

Fax to: Mark Savio

of: BGT

Fax no: 9241 6304

From: Ray Giddins

of: EPRG Metro

Phone: 99956811

cc:

Date: 6 February 2009

No of pages (including this page): 5

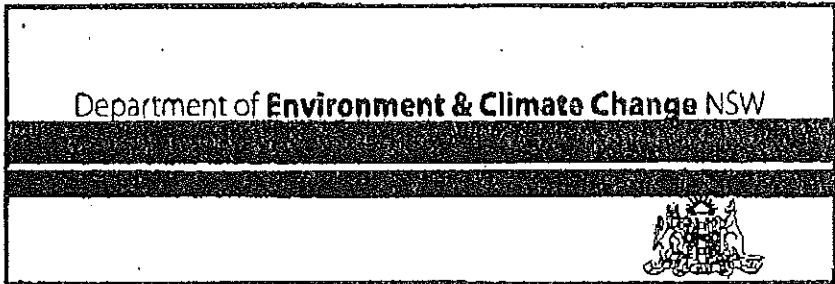
**RE: Grey-headed Flying-fox**

Mark

Please find attached your Section 95 certificate. A hard copy will follow by registered post next week.

**Ray Giddins**  
Regional Biodiversity Conservation Officer  
Metropolitan Projects and Support Section  
Environment Protection and Regulation Group  
Department of Environment and Climate Change

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# Section 95(2) Certificate

Threatened Species Conservation Act 1995

Department of Environment & Climate Change NSW



## Issued To:

ROYAL BOTANIC GARDENS AND DOMAIN TRUST,  
ABN 22 988 772 206,  
MRS MACQUARIES ROAD,  
SYDNEY NSW 2000  
Fax: (02)92318066

Certificate no. : 1097285  
Issue Date: 06-Feb-2009  
Expiry date: 31/12/2014

I certify that picking/harming of Grey-headed Flying-fox (GHFF), Powerful Owl and Sydney Turpentine Ironbark Forest for the purposes of dispersing Grey-headed Flying-fox from the Royal Botanic Gardens as described your Section 91 application, is 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).

This certificate is a defence against prosecution under sections 118A-D of the *National Parks and Wildlife Act 1974*.

Ms Giselle Howard  
Director  
Metropolitan

## RELEVANT CONDITIONS

1. The proposal is to be carried out as described in the application documents, these conditions and in the management plans and strategy required to be prepared by Conditions 5 to 8, below.
2. Should there be a conflict between the application documents and these conditions, these conditions shall prevail.
3. Disturbance may not be undertaken during adverse weather conditions, such as during strong winds, periods of several hours of heavy rain, ground frost or when air temperatures have exceeded 38 degrees Celsius on the previous day.
4. Prior to commencing the dispersal of the Grey-headed Flying-fox (GHFF) (the action), the Botanic Gardens Trust (BGT) shall provide the Department of Environment and Climate Change (DECC) with the details of the assistance that the BGT has negotiated with the NSW Wildlife Council (to ensure that there will be other licensed wildlife carers on call) to assist with rescue and rehabilitation of any flying-foxes that may be found injured or otherwise debilitated during the relocation process.
5. Prior to commencing the action, the BGT shall develop monitoring program(s) to the satisfaction of DECC. The monitoring program(s) shall include the details of, (among other relevant matters):
  - The number of GHFF to be colour banded.
  - The number of GHFF to be fitted with radio collars.
  - Justification for proposing the above two figures.
  - The timing of the fitting of the colour bands and radio collars, in relation to the commencement of the disturbance program.
  - The identity and contact details of the person(s) to will be appointed to run the monitoring program.
  - The reporting dates for written monitoring reports.
  - The lengths of the various monitoring programs. Note that the application states that radio tracking and colour banding monitoring will continue for six months. DECC considers that the reporting of movements through the colour banding should occur for the same amount of time as the assessment of reproductive success following the dispersal.
  - The methods for assessing breeding success at the new site(s).
  - The identity of the person(s) who will assess the breeding success at the new site(s).
  - The identity of the other Sydney camp sites that will have their fly out counts monitored. The period for which these will be continued. . The number and identity of the persons who will carry out these counts.
  - The factors (e.g., for body condition and stress levels) that will be monitored to determine the effects of the dispersal on GHFF welfare.
  - The thresholds for these factors that would indicate that GHFF are suffering unduly as a result of the program.
  - The number of animals that will be tested and the frequency of this testing.
  - The number and identity of the persons who will carry out this testing.
  - The identity of the person(s) to whom they will report the results of this testing; and,
  - The identity of the person(s) who will make the decision whether or not the dispersal should be amended or halted based on the results of these tests.
  - The lines of communication to ensure that both the BGT and DECC are aware of the monitoring results, particularly any monitoring results that may justify an alteration to the dispersal program.

*Reasoning: The application mentions monitoring in several place, stating that these matters will be monitored, but does not provide sufficient detail on the monitoring that will be undertaken. This monitoring*

*program is closely tied to animal welfare and future breeding success of GHFF in the metropolitan region. Therefore DECC considers it important to be sure that a suitable monitoring program is in place, and that sufficient resources have been committed to undertake it, before dispersal can commence. A well described, detailed monitoring program is also important to ensure compliance.*

6. Prior to commencement of the action, the BGT shall develop a communications strategy to the satisfaction of DECC. This strategy should include:
- A page or pages on the Royal Botanic Gardens website for dissemination of information to the public.
  - A mechanism (possibly a website contacts page) to allow people to make reports of new GHFF camps or increases in numbers at existing camps or other matters.
  - A series of press releases explaining the process at nominated times during the process.
  - Advising relevant authorities (such as the Police and Councils) so that they can respond appropriately to public concerns about noise, etc. This shall include the contact details of relevant persons involved with the project.
  - Advising residents near to any new camp sites of any actions that the BGT will be undertaking at those sites.
  - Other forms of communication such as pamphlets, educated tour guides, etc, and their target audiences.

*Reasoning: While the communications strategy is discussed in the application, the discussion lacks the detail required for DECC to be certain that sufficient communication will occur and to ensure compliance with the approval.*

7. Prior to commencing the action, the BGT shall develop a management plan, to the satisfaction of DECC, for on-going disturbance outside of the May-July timeframe to minimise the possible impacts on pregnant females and young. This management plan shall include, among other relevant matters:
- The factors that will be assessed to determine if adverse impacts are occurring.
  - The thresholds for these factors that would indicate that GHFF are suffering unduly as a result of the program.
  - The number and identity of the persons who will carry out this assessment.
  - The identity of the person(s) to whom they will report the results of this testing and the person(s) who will make the decision whether or not the dispersal should be amended or halted based on the results of this assessment.
  - A discussion of the modifications to the disturbance regime that could occur to reduce the adverse impacts to below the threshold.

*Reasoning: On-going disturbance is likely to be required to prevent GHFF from resettling at the RBG and to re-disperse those that settle at inappropriate sites. This disturbance has the possibility of adverse impacts on heavily pregnant females or non-flying young, given the times of the year in which it may occur. The application briefly discusses the preparation of this plan but does not provide the detail necessary to ensure compliance with it. While this part of the action will not occur until 2-3 months following the commencement of the main dispersal, it is essential to ensure that an appropriate plan is in place to manage these impacts prior to the action commencing.*

8. Prior to commencing the action, the BGT shall develop a detailed management plan, to the satisfaction of DECC, for the process to be undertaken at sites where the GHFF settle. This shall include, among other relevant matters:

- The criteria for determining whether a new camp site is an inappropriate site, such as number of flying-foxes, distance to residences or other sensitive sites (schools, hospitals, etc), possible environmental harm, land manager opposition, etc.
- Details of the mechanism(s) by which the BGT can be informed of GHFF settling in new campsites (or increasing in numbers at existing camp sites).
- Details of the decision-making process that will be used to determine that new camps or increased numbers at existing camps are the direct result of the action. This process should include expert review and referral to DECC.
- Details of the commitment of the RBG to re-dispersing GHFF that settle at inappropriate locations. This commitment should last as long as the commitment to preventing GHFF from re-settling at the RBG (although it is unlikely to need to do so and should be guided by the decision-making process required above).
- Details of the resources that will be made available to the managers of the new camp sites. Resources can include in kind or monetary contributions.
- Details of the dispute resolution mechanisms that will be in place should there be disagreement between the BGT and other land managers over a new or larger GHFF camp site.

*Reasoning: These matters are discussed in the application but not in sufficient detail for approval or to ensure compliance.*

9. The management plans and strategy required by Conditions 5 to 8 are to be provided to DECC for review at least two weeks prior to the commencement of the dispersal action.

*Reasoning: To ensure that the management plans can be revised to the satisfaction of DECC prior to the commencement of the action*

10. The management plans and strategy required by Conditions 5 to 8 are to be published on the RBG web site once they are approved by DECC.

*Reasoning: To ensure transparency in the decision-making process. Although required by the approval, these management plans and their included details of the action are not published on the public DECC licence register.*