

IN THE PLANNING AND ENVIRONMENT COURT  
AT BRISBANE

No. BD 2845 of 2006

BETWEEN: **CAROL JEANETTE BOOTH**

Applicant

AND: **RICHARD GEORGE YARDLEY**

First Respondent

**ANTJE GESINA YARDLEY**

Second Respondent

**AMENDED ORIGINATING APPLICATION**

Filed on: 6 October 2006

Filed by: Environmental Defenders Office (Qld) Inc

Service address: Level 9, 193 North Quay  
Brisbane QLD 4000

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**THE APPLICANT** of 6 Henry St, Chapel Hill, in the State of Queensland applies to the Planning and Environment Court at Brisbane for the following enforcement orders under section 173D of the *Nature Conservation Act 1992*:

1. That the first respondent and the second respondent be restrained from the commission of an offence against section 88 of the *Nature Conservation Act 1992* by electrocuting flying-foxes (Genus *Pteropus*) at Hosking Road, Mirriwinni, being land described as Lot 1 on RP 712412, County of Nares, Parish of Bellenden Ker, in the State of Queensland ("**the land**"), unless authorised in accordance with section 88 of the *Nature Conservation Act 1992*.
2. That within three months of the date of this order, the first respondent and the second respondent and/or their employees or agents dismantle any electric grid system constructed for the purpose of electrocuting flying-foxes (Genus *Pteropus*) on the land unless the taking of flying-foxes by electrocution using such an electric grid is specifically authorised under section 88 of the *Nature Conservation Act 1992*.
3. That the first respondent and the second respondent remedy, as close as practicable, the commission of an offence against sections 88 of the *Nature Conservation Act 1992* involving electrocuting flying-foxes (Genus *Pteropus*) between or about 2001 and 2005 on the land by donating [an amount the Court considers reasonable] within three months of the date of this order to the Tolga Bat Hospital operated by the Tolga Bat

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**AMENDED ORIGINATING  
APPLICATION**  
Filed on behalf of the Applicant  
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Environmental Defenders Office (Qld) Inc  
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Brisbane Qld 4000  
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Rescue & Research Inc at 134 Carrington Road, Atherton, Queensland, for the purpose of the care and rehabilitation of injured flying-foxes.

**The grounds** relied on are:

1. The applicant is a person and capable of bringing these proceedings under section 173D of the *Nature Conservation Act 1992*.
2. The first respondent and the second respondent own and operate a lychee, star fruit and pomelo farm at Hosking Road, Mirriwinni, in the State of Queensland, being land described as Lot 1 on RP 712412, County of Nares, Parish of Bellenden Ker, in the State of Queensland (“**the land**”).
3. Three aerial electric grids have been constructed on the land for the purpose of electrocuting flying foxes that approach, fly between or depart from the fruit trees on the land (“**the electric grids**”).

#### Particulars

- (a) The total length of the three electric grids is approximately 600-800 meters.
- (b) The electric grids are constructed of approximately 15 wires, spaced approximately 20 centimeters apart.
- (c) The wires are positioned above the height of lychee fruit trees on the land, commencing approximately 3 meters above the ground to a height of approximately 6 meters above the ground.
- (d) The wires are strung horizontally between metal poles.
- (e) The wires are electrified.
4. Between or about 2001 and 2005 the first respondent and the second respondent and/or their employees or agents killed at approximately 1,100 flying-foxes (Genus *Pteropus*) indigenous to Australia by operating the electric grid to electrocute the flying-foxes.
5. At all times relevant to this application flying-foxes indigenous to Australia have been classified as protected wildlife under the *Nature Conservation (Wildlife) Regulation 1994* or the *Nature Conservation (Wildlife) Regulation 2006* and therefore are protected animals for the purposes of section 88 of the *Nature Conservation Act 1992*.

#### Particulars

- (a) Between 19 December 1994 and 24 June 2005 flying-foxes (Genus *Pteropus*) indigenous to Australia were classified as “common mammals” under Schedule 5 of the *Nature Conservation (Wildlife) Regulation 1994*.
- (b) ~~Since~~ Between 25 June 2005 and 10 August 2006 flying-foxes (Genus *Pteropus*) indigenous to Australia ~~have been~~ were classified as “least concern mammals” under Schedule 5 of the *Nature Conservation (Wildlife) Regulation 1994*.

(c) Since 11 August 2006 flying-foxes (Genus *Pteropus*) indigenous to Australia have been classified as “least concern wildlife” under Schedule 6 of the *Nature Conservation (Wildlife) Regulation 2006*.

6. The killing of flying-foxes specified in paragraph 4 of these grounds was an offence against section 88 of the *Nature Conservation Act 1992* and was not otherwise authorised or excused by law.

Particulars

- (a) The taking was not authorised under section 93 of the *Nature Conservation Act 1992* as the first respondent and second respondent are not Aborigines or Torres Strait Islanders and the taking is not part of Aboriginal tradition or Island custom;
  - (b) The land was not within a protected area under the *Nature Conservation Act 1992*;
  - (c) The first respondent and second respondent were not authorised persons under the *Nature Conservation Act 1992*;
  - (d) The taking was not authorised under the *Nature Conservation Act 1992*;
  - (e) The taking was not authorised under a conservation plan applicable to the animal;
  - (f) The taking was not authorised under a licence, permit or other authority issued or given under a regulation to the *Nature Conservation Act 1992*;
  - (g) The taking was not authorised under an exemption under a regulation to the *Nature Conservation Act 1992*;
  - (h) The taking did not happen in the course of a lawful activity that was not directed towards the taking; and/or
  - (i) The taking could have been reasonably avoided by using non-lethal methods of crop protection such as full-exclusion netting.
7. The dismantling of the electric grids on the land is necessary to prevent unauthorized operation of the grids and ongoing policing of the operation of the grids.
8. A donation for the care and rehabilitation of injured flying-foxes will remedy, as close as practicable, the damage to the local, regional and State populations of flying-foxes due to the unlawful killing of flying-foxes specified in paragraph 4 of these grounds.
9. The Tolga Bat Hospital and Tolga Bat Rescue & Research Inc is an appropriate facility and organisation to receive a donation for the care and rehabilitation of injured flying-foxes to remedy, as close as practicable, the killing of flying-foxes specified in paragraph 4 of these grounds.

Particulars

- (a) The Tolga Bat Hospital operated by the Tolga Bat Rescue & Research Inc at 134 Carrington Road, Atherton, Queensland, is a non-profit facility and organisation for the care, rehabilitation and research into injured flying-foxes.

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Larissa Water  
Solicitor

To: Richard Yardley and Antje Yardley  
Hosking Road (PO Box 42)  
Miriwinni Qld 4871

**NB. An application for an interim enforcement order is to be heard by the Court at Supreme and District Court Complex, George Street, Brisbane on the 19<sup>th</sup> day of October 2006 at 10 am.**

**If you wish to be heard on this application you must, before the hearing of the interim enforcement order or within ten business days of receipt of this application, file an entry of appearance in the Registry of the Court. The entry of appearance should be in the form set out in the form PEC-6 for the Planning and Environment Court.**

And to: Chief Executive / Director-General  
Environmental Protection Agency  
160 Ann Street  
BRISBANE QLD 4000

**NOTICE TO THE CHIEF EXECUTIVE**

**Under section 173D of the *Nature Conservation Act 1992*, as the Chief Executive administering the *Nature Conservation Act 1992* you are entitled to elect to become a party to the proceeding by filing in the Court a notice of election in the form approved by the Chief Executive.**