

Application for a



Office of
Environment
& Heritage

Section 91 Licence

under the *Threatened Species Conservation Act 1995* to harm or pick a threatened species, population or ecological community* or damage habitat.

1. Applicant's Name ^: (if additional persons require authorisation by this licence, please attach details of names and addresses)	Blake Dyer - Seek authority to nominate additional people as required	
2. Australian Business Number (ABN):	43662 868 065	
3. Organisation name and position of applicant ^: (if applicable)	In-house Solicitor, Manly Council	
4. Postal address ^:	PO Box 82 Manly NSW 1655	Telephone ^: B.H. A.H.
5. Location of the action (including grid reference and local government area and delineated on a map).		

* A threatened species, population or ecological community means a species, population or ecological community identified in Schedule 1, 1A or Schedule 2 of the *Threatened Species Conservation Act 1995*.

^The personal details of all Section 91 licences will be displayed in the register of Section 91 licences required under Section 104 of the *Threatened Species Conservation Act 1995*. See notes.

<p>6. Full description of the action and its purpose (e.g. <i>environmental assessment, development, etc.</i>)</p>	<p>Inspect stairway for on-site hearing for appeal against order for demolition of unauthorised structure and refusal of Building Certificate for same.</p> <p>The unauthorised structure goes through the critical habitat located at the rear of [REDACTED] commonly known as [REDACTED] Manly, NSW, 2095.</p>
<p>7. Details of the area to be affected by the action (in hectares).</p>	<p>The area affected is at the rear of the property and is less than 1 hectare.</p>
<p>8. Duration and timing of the action (including staging, if any).</p>	<p>The activity is estimated to take no more than ½ an hour at approximately 9.30am on 26 June 2014.</p>
<p>9. Is the action to occur on land declared as critical habitat*? (tick appropriate box)</p>	<p>Yes</p>
<p>* Critical habitat means habitat declared as critical habitat under Part 3 of the <i>Threatened Species Conservation Act 1995</i>.</p>	

10. Threatened species, populations or ecological communities to be harmed or picked.	<u>Scientific name</u> <i>Eudyptula minor</i>	<u>Common name</u> Little Penguin	<u>Conservation status</u> Endangered Population	<u>Details of no. of individual animals, or proportion and type of plant material</u> Nest Site 310, potentially two to four individuals
11. Species impact: <p>(please tick appropriate box)</p> a) For action proposed on land declared as critical habitat; or b) For action proposed on land <u>not</u> declared as critical habitat.	<p>an SIS is attached <input type="checkbox"/> Yes x No In accordance with s111(4) of the Threatened Species Conservation Act 1995, an SIS is not considered necessary in this situation as impacts to the Little Penguin Manly population are likely to be trivial or negligible.</p> <p>Items 12 to 25 have been addressed <input type="checkbox"/> Yes <input type="checkbox"/> No</p>			
<p><i>N.B: Provision of a species impact statement is a statutory requirement of a licence application if the action is proposed on critical habitat.</i></p>				

The provision of information addressing items 12 to 17 is a statutory requirement of a licence application if the action proposed is not on land that is critical habitat. Information addressing any of the questions below must be attached to the application.

<p>12. Describe the type and condition of habitats in and adjacent to the land to be affected by the action.</p>	<p>The land contains one known breeding/nesting site and is in close proximity to another ten known breeding/nesting sites to the north-east and south –west (Appendix A). The exact location of the nest sites has not been included to prevent persons from accessing the nest sites directly.</p>
<p>13. Provide details of any known records of a threatened species in the same or similar known habitats in the locality (include reference sources).</p>	<p>According to Dr Lisa O'Neill's (2014) monitoring report Manly Little Penguin Recovery Program for 2013/14 - there are a total of 70 known breeding pairs present within Critical Habitat area A and B combined. Monitoring from this last breeding season revealed a total of eighteen active nest sites (i.e. nest sites utilised for breeding and nesting by a breeding pair) in the vicinity of [REDACTED] Manly.</p> <p>The site is also within the known distribution of the endangered population of Long-nosed bandicoot at North Head. These species are not considered likely to be impacted by the proposed activity.</p>
<p>14. Provide details of any known or potential habitat for a threatened species on the land to be affected by the action (include reference sources).</p>	<p>There is one known nesting/breeding site for the Little Penguins in close proximity (within 5 metres) of the staircase. Several other rock crevices also exist in close proximity to this area which may be used on occasions by the Little Penguins for roosting, moulting or as alternative nest sites. Any surrounding dense vegetation may also provide shelter for individuals of the species undertaking nest exploration behaviour prior to the nesting season.</p>
<p>15. Provide details of the amount of such habitat to be affected by the action proposed in relation to the known distribution of the species and its habitat in the locality.</p>	<p>The action will occur within 4m of the known nest site 310 and will be within the vicinity of ten other nest sites. All other nest sites would be greater than 7m from the staircase and are therefore unlikely to be disturbed by the proposed inspection. The area in which the inspection would be undertaken is less than 1 hectare. The likely form of disturbance may include the close contact of several persons within 4-5m of nesting/roosting/sheltering individuals of the species.</p>

16. Provide an assessment of the likely nature and intensity of the effect of the action on the lifecycle and habitat of the species.	<p>The nature and intensity of the effect is considered to be minor as the action will be of a short duration and will be a one off occurrence. The action may be limited by ensuring that the number of people involved in the site inspection be limited to the Commissioner, the experts giving evidence of the impact on the affected species and legal Counsel. The impact will be further minimised by limiting the conversation and lowering the volume of voices whilst in the vicinity of the nest site.</p>
17. Provide details of possible measures to avoid or ameliorate the effect of the action.	<p>An inspection should be carried out first to determine whether nest 310 is being used. If it is not then the stairway can be used. If the nest is being used, then the OEH officer present can determine whether the stairway can be used or some other alternative measure should be employed, to mitigate the impact upon the penguins that are present. The site may be accessed from adjoining properties if the nest site is in use and owner's consent is obtained beforehand.</p> <p>A register will be utilised on the day, with all persons accessing the site signing on and off and dating the register, and agreeing to the conditions of the certificate, including that all persons agree to follow the instructions of the OEH expert present.</p>
<p><i>N.B: The Director-General must determine whether the action proposed is likely to significantly affect threatened species, populations or ecological communities, or their habitats. To enable this assessment the Applicant is required to address items 18 to 24. Any additional information referred to in addressing these items must be attached to the application.</i></p>	
18. In the case of a threatened species, whether the action proposed is likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction.	Not applicable.

<p>19. In the case of an endangered population, whether the action proposed is likely to have an adverse effect on the life cycle of the species that constitutes the endangered population such that a viable local population of the species is likely to be placed at risk of extinction.</p>	<p>This action is not likely to have an adverse impact on the life cycle of individuals of the endangered population given the short duration of the disturbance, the restricted area of disturbance and the once off nature of it. Therefore this action is not likely to place the population at risk of extinction.</p>
<p>20. In the case of an endangered ecological community or critically endangered ecological community, whether the action proposed:</p> <p>(i) is likely to have an adverse effect on the extent of the ecological community such that its local occurrence is likely to be placed at risk of extinction, or</p> <p>(ii) is likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction.</p>	<p>Not applicable.</p>

<p>21. In relation to the habitat of a threatened species, population or ecological community:</p> <p>(i) the extent to which habitat is likely to be removed or modified as a result of the action proposed, and</p> <p>(ii) whether an area of habitat is likely to become fragmented or isolated from other areas of habitat as a result of the proposed action, and</p> <p>(iii) the importance of the habitat to be removed, modified, fragmented or isolated to the long-term survival of the species, population or ecological community in the locality.</p>	<p>(i) No habitat will be removed or modified as a result of the action;</p> <p>(ii) No habitat is likely to become fragmented as a result of the action; and</p> <p>(iii) Given the above, the long-term survival of the population is not likely to be impacted by the action.</p>
<p>22. Whether the action proposed is likely to have an adverse effect on critical habitat (either directly or indirectly).</p>	<p>This action is not likely to directly or indirectly have an adverse impact on the critical habitat given the nature and short duration of the action.</p>
<p>23. Whether the action proposed is consistent with the objectives or actions of a recovery plan or threat abatement plan.</p>	<p>Yes the action is consistent with the objectives and actions of the recovery plan as the primary purpose of the inspection is to enable the continued protection of the habitat directly within the area of interest.</p>

<p>24. Whether the action proposed constitutes or is part of a key threatening process or is likely to result in the operation of, or increase the impact of, a key threatening process.</p>	<p>The action is not likely to constitute, form part of or exacerbate any key threatening process.</p>
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Important information for the applicant

Processing times and fees

The *Threatened Species Conservation Act 1995* provides that the Director-General must make a decision on the licence application within 120 days where a species impact statement (SIS) has been received. No timeframes have been set for those applications which do not require a SIS. The Director-General will assess your application as soon as possible. You can assist this process by providing clear and concise information in your application.

Applicants may be charged a processing fee. The Director-General is required to advise prospective applicants of the maximum fee payable before the licence application is lodged. Therefore, prospective applicants should contact the Office of Environment and Heritage (OEH) prior to submitting a licence application.

A \$30 licence application fee must accompany a licence application.

Protected fauna and protected native plants*

Licensing provisions for protected fauna and protected native plants are contained within the *National Parks and Wildlife Act 1974*. However, a Section 91 Licence may be extended to include protected fauna and protected native plants when these will be affected by the action.

If you are applying for a licence to cover both threatened and protected species please provide the information requested in Item 10 *as well as* a list of protected species and details of the number of individuals animals or proportion and type of plant material which are likely to be harmed or picked.

Request for additional information

The Director-General may, after receiving the application, request additional information necessary for the determination of the licence application.

* Protected fauna means fauna of a species not named in Schedule 11 of the *National Parks and Wildlife Act 1974*.

Protected native plant means a native plant of a species named in Schedule 13 of the *National Parks and Wildlife Service 1974*.

Species impact statement

Where the application is not accompanied by a SIS, the Director-General may decide, following an initial assessment of your application, that the action proposed is likely to have a significant effect on threatened species, populations or ecological communities, or their habitats. In such cases, the *Threatened Species Conservation Act 1995* requires that the applicant submit a SIS. Following initial review of the application, the Director-General will advise the applicant of the need to prepare a SIS.

Director-General's requirements for a SIS

Prior to the preparation of a SIS, a request for Director-General's requirements must be forwarded to the relevant OEH Office. The SIS must be prepared in accordance with section 109 and 110 of the TSC Act and must comply with any requirements notified by the Director-General of OEH.

Disclosure of Personal Information in the Public Register of s91 Licences

The Public Register provides a list of licence applications and licences granted. A person about whom personal information is contained in a public register may request that the information is removed or not placed on the register as publicly available.

Copies of all applications and licences issued under section 91 and certificates issued under section 95 of the Act are available on the OEH website at

www.environment.nsw.gov.au/threatenedspecies/S91TSCaRegisterByDate.htm

or in hardcopy form from The Librarian, OEH, 59 Goulburn St, Sydney.

Certificates

If the Director-General decides, following an assessment of your application, that the proposed action is not likely to significantly affect threatened species, populations or ecological communities, or their habitats, a Section 91 Licence is not required and the Director-General must, as soon as practicable after making the determination, issue the applicant with a certificate to that effect.

N.B: An action that is not required to be licensed under the Threatened Species Conservation Act 1995, may require licensing under the National Parks and Wildlife Act 1974, if it is likely to affect protected fauna or protected native plants.

I confirm that the information contained in this application is correct. I hereby apply for a licence under the provisions of Section 91 of the *Threatened Species Conservation Act 1995*.

Blake James Dyer

Applicant's name

(Please print)

In-House Solicitor

Applicant's Position &

Organisation (if relevant)

(Please print)

[Signature]

Applicant's signature

15/5/2014

Date

For more information or to lodge this form, contact the nearest branch of OEH's Conservation and Regulation Division:

Metropolitan Branch

P: 02 9995 6802

F: 02 9995 6900

PO Box 668

Parramatta

NSW 2124

North East Branch

P: 02 6640 2500

F: 02 6642 7743

PO Box 498

Grafton

NSW 2460

North East Branch

P: 02 4908 6800

F: 02 4908 6810

PO Box 488G,

Newcastle

NSW 2300

North West Branch

P: 02 6883 5330

F: 02 6884 8675

PO Box 2111

Dubbo

NSW 2830

South Branch

Biodiversity Conservation Section

P: 02 6122 3100

F: 02 6299 3525

PO Box 622 Queanbeyan

NSW 2620

Office of Environment and Heritage (NSW)

PO Box A290, Sydney South NSW 1232

Phone: 131 555 (Environment Line) Fax: 9995 5999

Email: info@environment.nsw.gov.au