THREATENED SPECIES CONSERVATION ACT 1995

SECTION 95(2) CERTIFICATE

Certificate No: NC015 **Date issued:** **5 September 2008** **Date of expiry:** **4 September 2009**	**Issued to:** **Mr Ron Phillips** School Education Director, Clarence, North Coast Region Department of Education and Training PO Box 275 GRAFTON NSW 2460 **And** **Mr Stuart McPherson,** General Manager, Clarence Valley Council Locked Bag 23 GRAFTON NSW 2460

I certify that, provided that the measures listed in the application and the attached conditions below are implemented, the proposed dispersal of flying foxes from the Maclean and Townsend living area (which encompasses the Maclean Rainforest Reserve and the area known as "the gully" as depicted on Figure 3 of the licence application) 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 does not require a licence under the *Threatened Species Conservation Act, 1995* pursuant to Section 95(2).

Conditions

1. Compliance

The action must be undertaken in accordance with the outline provided in the licence application, unless modified by the following conditions.

Reason: To ensure compliance with the ameliorative measures incorporated into the licence application.

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2. Dispersal arrangements, timing and preventing re-establishment

a) Flying-fox (FF) in the Rainforest Reserve and/or the gully must only be dispersed in the manner described in the application.

b) Between 1 August in the current year and 30 April in the next year dispersal must cease if more than 50 FFs are observed to have settled in the Rainforest Reserve or the gully.

Note: This condition does not apply if the FFs observed to have settled in the Rainforest Reserve or the gully consist of Little Red FFs only, however, condition 2(c) continues to apply.

c) Between March 1 and May 31 in the next year dispersal must cease if more than 50 Little Red FFs are observed to have settled in the Rainforest Reserve or the gully.

d) Disturbance actions must not be undertaken during periods of adverse weather conditions. Such conditions include strong winds, periods of several hours of sustained heavy rain, ground frost and air temperatures that exceed 38 degrees centigrade during the day prior to implementation of the proposed disturbance program.

Reason: FFs must only be dispersed in a manner that is not likely to result in harm to the animals. DECC does not support disturbing FF camps when females are in the last trimester of pregnancy or when dependent young are present. Dependent young are considered to have not yet been weaned. Heavily pregnant Grey-Headed FFs, have been known to spontaneously abort when exposed to stress. It is considered likely that heavily pregnant Black FFs and Little Red FFs would also respond to stress in a similar manner.

In situations where less than 50 FFs arrive at the Rainforest Reserve or the gully they are regarded as making a reconnoitre of the potential roosting sites and are not the main body of the FF population.

3. Establish a Steering Committee

a) A steering committee must be established by 1 December 2008 to oversee the proposed camp relocation project and manage actions as detailed in Section 6 of the DECC's Flying-fox Camp Management Policy. All actions and findings of the committee must be provided to the DECC on request.

b) The committee shall include representatives from all relevant stakeholder groups, including, but not limited to: local government, state agencies (including DECC), RSPCA, community representatives with a ranges of views, owners/managers of existing and proposed camp sites and a scientific/technical adviser.

c) Responsibilities of the committee will include:

(i) Monitor progress on the implementation of FF relocation activities and the extent of compliance with undertakings given in the Section 91 application and conditions of the Section 95 certificate.

(ii) Assess and provide documented evidence of community attitudes to the FF relocation including that of the Aboriginal community.

(iii) Develop and implement a local community education program to highlight the threatened and protected status of FFs under state and commonwealth legislation; how to manage FF and community conflicts; perceived health risks and management options with particular emphasis on "in situ" management.

Note:
Consultation with the wider Aboriginal community will not be required regarding relocation of FFs from the gully given that this camp has only been established recently and therefore is not likely to hold cultural significance to Aboriginal people. However, the rainforest reserve has been utilised by FFs for over a hundred years and could hold significance to the Aboriginal community. Therefore consultation with the Aboriginal community, including other relevant Aboriginal groups, individuals and elders should be undertaken regarding the proposed relocation from the rainforest reserve.

Aboriginal groups do not always represent the views and opinions of the Aboriginal people they claim to represent. Therefore consultation with the wider Aboriginal community (not just the Nungera Co-operative) must be undertaken to demonstrate their views and opinions with regard to the proposed FF relocation from the rainforest reserve.

Reason: Flying Fox camp relocations are a difficult and complex management option which require a governing body to co–ordinate the timely collection and provision of information to the numerous stakeholders and state and federal government departments.

4. Planning for FF Camp Protection in the Clarence Valley

Clarence Valley Council (CVC) must:

(a) Ensure that FF camps are considered when planning, designing and constructing developments.
(b) Adopt a landscape approach for FF camp management in the CV LGA.
(c) Identify appropriate vegetation rehabilitation activities in the known FF camps in the Lower Clarence as defined in condition 6, for example planting of native canopy roost trees and the staged removal of non-native canopy roost trees as planted native trees become large enough for roosting.
(d) Protect those FF camp sites identified in consultation with DECC through amendments to Council's LEP.
(e) Identify prohibited and exempt activities in or adjacent to FF camps and note those in Council's LEP.

Clarence Valley Council must amend its DCP to:

(a) include guidelines for Council officers assessing development applications near known FF camps, particularly in terms of avoiding conflict between adjoining landuses.
(b) Identify the level of information that must be submitted by proponents of developments near known FF camps and ensure that the camps are considered when preparing and assessing development applications.

Reason: The proposed dispersal action will reduce access to some habitat currently available for roosting and breeding for the threatened Grey Headed FF and the Black FF. Therefore, a strategic approach must be applied to secure and protect the remaining FF camps in the Clarence Valley LGA in perpetuity to minimise the likelihood that the dispersal action will have a significant effect on these species.

5. Monitoring of FF Camps in the Lower Clarence

(a) Monitoring of the number of FFs present within of all known FF camps in the Lower Clarence (see note below) must be undertaken at least once prior to any dispersal actions and within 24 hours of commencing any dispersal actions.

(b) The monitoring referred to in condition 5(a) must include an assessment of the numbers of Grey Headed FFs, Black FFs and Little Red FFs and must be undertaken by CVC's Ecologist and/or individuals trained in the identification of the above mentioned FF species.

(c) Monitoring of all known FF camps in the Lower Clarence must be undertaken within 48 hours of the completion of the dispersal actions where no FFs have returned to the RR or gully for a period of at least three days.

(d) Monitoring of all known FF camps in the Lower Clarence must continue at a minimum of once per fortnight until it can be determined whether the dispersed FFs from the rainforest reserve and "the gully" have relocated to any of those other camps.

(e) An assessment of vegetation condition, presence of weeds and percentage canopy cover at all the known FF camps in the Lower Clarence must be undertaken in conjunction with the monitoring referred to in condition 5 (a).

Note: The known FF camps in the Lower Clarence region include; Lawrence, Maclean Rainforest Reserve, Maclean Gully, Ashby, Yaegl Nature Reserve, Yamba, Ulgundahi island, Whyna island, Thorny island, Sleeper island, Iluka, Boloroobo island and Warregah island.

Reason: To determine where FFs relocate to in response to the proposed disturbance. The adequacy of this data will be crucial in order to obtain meaningful data from the monitoring requirements detailed in conditions 9 and 10.

6. Monitoring for the first arrivals of FFs to the Rainforest Reserve and the gully.

a) From 1 July, when FFs are absent from the rainforest reserve and the gully, a minimum of daily monitoring (7 days per week) must be undertaken at the Rainforest Reserve and the gully in the early morning to detect the arrival of any FFs.

b) Daily monitoring, as described in (a), must be conducted until FFs are detected and must continue until all FFs have been dispersed from the rainforest reserve and the gully or until dispersal activities must cease (see condition 2 (b) and 2(c)).

Note

Monitoring for early detection of FF arrival to the rainforest reserve and the gully has been conditioned to be conducted from the 1st of July on the basis that there is data to support a general trend that FFs return to Maclean between July and October. However, FFs have also returned to Maclean in June 2003 and January/February in 2001. It is therefore also recommended that CVC and DET monitor for the early detection of FFs outside of the conditioned timeframe as considered feasible.

Reason: Early detection of FFs will provide for prompt implementation of dispersal actions which should increase the likelihood of preventing FFs from roosting in the rainforest reserve and the gully and with a minimum resource requirement.

7. Monitoring for FF Welfare

Monitoring of FF behaviour in response to all disturbance actions must be undertaken by CVC's Ecologist and individuals trained to recognise stressed behaviour in FFs. The persons undertaking the monitoring are to be specifically engaged for that task and must not participate in the disturbance actions.

The monitoring must include monitoring for animal welfare, deaths and injury with numbers of affected animals to be recorded.

If, in the opinion of the person responsible for monitoring FF welfare, the disturbance action(s) being undertaken are causing significant "harm" to FFs then all disturbance actions must cease immediately. DECC must be informed verbally in the first instance and subsequently in writing by CVC and/or DET of the apparent causes of the "harm" and the nature of the "harm". Disturbance

actions must not recommence until DECC has approved their recommencement. Significant "harm" includes tangible evidence of injured, dead, traumatised, miscarriage or abandonment of young FFs and which is likely to have occurred as a result of the disturbance actions. It could also include animals that have become so stressed by the disturbance actions that they collide with objects in the local area. Significant "harm" does not include FFs that appear to be distressed by the disturbance actions but are still capable of flying or are behaving in a way that is unlikely to result in obvious adverse physical effects.

Reason: To minimise harm to wildlife as a result of the proposed actions.

8. Provision of Care for Injured Wildlife

a) A veterinarian or a suitably experienced person in the handling and care of injured, distressed or orphaned FFs must be contacted immediately should any wildlife become injured, distressed or harmed as a result of the FF dispersal actions.

b) The applicant must meet all costs associated with any ongoing professional care of wildlife referred to in (a) above.

Reason: To ensure that any wildlife injured as a consequence of the proposed actions are appropriately cared for.

9. Monitoring the Impact of FFs on the site(s) to which Dispersed FFs Relocate

a) Once the site(s) to which the majority of the FFs subject to dispersal actions from the rainforest reserve and the gully has been identified, monitoring of the impact of FFs on that site(s) must be undertaken on a three-monthly basis for 12 months unless otherwise advised.

b) The monitoring referred to in (a) above must include impacts to vegetation, the presence of weeds, percentage canopy cover and community concerns.

Reason: To assess the initial and longer term impacts of the proposed action on the new camp(s) and the community's response.

10. Monitoring Breeding Success

a) Monitoring must be undertaken at the site(s) referred to in condition 9 to determine the breeding success of the relocated FF population following dispersal actions.

b) The monitoring must include the number of females with young and the number of successfully weaned young.

Reason: To identify any impacts of the proposed action on the subsequent breeding success of the Maclean FF population.

11. Obtain consent from all affected landowners to action the dispersal

If during dispersal activities FFs move into any properties not owned or managed by the applicant, and those properties are not the intended destination for the FF, written approval must be obtained from the relevant landowners prior to entering those properties to disperse the FFs. A copy of the landowner's approval must be forwarded to the DECC's Grafton office within 48 hours of being received.

Reason: To ensure that appropriate approvals are obtained to enter and undertake dispersal activities on properties not owned or managed by the applicant.

12. Reporting

CVC and DET must submit a report outling the actions taken and their results to the DECC Manager North Coast Region, Environment Protection and Regulation by 30 June 2009. The Report must:

a) Identify and detail the methods used in the disturbance actions and their implementation, including the dates and time of day.

b) Detail and discuss the success or failure of the disturbance methods used in relocation of FFs from the Rainforest Reserve and the gully area, and include comments on why such disturbance methods may or may not have worked.

c) Summarise the results of monitoring required by Conditions 5, 9 and 10.

d) Document:

i. The number, species and nature of physical or behavioural stress of any FFs found sick, injured, traumatised or dead within the area subject to the licence application.

ii The likely reasons for their adverse condition or mortality, and

iii The name of the carer(s) or carer organisation to which sick, injured or traumatised FFs were taken and the ultimate fate of those animals.

13. Ability to revoke the licence/certificate

This licence/certificate may be revoked at any time by the Director General of DECC or her delegate, by advice in writing to the holder of the licence/certificate.

Reason: To allow review of the licensing of the action in circumstances deemed appropriate.

ALEX PURVIS

Manager North Coast Region

Environment Protection and Regulation