, file notes of phone conversations, etc.).

Date	Type of Correspondence	Brief description of correspondence	Which alleged offence does the	Copy Attached?
------	------------------------	-------------------------------------	--------------------------------	----------------

			correspondence relate to?	
27/02/14	Email	Email correspondence	Offence 1. Use	Yes
13/03/14	Telephone Conversation	Telephone Correspondence	Offence 1. Use	Yes

6. Other enforcement options

Please detail what other enforcement options have been considered for this matter as per the departments Enforcement Guidelines.

Have other enforcement options been considered?	Yes
If yes, what are they and the reasons for using/not using them?	<p>Based on the Departments Enforcement Guidelines, the following options should be considered:</p> <p><u>Option 1. Warning Letter –</u></p> <ul style="list-style-type: none"> • It is EHP Wildlife Rangers belief that Charters Towers Regional Council were unaware that conduction tests on a dead flying-fox was a in breach of the NCA. • The way in which this incident was reported to EHP would give validity to this opinion of not intentionally trying to breach the NCA. It is our belief that Charters Towers Regional Council did not intentionally, wilfully or malice breach the NCA therefore there was no intent. • There was little or no conservation impact by the activity. • A warning letter is the primary response by the Department when dealing with minor breaches of legislation where the imposition of a financial penalty is not considered appropriate and where little or no environmental impact has occurred with a low level of culpability <p><u>Option 2. Penalty Infringement Notice</u></p> <ul style="list-style-type: none"> • Under the NCA 1992 Charters Towers Regional Council have breached section 88 (5) which can incur a Penalty Infringement Notice of 100 penalty units. • Based on the information that EHP Rangers currently

	<p>have and the level of admission by Charters Towers Regional Council there is definitely scope there to issue a Penalty Infringement Notice</p> <ul style="list-style-type: none"> Based on the enforcement guidelines this action may be considered due to the criteria surrounding the impact or risk there of although this course of action may have a detrimental effect on the relationships of the parties involved. Based on the given circumstances, the issue of a PIN would overshadow the educational benefit of the action <p><u>Option 3. Suspension/Cancellation off Permit</u></p> <ul style="list-style-type: none"> This option may be an extreme action based on the seriousness of the breach of legislation along with the impact assessment criteria within the enforcement guidelines. Due to the low conservation value of the activity along with the low culpability of the offence, this action would be excessive with a detrimental impact on working relationships of all parties involved.
If no, please advise why no other options have been considered?	

7. Recommendation

The officer is required to make a recommendation in relation to the matter under investigation.

Based on the Departments enforcement guidelines, discretion is to be taken into consideration when applying enforcement action while considering the circumstances surrounding the offence, taking into account the seriousness of the breach of the legislation. I believe that an educational approach is the best course of action due to the offence being of low impact and holding low conservation value. This is reinforced by the low culpability of the offender due to the fact that we believe council were unaware that their actions were in fact a breach of NCA. If a more serious action were to be taken, an adverse outcome would follow with a detrimental impact on all parties involved thus negatively effecting relative working relationships I believe that the likelihood of the offence reoccurring would be minimal and with all other options considered, I recommend that a warning letter be issued to Charters Towers Regional Council outlining the breach to the NCA. This action would be beneficial to both parties and would have minimal effect on the relationship between Charters Towers Regional Council and EHP. By taking this enforcement option, the Department can assess the outcome which will aid decisions if future offences occur.

8. Acknowledgement

The recommending officer and supervisor are required to sign and date below.

Recommending Officer	Supervisory Review
Signature:	Signature: <INSERT details>
Print Name: Wade Kelly	Print Name: <INSERT details>
Position: Wildlife Ranger 004	Position: <INSERT details>
Date: 19/03/14	Date: <INSERT details>

9. Endorsement

The appropriate manager or supervisor is required to either support / not support the decision and sign and date below.

Decision for recommendation	<INSERT details support/ not support>
Reasons for decision <INSERT details>eg: I support this decision for the reasons set out above and I note Mr xxxx has previously received a warning letter in relation to this matter. > <INSERT> eg: I do not approve the above recommendation as I consider it more appropriate for the Department to take an educational approach to this breach>	
Signature: <INSERT details>	Print Name: <INSERT details>
Position: <INSERT details>	Date: <INSERT details>

Please ensure that the PIN, cover letter and alleged breach report are saved into EcoTrack.