



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

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
Facsimile + 61 7 3330 6306
Website www.ehp.qld.gov.au
ABN 46 640 246 811 Page 1 of 21

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.	<ul style="list-style-type: none"> • 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.	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • Humane dispersal 	<ul style="list-style-type: none"> • NC(WM) RS 186 (c)
PB4 EHP officers able to enter where activities occurring.	<ul style="list-style-type: none"> • 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

Levinge Chris

From: Williams Rebecca
Sent: Tuesday, 24 December 2013 3:31 PM
To: Clare Geoff
Cc: Manchon Christophe; Egan Sally
Subject: 131224 Statement of reasons_Charters Towers FF dispersal (KM amendments)
Attachments: 131224 Statement of reasons_Charters Towers FF dispersal (KM amendments).docx

Follow Up Flag: Follow up
Flag Status: Flagged

Geoff

My statement of reasons for the Charters Towers DMP. Because of the change of legislative framework on the 29th November it is worth noting that the Charter Towers' dispersal was carried out under a flying fox roost management permit.

Whilst I have not followed the same format in the statement of reasons I would like to be clear that the issuing of that permit was based on the same reasons as the issuing of the DMP.

Regards
Beck

RD Williams
Director Wildlife
Environment and Heritage Protection
Telephone 07 33305512



RTI DL RELEASE - EHP

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landowners where entry to land not owned by Council is required to carry out the necessary dispersal activity.		
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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
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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

From: Gavin David [David.Gavin@ehp.qld.gov.au]
Sent: Tuesday, 11 February 2014 11:09 AM
To: Armbruster Christine
CC: Prior Katrina
Subject: Water Cannons

Chrissie

Charters Towers

I don't believe their dispersal plan states HOW water was to be used – just stated that 2 small water units on the back of utilities would be used.

I think we should be more careful about conditions in future?

Regards

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



RTI DL RELEASE - EHP

From: ARMBRUSTER Christine [Christine.Armbruster@ehp.qld.gov.au]
Sent: Thursday, 17 April 2014 3:06 PM
To: GAVIN David
Subject: CASA

Hi Dave

Welcome back, hope its not too harsh being back, at least it's a short week.

Kat mentioned that she thought you mentioned that you had spoken with CASA about their investigations at Charters Towers. The last update that I had and included in the Running sheet was 14/02/14 that said that CASA was investigating. Do you know if there are any outcomes of this investigation?

Regards

Christine Armbruster

Administration Officer, Operational Support and Services | Wildlife Management
Nature Conservation Services
Department of Environment and Heritage Protection
Level 5 | 400 George Street | BRISBANE
Tel 07 3330 5820
www.ehp.qld.gov.au
ehp-email-signature



RTI DL RELEASE - EHP

From: GAVIN David [David.Gavin@ehp.qld.gov.au]
Sent: Tuesday, 29 April 2014 3:36 PM
To: northqld@casa.gov.au
Subject: Charters Towers Regional Council Investigation - Flying Foxes

Importance: High

Good afternoon

My department issued a permit for Charters Towers Regional Council to disperse a flying-fox roost in December 2013 which included the use of helicopters.

I understand that CASA has investigated the helicopter actions during the dispersal.

I would appreciate it if you could confirm that the investigation has been completed and what the outcomes of the investigation were?

Best regards

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



RTI DL RELEASE - EHP

From: WILLIAMS Rebecca [Rebecca.Williams@ehp.qld.gov.au]
Sent: Wednesday, 30 April 2014 2:13 PM
To: PRIOR Katrina; MILLS Frank
CC: GAVIN David
Subject: RE: Charters Towers Regional Council Investigation - Flying Foxes [SEC=UNCLASSIFIED]

Kat : I agree it provides a wonderful format for a response. Please copy and add to our project plan/ response to privacy report. At this stage we will put this in the investigation folder.

Frank: for discussion re investigation.

Regards

Beck

RD Williams
Director Wildlife
Environment and Heritage Protection
Telephone 07 33305512



From: PRIOR Katrina
Sent: Wednesday, 30 April 2014 2:03 PM
To: WILLIAMS Rebecca
Cc: GAVIN David
Subject: FW: Charters Towers Regional Council Investigation - Flying Foxes [SEC=UNCLASSIFIED]

Hi Beck

FYI re: CASA. (Coincidentally, this provides a reasonable format to responding to requests for information regarding investigations we have conducted, such as we were discussing yesterday).

Would there be merit in approaching the council directly?

Cheers

Kat

From: GAVIN David
Sent: Wednesday, 30 April 2014 9:37 AM
To: PRIOR Katrina
Subject: FW: Charters Towers Regional Council Investigation - Flying Foxes [SEC=UNCLASSIFIED]

FYI

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



From: McLAREN, THOMAS [<mailto:tom.mclaren@casa.gov.au>]
Sent: Tuesday, 29 April 2014 5:02 PM
To: GAVIN David
Subject: RE: Charters Towers Regional Council Investigation - Flying Foxes [SEC=UNCLASSIFIED]

UNCLASSIFIED

Dear Mr Gavin,

CASA issued a low flying permit upon assessment of an application submitted by a local Operator. The permit had strict conditions to ensure operations were conducted safely. Alleged breaches of the conditions were reported to CASA and an investigation conducted. The investigation concluded late last month and appropriate action taken but as the matter involves individuals – pilots – details cannot be released due to Privacy Act provisions.

CASA will consider any future application for helicopter operations in Charters Towers to remove bats on its merits and will ensure all appropriate safety measures are taken. Ensuring the safe operation of aircraft is of the utmost concern to CASA.

Regards

Tom McLaren

Regional Manager - North QLD Region

Operations Division

CIVIL AVIATION SAFETY AUTHORITY

O +61 7 4042 3628 M SchM Personal information F +61 7 4042 3600

E tom.mclaren@casa.gov.au

From: GAVIN David [<mailto:David.Gavin@ehp.qld.gov.au>]
Sent: Tuesday, 29 April 2014 3:37 PM
To: northqld
Subject: Charters Towers Regional Council Investigation - Flying Foxes
Importance: High

Good afternoon

My department issued a permit for Charters Towers Regional Council to disperse a flying-fox roost in December 2013 which included the use of helicopters.

I understand that CASA has investigated the helicopter actions during the dispersal.

I would appreciate it if you could confirm that the investigation has been completed and what the outcomes of the investigation were?

Best regards

Dave Gavin
Senior Project Officer
Wildlife Management
Nature Conservation Services Branch
Department of Environment and Heritage Protection
T: 3330 5363



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If you have received this message in error, you are asked to inform the sender as quickly as possible and delete this message and any copies of this message from your computer and/or your computer system network.

RTI DL RELEASE - EHP

From: PRIOR Katrina [Katrina.Prior@ehp.qld.gov.au]
Sent: Friday, 19 September 2014 11:56 AM
To: WILLIAMS Rebecca; GAVIN David
Subject: RE: DLO Request - For your approval - Update on the status of flying-foxes at Charters Towers

I think that is the way to go. I don't think it has key relevance to the management issue we are dealing with.

Kat

From: WILLIAMS Rebecca
Sent: Friday, 19 September 2014 11:08 AM
To: PRIOR Katrina; GAVIN David
Subject: RE: DLO Request - For your approval - Update on the status of flying-foxes at Charters Towers

alternative is to delete the para about ebola (I thought about it)

regards

Beck

RD Williams

Director Wildlife

Environment and Heritage Protection

Telephone 07 33305512

<< OLE Object: Picture (Device Independent Bitmap) >>

From: PRIOR Katrina
Sent: Friday, 19 September 2014 10:58 AM
To: GAVIN David
Cc: WILLIAMS Rebecca
Subject: FW: DLO Request - For your approval - Update on the status of flying-foxes at Charters Towers
Importance: High

Dave

Could you please update. The permit information should be on the running sheet. You might need to give Mike or Tony a call regarding the presence of little reds. Do you know where the other comment came from re: migration?

We will also need to send through via MECS – is this CTS22912/14 that is already on there?

Kat

From: WILLIAMS Rebecca
Sent: Friday, 19 September 2014 10:54 AM
To: PRIOR Katrina
Cc: JOYCE Mike
Subject: FW: DLO Request - For your approval - Update on the status of flying-foxes at Charters Towers
Importance: High

Kat

could you have this updated please

regards

Beck

RD Williams

Director Wildlife

Environment and Heritage Protection

Telephone 07 33305512

<< OLE Object: Picture (Device Independent Bitmap) >>

From: NAIR Nisha
Sent: Friday, 19 September 2014 10:32 AM
To: WILLIAMS Rebecca
Cc: ARMBRUSTER Christine
Subject: FW: DLO Request - For your approval - Update on the status of flying-foxes at Charters Towers

Dear Beck,

Geoff's comments in **red**, kindly update and send it through via MECS please.

Kind Regards

Nisha

From: CLARE Geoff
Sent: Friday, 19 September 2014 9:52 AM
To: NAIR Nisha
Subject: RE: DLO Request - For your approval - Update on the status of flying-foxes at Charters Towers

Good but can it be augmented as below pls

Geoff Clare

Executive Director

Nature Conservation Services
Conservation and Sustainability Services

Department of Environment and Heritage Protection

P: 07 3330 5390

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M4 - Personal information

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<< OLE Object: Picture (Device Independent Bitmap) >>

From: NAIR Nisha
Sent: Friday, 19 September 2014 9:42 AM
To: CLARE Geoff
Subject: DLO Request - For your approval - Update on the status of flying-foxes at Charters Towers
Importance: High

Due to MO – 23/09/14

Endorsed by Rebecca Williams – 19/09/14

REQUEST DATE: 16 September 2014

ISSUE: Update on the status of flying-foxes at Charters Towers

QUESTION/S:

- Please provide an update on the status of flying-foxes at Charters Towers.

RESPONSE:

- Lissner Park has a small number of black flying-foxes that are present all year round. The conflict with the public arises when thousands of nomadic little red flying-foxes arrive for a 6-week period usually around November. **Please clarify that there aren't any little reds there yet if we know this.**
- **Please make clear the status of Council permit and whether they have approached us recently for another one or flagging they might (eg to operate outside their as of right authority when the reds arrive**
- On the 12 August 2014 the media reported on Mayor Frank Beveridge concerns about CASA preventing private helicopter operators from participating in flying-fox dispersals. Senator Matthew Canavan said that he would raise the issue with CASA and seek a resolution.
- On the 14 August 2014 the media reported a Charters Towers geologist/ecologist raising his concerns that the World Health Organisation had reported that two species of flying-foxes in Africa are hosts to the Ebola virus. EHP responded by stating **(how/to who?)** that flying-foxes are known to be able to fly between Papua New Guinea, Torres Straits and Australia ,however, it would be unlikely for a flying-fox to fly from Africa to Australia.
- In order for the Council to carry out its annual clean and maintenance program of the Duck Pond in Lissner Park, the council used a non-lethal method (two fogging machines) to discourage the flying-foxes from roosting near the pool complex and move to the central and western side of Lissner Park. Council started this work on the 1 September 2014. These actions were taken under their as-of-right authority.
- Charters Towers Regional Council has conducted dispersal activities to nudge flying-foxes from around the Kennedy Regiment Memorial Pool (town pool) back into Lissner Park. These activities occurred in the mornings from 8 – 16 September 2014. These actions were taken under their as-of-right authority.

Kind Regards

Nisha