

APPROVAL

Flying-fox relocation measures, 151 Abbott Street, Cairns, Queensland (EPBC 2019/8424)

This decision is made under sections 130(1) and 133(1) of the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*. Note that section 134(1A) of the **EPBC Act** applies to this approval, which provides in general terms that if the approval holder authorises another person to undertake any part of the action, the approval holder must take all reasonable steps to ensure that the other person is informed of any conditions attached to this approval, and that the other person complies with any such condition.

Details

Person to whom the approval is granted (approval holder)	Cairns Regional Council
ACN or ABN of approval holder	ABN 24 310 025 910
Action	To implement deterrent measures to disperse and permanently relocate a nationally important population of Spectacled Flying-fox (<i>Pteropus conspicillatus</i>) located at 151 Abbott Street, Cairns, Queensland (see EPBC Act referral 2019/8424).

Approval decision

My decision on whether or not to approve the taking of the action for the purposes of the controlling provision for the action is as follows.

Controlling Provisions

Listed Threatened Species and Communities	
Section 18	Approve
Section 18A	Approve

Period for which the approval has effect

This approval has effect until 1 October 2024

Decision-maker

Name and position Andrew McNee
Assistant Secretary
Environment Approvals Division
Department of Agriculture, Water and the Environment

Signature



Date of decision

15 May 2020

Conditions of approval

This approval is subject to the conditions under the EPBC Act as set out in ANNEXURE A.

ANNEXURE A – CONDITIONS OF APPROVAL

Part A – Conditions specific to the action

1. The proposed **relocation activities** must only be undertaken within the flying-fox management areas shown in Figure 1 unless otherwise agreed in writing by the **Minister**.
2. To ensure there are no **adverse impacts** on the Spectacled Flying-Fox (*Pteropus conspicillatus*) (SFF) from the action, **relocation activities** must:
 - a. be carried out using **non-lethal measures**;
 - b. be limited to a maximum of 2 periods, each of up to 2.5 hours duration, in any 24 hour period, and be conducted before sunrise and after sunset;
 - c. be undertaken for a **maximum period**;
 - d. must not **commence** during a period of **significant population stress**; and
 - e. be immediately discontinued if heavily pregnant females (in last trimester), dependent young SFF, sick, injured or dead SFF are detected.

Action Management Plan

3. The approval holder must implement the **Cairns Flying-fox Relocation Implementation Plan**.
5. Within 40 days of the completion of each **maximum period** of **relocation activities**, the approval holder must have an **independent suitably qualified ecologist** undertake a review of the effectiveness and appropriateness of the **Cairns Flying-fox Relocation Implementation Plan**.
6. The review of the **Cairns Flying-fox Relocation Implementation Plan** must include:
 - a. an assessment of the performance of each **maximum period** of **relocation activities** against the **relocation success indicators**; and
 - b. the outcomes of the monitoring program specified in the **Cairns Flying-fox Relocation Implementation Plan**.
7. The approval holder must amend the **Cairns Flying-fox Relocation Implementation Plan** to include any revisions the **independent suitably qualified ecologist** recommends to avoid **adverse effects** on SFF.
8. The approval holder must not **commence** any **maximum period** of **relocation activities**, other than the initial such period, until the **Minister** has approved the amended version of the **Cairns Flying-fox Relocation Implementation Plan**.

Cease relocation activities provisions

9. The **SFF camp** and **relocation sites** must be monitored in accordance with the monitoring program specified in the **Cairns Flying-fox Relocation Implementation Plan** to detect changes to SFF numbers, extent of roosting, ill health, death or injury to SFF, changes in SFF flying or roosting behaviour and any signs of stress in the SFF colony attributable to the action.
10. The results of the monitoring undertaken each day must be reviewed on the same day by a **independent suitably qualified ecologist** to:
 - a. determine the impacts of the **relocation activities** on SFF;
 - b. determine if a **relocation success indicator** has been achieved; and
 - c. decide if it is safe for **relocation activities** to continue as planned.

11. If the **independent-suitably qualified ecologist** decides that it is not safe for **relocation activities** to continue as planned and/or detects through monitoring specified in the **Cairns Flying-fox Relocation Implementation Plan** that a **relocation success indicator** has been reached, the approval holder must report this to the **Minister** in writing within two **business days** and must not resume **relocation activities** until the **Department** has agreed in writing that **relocation activities** can be resumed as planned.

Part B – Standard administrative conditions

Notification of date of commencement of the action

12. The approval holder must notify the **Department** in writing of the date of **commencement of the action** within 10 **business days** after the date of **commencement of the action**.
13. If the **commencement of the action** does not occur within 3 years from the date of this approval, then the approval holder must not **commence the action** without the prior written agreement of the **Minister**.

Compliance records

14. The approval holder must maintain accurate and complete **compliance records**.
15. If the **Department** makes a request in writing, the approval holder must provide electronic copies of **compliance records** to the **Department** within the timeframe specified in the request.

Note: **Compliance records** may be subject to audit by the **Department** or an independent auditor in accordance with section 458 of the **EPBC Act**, and or used to verify compliance with the conditions. Summaries of the result of an audit may be published on the **Department's** website or through the general media.

Publication of plans

16. The approval holder must:
 - a. submit **plans** electronically to the **Department**;
 - b. publish each **plan** on the **website** within 20 **business days** of the date of this approval or the **plan** is approved by the **Minister**, unless otherwise agreed to in writing by the **Minister**;
 - c. exclude or redact **sensitive ecological data** from **plans** published on the **website** or provided to a member of the public; and
 - d. keep **plans** published on the **website** until the end date of this approval.
17. The approval holder must ensure that any **monitoring data** (including **sensitive ecological data**), surveys, maps, and other spatial and metadata required under the conditions of this approval, is prepared in accordance with the **Department's Guidelines for biological survey and mapped data** (2018) and submitted electronically to the **Department** within 30 business day.

Annual compliance reporting

18. The approval holder must prepare a **compliance report** for each 12 month period following the date of **commencement of the action**, or otherwise in accordance with an annual date that has been agreed to in writing by the **Minister**. The approval holder must:
 - a. publish each **compliance report** on the **website** within 60 **business days** following the relevant 12 month period;
 - b. notify the **Department** by email that a **compliance report** has been published on the **website** and provide the weblink for the **compliance report** within five **business days** of the date of publication;
 - c. keep all **compliance reports** publicly available on the **website** until this approval expires;

- d. exclude or redact **sensitive ecological data** from **compliance reports** published on the **website**; and
- e. where any **sensitive ecological data** has been excluded from the version published, submit the full **compliance report** to the **Department** within 5 **business days** of publication.

Note: Compliance reports may be published on the **Department's** website.

Reporting non-compliance

19. The approval holder must notify the **Department** in writing of any: **incident**; non-compliance with the conditions; or non-compliance with the commitments made in **plans**. The notification must be given as soon as practicable, and no later than two **business days** after becoming aware of the **incident** or non-compliance. The notification must specify:
 - a. any condition which is or may be in breach;
 - b. a short description of the **incident** and/or non-compliance; and
 - c. the location (including co-ordinates), date, and time of the **incident** and/or non-compliance. In the event the exact information cannot be provided, provide the best information available.
20. The approval holder must provide to the **Department** the details of any **incident** or non-compliance with the conditions or commitments made in **plans** as soon as practicable and no later than 10 **business days** after becoming aware of the **incident** or non-compliance, specifying:
 - a. any corrective action or investigation which the approval holder has already taken or intends to take in the immediate future;
 - b. the potential impacts of the **incident** or non-compliance; and
 - c. the method and timing of any remedial action that will be undertaken by the approval holder.

Independent audit

21. The approval holder must ensure that **independent audits** of compliance with the conditions are conducted as requested in writing by the **Minister**.
22. For each **independent audit**, the approval holder must:
 - a. provide the name and qualifications of the independent auditor and the draft audit criteria to the **Department**;
 - b. only commence the **independent audit** once the audit criteria have been approved in writing by the **Department**; and
 - c. submit an audit report to the **Department** within the timeframe specified in the approved audit criteria.
23. The approval holder must publish the audit report on the **website** within 10 **business days** of receiving the **Department's** approval of the audit report and keep the audit report published on the **website** until the end date of this approval.

Completion of the action

24. Within 30 days after the **completion of the action**, the approval holder must notify the **Department** in writing and provide **completion data**.

Part C - Definitions

In these conditions, except where contrary intention is expressed, the following definitions are used:

Adverse impacts -means an exceedance of a **relocation success indicator** as a result of the project.

Business day means a day that is not a Saturday, a Sunday or a public holiday in the state or territory of the action.

Cairns Flying-fox Relocation Implementation Plan means the Cairns Flying-fox Relocation Implementation Plan dated 12 May 2020 or any subsequent amended **Cairns Flying-fox Relocation Implementation Plan** approved in writing by the Minister.

Commencement/commence/recommencement of the action means the first instance of undertaking **relocation activities**.

Completion data means an environmental report and spatial data clearly detailing how the conditions of this approval have been met. The **Department's** preferred spatial data format is **shapefile**.

Completion of the action means all specified activities associated with the action have permanently ceased.

Compliance records means all documentation or other material in whatever form required to demonstrate compliance with the conditions of approval in the approval holder's possession or that are within the approval holder's power to obtain lawfully.

Compliance reports means written reports:

- i. providing accurate and complete details of compliance, **incidents**, and non-compliance with the conditions and the **plans**;
- ii. consistent with the **Department's Annual Compliance Report Guidelines (2014)**;
- iii. include a **shapefile** of any clearance of any **protected matters**, or their habitat, undertaken within the relevant 12 month period; and
- iv. annexing a schedule of all **plans** prepared and in existence in relation to the conditions during the relevant 12 month period.

Department means the Australian Government agency responsible for administering the **EPBC Act**.

Incident means any event which has the potential to, or does, impact on one or more **protected matter(s)**.

Independent audit: means an audit conducted by an independent and **suitably qualified person** as detailed in the *Environment Protection and Biodiversity Conservation Act 1999 Independent Audit and Audit Report Guidelines (2019)*

Independent suitably qualified ecologist means a person who has professional qualifications, training, skills and/or experience related to the nominated subject matter and can give authoritative independent assessment, advice and analysis on performance relative to the subject matter using the relevant protocols, standards, methods and/or literature.

Maximum period means a period of up to 30 consecutive days.

Monitoring data means the data required to be recorded under the conditions of this approval.

Minister means the Australian Government Minister administering the **EPBC Act** including any delegate thereof.

Nationally important in respect of SFF camps, means a camp that has contained $\geq 16,000$ SFF in more than one year in the last 10 years, or have been occupied by SFF in at least 50 per cent of the surveys of that camp conducted in the last 10 years.

Non-lethal measures means the use of metal clangers, pool noodles, long-range acoustic devices, lights, low pressure water sprayers, inflatable devices and foggers. Non-lethal measures does not include the use of helicopters.

Plan(s) means any of the documents required to be prepared, approved by the **Minister**, and/or implemented by the approval holder and published on the **website** in accordance with these conditions (includes action management plans and/or strategies).

Relocation activities means the use of **non-lethal measures** to disperse SFF from the **SFF camp**, deter SFF from roosting at the **SFF camp** and deter and disperse SFF from other unsuitable areas in Figure 1.

Relocation success indicators means the relocation success indicators described in the **Cairns Flying-fox Relocation Implementation Plan**.

Sensitive ecological data means data as defined in the Australian Government Department of the Environment (2016) *Sensitive Ecological Data – Access and Management Policy V1.0*.

Shapefiles means a mapping file or files showing polygons outlining all site boundaries and delineating all relevant sub-zones on site. The shapefiles must use the GDA94 coordinate system, and be in either of the following formats:

- a KML file (file extension either '.KML' or '.KMZ'); or
- a zip folder using the '.zip' file extension (other formats such as '.7z' are not acceptable), and containing a single unique occurrence of each of '.shp', '.prj', '.dbf' and '.shx' file types.

If a '.zip' format is used, the shapefile may also contain unique occurrences of any or all of the following file types: '.qix', '.fix', '.sld', '.sbn', '.sbx', '.lyr', '.avl', '.xml' or '.cpg'. Each polygon must be provided as a separate '.zip' or KML file.

Significant population stress means, in the year prior to the proposed date of the action taking place, an event has occurred which results in the mortality of 1.5 percent or more of the national population of spectacled flying-fox.

SFF camp means the **nationally important** Spectacled Flying-fox camp located at 151 Abbot Street, Cairns.

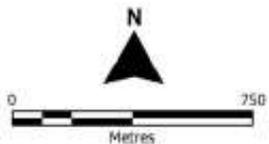
Website means a set of related web pages located under a single domain name attributed to Cairns Regional Council and available to the public.



Figure 1: Current site and proposed relocation site for the Cairns City Flying-fox colony

Project: Cairns Flying-fox Relocation Management Plan

- Flying-fox management areas
- Current flying-fox roost area
 - Proposed relocation site



Source: © ONRME 2018, Google Earth

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