

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

APPLICATION IN PENDING PROCEEDING

Filed on: 6 October 2006
Filed by: Environmental Defenders Office (Qld) Inc
Service address: Level 9, 193 North Quay
Brisbane QLD 4000
Phone: (07) 3211 4466
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THE APPLICANT applies to the Planning and Environment Court at Brisbane for the following interim order under section 173E 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:
 - (a) unless authorised in accordance with section 88 of the *Nature Conservation Act 1992*; or
 - (b) pending a decision in the principal proceedings for an enforcement order under section 173D of the *Nature Conservation Act 1992*.

The grounds relied on are:

1. The respondents own and operate a lychee, star fruit and pomelo farm 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**”).
2. Three aerial electric grids have been constructed on the land for the purpose of electrocuting flying-foxes (Genus *Pteropus*) that approach, fly between or depart from the fruit trees on the land (“**the electric grids**”).

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PEC-4

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3. Between or about 2001 and 2005 the respondents and/or their employees or agents killed approximately 1,100 flying-foxes indigenous to Australia by operating the electric grids to electrocute the flying-foxes.
4. 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* and therefore are protected animals for the purposes of section 88 of the *Nature Conservation Act 1992*.
5. The killing of flying-foxes specified in paragraph 3 of these grounds was an offence against section 88 of the *Nature Conservation Act 1992* and was not otherwise authorised or excused by law.
6. The applicant has filed an application for enforcement orders under section 173D of the *Nature Conservation Act 1992* to restrain and remedy the killing of flying-foxes by the respondents on the land.
7. The hearing and determination of the enforcement orders in the principal proceedings will not occur before February 2007 at the earliest.
8. The lychee season runs from late October to early January annually during which time the respondents intend to operate the electric grid on the land to kill flying-foxes.
9. Between the filing of the application for the enforcement order and the hearing and determination of the enforcement order the respondents and/or their employees or agents are likely to kill a significant number of flying-foxes in contravention of section 88 of the *Nature Conservation Act 1992*.
10. Whether the killing of flying-foxes by the respondents and/or their employees or agents using the electric grids is an offence against section 88 of the *Nature Conservation Act 1992* raises a serious question to be tried.
11. The balance of convenience favours the grant of an interim enforcement order under section 173E of the *Nature Conservation Act 1992* restraining the respondents from operating the electric grids unless authorised under the Act and pending the determination of the principal proceedings by the Court.

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Jo-Anne Bragg
Principal Solicitor

This application for an interim enforcement order is to be heard by the Court at Supreme and District Court Complex, George Street, Brisbane on the day of October 2006 at 10 am.

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Registrar

If you wish to oppose the application or to argue that any different order should be made, you must appear before the Court in person or by your lawyer or agent and you shall be heard. If you do not appear at the hearing the orders sought may be made without further notice to you.