



Approval

Tourist and Residential Development, 163 Abbott Street, Cairns, Queensland (EPBC 2016/7840)

This decision is made under sections 130(1) and 133 of the *Environment Protection and Biodiversity Conservation Act 1999*.

Proposed action

person to whom the approval is granted GAG Lake Street (Cairns) Business Company No.1 Pty Limited
ACN: 614 397 278

proposed action To construct a mixed use hotel and accommodation development at the crossroads of Lake, Abbott and Aplin Streets, in Cairns, Queensland [See EPBC Act referral 2016/7840].

Approval decision

Controlling Provision	Decision
Listed threatened species and communities (sections 18 & 18A)	Approved

conditions of approval

This approval is subject to the conditions specified below.

expiry date of approval

This approval has effect until 1 November 2022.

Decision-maker

name and position James Barker
Assistant Secretary
Assessments and Sea Dumping Branch

signature

date of decision 4 May 2017

Conditions attached to the approval

Clearance

1. The **person taking the action** must undertake **clearance activities** in accordance with the **flying-fox roost management permit**.
2. The **person taking the action** must not undertake **clearance activities** during the **Spectacled Flying-fox** breeding or rearing season or:
 - a. when female **Spectacled Flying-foxes** are in the late stages of pregnancy, as determined by a **pre-clearance survey**;
 - b. when dependent **Spectacled Flying-fox** young that cannot fly on their own are present, as determined by a **pre-clearance survey**; or
 - c. during or immediately after a heat stress event, food stress event or cyclone event.
3. A **person with knowledge and experience relevant to the management of Spectacled Flying-foxes** and their habitat, and an authorised wildlife carer or veterinarian, must be present:
 - a. during **pre-clearance surveys**;
 - b. during **clearance activities**; and
 - c. after **clearance activities**, for a period of 7 days to monitor any displaced **Spectacled Flying-foxes** that return to the **development site** and to act in the event there is evidence of stress or an injury to **Spectacled Flying-foxes**.

Construction

4. The **person taking the action** must not undertake **excavation** or piling during the **Spectacled Flying-fox** breeding or rearing season or:
 - a. when female **Spectacled Flying-foxes** in the late stages of pregnancy are present in **adjacent roost trees**;
 - b. when dependent **Spectacled Flying-fox** young that cannot fly on their own are present in **adjacent roost trees**; or
 - c. during or immediately after a heat stress event, food stress event or cyclone event

unless the **person taking the action** provides evidence and a plan, reviewed by an independent **person with knowledge and experience relevant to the management of Spectacled Flying-foxes** and their habitat, that the undertaking of **excavation** or piling during the periods specified above are unlikely to have a significant impact on the **Spectacled Flying-fox** and must not commence **excavation** or piling during these periods until the plan is approved in writing by the **Minister**.

5. For **construction activities** undertaken during the breeding or rearing season or during a heat stress event, food stress event or cyclone event that involve the use of loud machinery or equipment that produces sudden impacts or sudden loud sounds, where physically feasible and where site safety is not compromised, machinery and equipment must be started slowly and away from the Cairns Library roost before moving closer to the Cairns Library roost.
6. Noise suppression measures, including the use of any silencers or dampeners provided on machinery or equipment, must be implemented at all times during **construction activities**.
7. Dust suppression measures must be implemented at all times during **construction activities**.
8. The **person taking the action** must ensure a rest day is scheduled every 7 days during the breeding and rearing season for **construction activities** that produce sudden impacts or sudden loud sounds or constant loud noises or vibration, or dust or light that extends beyond the **development site**.
9. The **person taking the action** must ensure any netting used at the **development site** for the period that **construction activities** occur does not have holes any larger than 5 millimetres in size, including netting over scaffolding.
10. Site inductions must include specific training to inform all site personnel of the possible impacts of **construction activities** on the **Spectacled Flying-fox**. Inductions must include details on what to do and who to contact if a **Spectacled Flying-fox** is found on the **development site**.
11. The **person taking the action** must develop and implement a community engagement strategy, including a process to handle complaints related to impacts on the **Spectacled Flying-fox**, and to inform the public of the construction programme and duration of works, and who to contact if they observe a sick, injured or orphaned **Spectacled Flying-fox**.

Monitoring

12. The **person taking the action** must undertake daily inspections of the **development site** for the period that **construction activities** occur. Any sightings of **Spectacled Flying-fox** on the **development site** must be documented.
13. The **person taking the action** must develop and implement an emergency response plan for handling any **Spectacled Flying-foxes** that are found on the **development site**.
14. The **person taking the action** must develop and implement, with input from a **person with knowledge and experience relevant to the management of Spectacled Flying-foxes** and their habitat, a monitoring and management plan for the period that **construction activities** occur. The monitoring and management plan must be published on the **person taking the action's** website and up to date versions must remain on the website for the period that **construction activities** occur.
15. The monitoring and management plan must detail the timing, frequency and longevity of monitoring and reporting, and must be adequate to inform early warning of impacts to **Spectacled Flying-foxes** in **adjacent roost trees** during high risk activities (**excavation** and **piling**) and during high risk periods (during the breeding and rearing season and during or immediately after a heat stress event, food stress event or cyclone event).

16. The monitoring and management plan must be capable of measuring the ongoing use of **adjacent roost trees** by **Spectacled Flying-foxes** for the period that **construction activities** occur, as compared to **baseline records**.
17. If monitoring indicates that 30% of the **Spectacled Flying-foxes** in **adjacent roost trees** as compared to **baseline records** have left in a single event as a result of **construction activities**, the **person taking the action** must provide a report to the **Department** within 10 **business days** of becoming aware of the event, documenting the cause, response measures and actions to prevent further occurrences.
18. The **person taking the action** must ensure that in **adjacent roost trees** as a result of **construction activities** there is no:
 - a. **significant increase** (as compared to **baseline records**) in:
 - i. the abortion of foetuses of **Spectacled Flying-fox**; and
 - ii. abandonment of young **Spectacled Flying-fox**.
 - b. **significant mortality event**.
19. If monitoring by the **person taking the action** indicates that as a result of **construction activities** an event in Condition 17a or 17b is likely to occur, the **person taking the action** must provide a report to the **Department** within 10 **business days** of becoming aware, documenting the cause, response measures and actions to prevent the event from occurring.
20. If the **Minister** is not satisfied of the actions to prevent further occurrences of the events in Condition 16 or to prevent the events in Condition 17a and 17b from occurring, the **Minister** may request the **person taking the action** to prepare a plan for the **Minister's** approval to monitor, manage, avoid, mitigate, record or report on impacts to **Spectacled Flying-fox**.
 - a. The **Minister** may set a timeframe in which the plan must be submitted, and may designate that the plan must be prepared or reviewed by a **person with knowledge and experience relevant to the management of Spectacled Flying-foxes** and their habitat.
 - b. If the **Minister** approves the plan in writing the **person taking the action** must implement the plan (or a revised version if approved in writing by the **Minister**).

Standard Conditions

21. Within 10 **business days** after the **commencement of construction**, the **person taking the action** must advise the **Department** in writing of the actual date of **commencement of construction**.
22. The **person taking the action** must maintain accurate records substantiating all activities associated with or relevant to the conditions of approval, including measures taken to implement any management plans or strategies required by this approval, and make them available upon request to the **Department**. Such records may be subject to audit by the **Department** or an independent auditor in accordance with section 458 of the **EPBC Act**, or used to verify compliance with the conditions of approval. Summaries of audits will be posted on the **Department's** website. The results of audits may also be publicised through the general media.

23. Within 60 **business days** of every 12 month anniversary of the **commencement of construction**, the **person taking the action** must publish a report on their website addressing compliance with each of the conditions of this approval, including implementation of any management plans or strategies as specified in the conditions. Documentary evidence providing proof of the date of publication and non-compliance with any of the conditions of this approval must be provided to the **Department** at the same time as the compliance report is published.
24. The **person taking the action** must report any potential or actual contravention of the conditions of this approval to the **Department** in writing within 5 **business days** of the **person taking the action** becoming aware of a contravention.
25. Upon the direction of the **Minister**, the **person taking the action** must ensure that an independent audit of compliance with the conditions of approval is conducted and a report submitted to the **Minister**. The independent auditor must be approved by the **Minister** prior to the commencement of the audit. Audit criteria must be agreed to by the **Minister** and the audit report must address the criteria to the satisfaction of the **Minister**. Reports must remain published on the **person taking the action's** website for the life of the approval. The **person taking the action** must continue to produce and publish the report until such time as agreed in writing by the **Minister**.
26. If, at any time after two years from the date of this approval, the **person taking the action** has not **commenced construction**, then the **person taking the action** must not **commence construction** without the written agreement of the **Minister**.

Definitions

Adjacent roost trees: roost trees at the Cairns Library Roost and any trees previously or currently used for roosting by **Spectacled Flying-foxes**, or that have the potential to be used as roost trees by **Spectacled Flying-foxes** in the future, in the area within the circle as shown by the map at [Attachment 1](#).

Baseline records: average number of **Spectacled Flying-foxes** occupying **adjacent roost trees** and average number of aborted fetuses, abandoned young and number of deaths of **Spectacled Flying-foxes** in **adjacent roost trees**, as determined by historical and current records, prior to **clearance activities** and **construction activities**.

Business days: measured in relation to the doing of any action, any day other than a Saturday, a Sunday, or a public holiday that occurs in Queensland.

Clearance activities: the clearance of **Spectacled Flying-fox** roost trees at the **development site**.

Commence /commenced / commencement of construction: includes **clearance activities**, the erection of any onsite temporary structures or the use of heavy equipment for the purposes of breaking ground for buildings or infrastructure.

Construction activities: means the creation and development of services (sewerage, electricity, water, stormwater) and building of infrastructure associated with the action. This does not include preparatory works such as the erection of signage or temporary fencing.

Department: the Australian Government Department administering the **EPBC Act**.

Development site: the 0.4 hectare site of the proposed action bound by the Novotel Hotel, Abbott Street, Lake Street and Aplin Street, Cairns, as shown by the map at [Attachment 1](#).

EPBC Act: the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

Excavation: means excavation of 50 cubic metres of earth or more.

Flying-fox roost management permit: the Flying-fox roost management permit (permit number WIFF17956816) granted to GAG Lake Street (Cairns) Property Company No.1 Pty Ltd by the Queensland Department of Environment and Heritage Protection on 13 February 2017.

Minister: the Australian Government Minister administering the **EPBC Act** and includes a delegate of the **Minister**.

Person taking the action: means the person to whom the approval is granted, or any person acting on their behalf, or to whom approval is transferred under section 145B of the **EPBC Act**.

Person with knowledge and experience relevant to the management of Spectacled Flying-foxes: means a person able to demonstrate knowledge and experience in the management of **Spectacled Flying-foxes** and who can identify dependent young and is aware of heat stress events, cyclone events and food stress events.

Pre-clearance survey: a survey of the trees to be cleared during **clearance activities**, undertaken by a person with knowledge and experience relevant to the management of **Spectacled Flying-foxes** and their habitat, prior to **clearance activities**.

Significant increase: an increase which is important, notable, or of consequence, having regard to its context or intensity.

Significant mortality event: the death of 450 individual **Spectacled Flying-foxes** (inclusive of aborted foetuses) in a single event at anytime during the period that **construction activities** occur.

Spectacled Flying-fox: the Spectacled Flying-fox (*Pteropus conspicillatus*), listed as a threatened species under the **EPBC Act**.

Attachment 1

