

BETWEEN: **CAROL JEANETTE BOOTH**

Applicant

AND: **FRIPPERY PTY LTD (ACN 010 890 007)**

First Respondent

MERVYN MEYER THOMAS

Second Respondent

PAMELA ANN THOMAS

Third Respondent

~~AMENDED~~ ORIGINATING APPLICATION (VERSION 3)

Filed on: August 2005

Filed by: Environmental Defenders Office (Qld) Inc

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THE APPLICANT of 32 Forbes Street, West End 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, Second Respondent and Third Respondent be restrained from the commission of an offence against section 88 of the *Nature Conservation Act 1992* by electrocuting, delivering a non-lethal electric shock to, and/or shooting Black Flying Foxes (*Pteropus alecto*) at 376 Volk Road, Mutarnee, being land described as Lot 85 on CWL 1576, County of Cardwell, Parish of Waterview, in the State of Queensland, unless authorised in accordance with section 88 of the *Nature Conservation Act 1992*.
2. That within 3 months of the date of this order, the First Respondent, Second Respondent and Third Respondent, and/or their employees or agents dismantle any electric grid system constructed for the purpose of electrocuting or delivering a non-lethal electric shock to Black Flying Foxes (*Pteropus alecto*) at 376 Volk Road, Mutarnee, being land described as Lot 85 on CWL 1576, County of Cardwell, Parish of Waterview, in the State of Queensland unless the taking of Black Flying Foxes by electrocution or delivering a non-lethal electric shock using such an electric grid is specifically authorised under section 88 of the *Nature Conservation Act 1992*.

~~AMENDED~~ ORIGINATING
APPLICATION (VERSION 3)

Filed on behalf of the Applicant
PEC-3

Environmental Defenders Office (Qld) Inc
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3. That the First Respondent, Second Respondent and Third Respondent remedy, as close as practicable, the commission of an offence against section 88 of the *Nature Conservation Act 1992* by electrocuting, delivering a non-lethal electric shock to, and/or shooting Black Flying Foxes (*Pteropus alecto*) on or about November between and including 19 December 1994 and December 2004 at 376 Volk Road, Mutarnee, being land described as Lot 85 on CWL 1576, County of Cardwell, Parish of Waterview, in the State of Queensland, by donating [an amount that the Court considers reasonable in the circumstances], collectively, within 3 months of the date of this order to the Tolga Bat Hospital operated by the Tolga Bat Rescue & Research Inc, PO Box 685, Atherton Tablelands, Queensland, 4883 for the purpose of the care and rehabilitation of injured Black 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 is a company incorporated in the State of Queensland and capable of being sued.
3. The Second Respondent and the Third Respondent are the sole directors and sole shareholders of the First Respondent. The Third Respondent is the secretary of the First Respondent.
4. The Second Respondent and the Third Respondent are executive officers of the First Respondent and therefore must ensure that the First Respondent complies with the *Nature Conservation Act 1992*, pursuant to section 162 of that Act.
5. The First Respondent owns a property known as “Edenvale” in freehold tenure at 376 Volk Road, Mutarnee, being land described as Lot 85 on CWL 1576, County of Cardwell, Parish of Waterview, in the State of Queensland (“**the land**”).
6. The First Respondent, Second Respondent and Third Respondent and/or their employees or agents operate a lychee fruit farm on the land.
7. Since approximately 1987, 7 or more aerial electric grids have been constructed on the land for the purpose of electrocuting, or delivering a non-lethal electric shock to, flying foxes that approach, fly between or depart from the lychee fruit trees on the land. There are currently 6 electric grids constructed on the land for this purpose (“the electric grids”).
8. The electric grids are constructed of approximately 15 wires, spaced approximately ~~20~~ 24 centimeters apart. The wires are positioned above the height of lychee fruit trees on the land, commencing approximately ~~2.5~~ 5 meters above the ground to a height of approximately ~~5-6~~ 10 meters above the ground. The wires are strung horizontally between metal poles of approximately ~~5-6~~ 10 meters in height, spaced approximately 20 meters apart. The wires are electrified by supply of a ~~high-voltage~~ an electrical current. The total length of the electric grids is ~~estimated to be at least 1,000~~ 2,000 meters.
- 8A. On 19 December 1994, Black Flying Foxes (*Pteropus alecto*) became a protected animal under section 88 of the *Nature Conservation Act 1992*.

- 8B. Between and including 19 December 1994 and December 2003, the First Respondent, Second Respondent or Third Respondent, and/or their employees or agents killed Black Flying Foxes (*Pteropus alecto*) by operating the electric grids to electrocute, or deliver a non-lethal electric shock to, the flying foxes or by shooting the flying foxes.
9. During November 2004 and up to 16 December 2004 the First Respondent, Second Respondent or Third Respondent, and/or their employees or agents killed at least 24 Black Flying Foxes (*Pteropus alecto*) ~~either~~ by operating the electric grids to electrocute, or deliver a non-lethal electric shock to, the flying foxes or by shooting the flying foxes.
 10. On or about the evening of 16 December 2004 and or the morning of 17 December 2004 the First Respondent, Second Respondent or Third Respondent, and/or their employees or agents killed at least 5 Black Flying Foxes (*Pteropus alecto*) by operating the electric grids to electrocute, or deliver a non-lethal electric shock to, the flying foxes.
 11. Between and including 19 December 1994 and December 2004, the Black Flying Fox (*Pteropus alecto*) is was classified as a common mammal under Schedule 5 of the *Nature Conservation (Wildlife) Regulation 1994* and therefore ~~is~~ was a protected animal for the purposes of section 88 of the *Nature Conservation Act 1992*. The species remains on the list of protected animals for the purposes of that provision.
 12. The killing of the Black Flying Foxes (*Pteropus alecto*) specified in paragraphs 8B, 9 and 10 of these grounds was an offence against section 88 of the *Nature Conservation Act 1992*.
 13. The killing of Black Flying Foxes (*Pteropus alecto*) specified in paragraphs 8B, 9 and 10 of these grounds was not authorised under:
 - (a) a conservation plan applicable to the animal; or
 - (b) a licence, permit or other authority issued or given under a regulation to the *Nature Conservation Act 1992*; or
 - (c) an exemption under a regulation to the *Nature Conservation Act 1992*.
 14. The killing of Black Flying Foxes (*Pteropus alecto*) specified in paragraphs 8B, 9 and 10 of these grounds did not happen in the course of a lawful activity that was not directed towards the taking.
 16. The killing of Black Flying Foxes (*Pteropus alecto*) specified in paragraphs 8B, 9 and 10 of these grounds was not otherwise authorised or excused by law.
 17. 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.
 18. It is not possible to directly remedy the unlawful killing of Black Flying Foxes as specified in paragraphs 8B, 9 and 10 of these grounds, but a donation for the care and rehabilitation of injured Black Flying Foxes will remedy, as close as practicable, the damage to the local population of Black Flying Foxes.

19. The Tolga Bat Hospital operated by the Tolga Bat Rescue & Research Inc, PO Box 685, Atherton Tablelands, Queensland, 4883 is a non-profit facility and organisation for the care, rehabilitation and research into injured flying foxes.
20. The Tolga Bat Hospital and Tolga Bat Rescue & Research Inc is an appropriate facility and organisation to receive such a donation for the care and rehabilitation of injured Black Flying Foxes to remedy, as close as practicable, the killing of Black Flying Foxes specified in paragraphs 8B, 9 and 10 of these grounds. A donation of \$50 to the Tolga Bat Hospital provides treatment and feeding of an adult flying fox for approximately 6 weeks, making a donation of \$1,000.00 provide for the treatment and care of 20 adult Black Flying Foxes for approximately 6 weeks.

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Jo-Anne Bragg
Principal Solicitor

To: Keta Tamblyn (Solicitor for the Respondents)
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NOTICE OF AMENDMENT

This Originating Application was amended pursuant to an order of
made on 2005.