



Your reference :
Our reference : s.95 Certificate CPP(M)/05/0, FIL06/777
Document no. : 1099975
Contact : James Dawson, 9585 6674

MICHAEL JOHN SYMONS
CONDOR GARDEN SERVICES
11 NET ROAD, AVALON, NSW

Dear Mr Symons

RE: Variation of Section 95 Certificate to for gardening within critical habitat of the endangered population of Little Penguin at Manly at and below 19A/21 Addison Road, Manly

I write in relation to Section 95(2) Certificate No. CPP(M)/05/01 for gardening activities at 19A/21 Addison Road Manly within the declared critical habitat area of the endangered population of Little Penguins at Manly which was issued following your Section 91 licence application received by the Department of Environment and Conservation (now the Department of Environment and Climate Change (DECC)) on 23-Jun-2005. Thank you for contacting the Department to request renewal of the certificate for future work at the above address, as the three year term of that certificate expired on 27 July 2008.

At a meeting and site inspection between you and James Dawson (DECC, Metropolitan Biodiversity Conservation Section) on 30 March 2009 it was agreed that the activities previously certified could be continued with minor variations. As varied the works agreed to are:

- (1) staged removal of the weeds Asthma Plant (*Chamaesyce hirta*) and Asparagus Fern (*Asparagus* spp.) by herbicide spraying,
 - (i) along the cliff edge, and
 - (ii) along the access from the residential area to the beach (i.e. along the path and steps) and
 - (iii) in areas in the open,but not if the weeds are immediately adjacent to penguin burrows or nesting boxes and the removal of the weeds result in the burrows or nesting boxes becoming exposed to wind, direct sunlight or increased visibility to the general public, until equal cover has developed by the establishment of native replacement plants;
- (2) revegetation of areas where Asthma Plant and Asparagus Fern has been removed with native Pigface (*Carpobrotus glaucescens*) and other native ground covers planted in such a way so as not to create continuous mats of vegetation that will impede the access of penguins;
- (3) pruning of those parts of Fig (*Ficus* spp.) trees and Looking Glass Bush (*Coprosma repens*) shrubs which protrude above the level of the highest cliff at the top of the rocky foreshore;
- (4) pruning of the single Mulberry tree near the beach;
- (5) removal of *Coprosma* bushes and replacement with plants such as coastal rosemary (*Westringia fruticosa*), coastal tea-tree (*Leptospermum laevigatum*), paper bark (*Melaleuca* spp.) and bottle brush (*Callistemon* spp.), but not until such replacement plants have developed equivalent cover against exposure to wind, direct sunlight or increased visibility to the general public for penguins leaving the water and entering their burrows;

- (6) removal of creeping or climbing weeds such as Morning Glory (*Ipomoea* spp.), Potato Vine (*Anredera cordifolia* or *Solanum laxum*) and Wandering Creeper (*Tradescantia* spp.) from the fig trees and *Coprosma* bushes, and from the understorey area behind the northern end of the beach in the vicinity of the penguin nest boxes, but with no disturbance, tampering or movement of nest boxes;
- (7) removal of dead fronds hanging from the large palm tree growing in the middle of the beach and surrounding ground.

Those works are subject to the following additional restrictions that:

- i) they be undertaken only between March and June inclusive each year, those being times outside of the breeding season of the Little Penguin;
- ii) during that period they not be undertaken within five metres of a penguin;
- iii) the lantana (*Lantana camara*) adjacent to the balcony at the top of the cliffs protecting penguin burrows must remain until such time that the replacement bushes have matured to ensure adequate protection for the burrows;
- iv) you maintain regular contact with the Department's Metropolitan Biodiversity Conservation Section in relation to any gardening activities or areas that you are unsure of the potential for impact on Little Penguins and critical habitat;
- v) you accompany an officer of the Department on site inspections as required to inspect the progress and compliance of the certified activities.

The Department acknowledges your long standing association with the site and that the activities you are undertaking, if implemented sensitively, are likely to enhance the habitat for Little Penguins.

Following advice from Mr Dawson, I am satisfied that the impact the activities as described above and carried out in accordance with the conditions will be trivial, and as a result I dispense with the need for a species impact statement, in accordance with section 111(4) of the *Threatened Species Conservation Act* 1995 (TSC Act), and conclude that the proposal is unlikely to have a significant impact on any threatened species, endangered population or endangered ecological community or its habitat.

The TSC Act makes provision for the issue of a certificate under section 95(2) for actions which technically constitute damage to the habitat of threatened species, but which are unlikely to have a significant impact. Hence, I have decided to issue you with certification to that effect by varying the existing certificate CPP(M)/05/01, in accordance with sections 95(2) and 101(2) of the Act.

Please find enclosed the varied certificate that will cover the activities described above for a further three year period. If you have any questions please do not hesitate to contact James Dawson on 9585 6674.

Yours sincerely

PENNY FINLAY

A/ Manager, Metropolitan Projects and Support

Environment Protection and Regulation Metropolitan Projects & Support Section

Section 95(2) Certificate - Variation

Threatened Species Conservation Act 1995

Department of Environment & Climate Change NSW



Issued To:

MICHAEL JOHN SYMONS,
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11 NET ROAD,
AVALON NSW 2107

Certificate no. : CPP(M)/05/01

Issue Date: 20-Apr-2009

Expiry Date: 30 March 2012

VARIATION OF SECTION 95(2) CERTIFICATE

I certify that the gardening activities in the declared Little Penguin critical habitat area at 19A-21 Addison Road, Manly, as described in the covering letter to this certificate, have been determined under Section 94(2) of the *Threatened Species Conservation Act 1995* as unlikely to significantly affect threatened species, populations, ecological communities or their habitats and consequently the proposal does not require a licence under the *Threatened Species Conservation Act, 1995* pursuant to Section 95(2).

If the activities are carried out as described and in accordance with any conditions, this certificate provides a defence against prosecution under sections 118A-D of the *National Parks and Wildlife Act 1974*.

Ms Penny Finlay

Acting Manager

Metropolitan Projects & Support Section