

# CONSERVATION AGREEMENT

Conservation Agreement for the  
protection and conservation of the  
Grey-headed Flying-fox (*Pteropus  
poliocephalus*)

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Minister for the Environment on behalf of the  
Commonwealth of Australia

Sunshine Coast Regional Council

# Table of contents

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<b>Table of contents</b>	<b>ii</b>
<b>Details</b>	<b>3</b>
<b>Agreed terms</b>	<b>4</b>
1. Definitions and interpretation	4
2. Agreement Period	6
3. Priority of documents	6
4. Grey-headed Flying-fox management	7
5. Activity	7
6. Declaration	9
7. Review and reporting of this Agreement	9
8. Dispute resolution	9
9. Termination or variation	10
10. Notices	11
11. General clauses	11
<b>Schedule 1 – Agreement Details</b>	<b>14</b>
<b>Schedule 2 – Grey-headed flying-fox management</b>	<b>15</b>
<b>Execution page</b>	<b>16</b>

# Details

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## Parties

1. Minister for the Environment (**Minister**) on behalf of the Commonwealth (**Commonwealth**)
2. Sunshine Coast Regional Council (**Council**)

## Recitals

- A. Section 305(1) of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**) provides that the Minister may, on behalf of the Commonwealth, enter into a conservation agreement for the protection and conservation of biodiversity in the Australian jurisdiction.
- B. Pursuant to Section 305(1A) of the EPBC Act, the purpose of this Agreement is to:
  - (a) provide for the protection and conservation of the **Grey-headed Flying-fox** (*Pteropus poliocephalus*) and its **habitat** in the Sunshine Coast Council Local Government Area (**LGA**), as described in clause 5.2; and
  - (b) provide for the abatement of processes, and the mitigation or avoidance of actions, that might adversely affect the Grey-headed Flying-fox and its habitat in the Sunshine Coast Council Local Government Area (**LGA**), as described in clause 5.2.
- C. The Minister, on behalf of the Commonwealth, has agreed to enter into this Agreement with the Council under section 305(1) of the EPBC Act to give effect to the purpose described in Recital B.
- D. Section 306A of the EPBC Act provides that the Minister may include in a conservation agreement a declaration to the effect that actions in a specified class of actions do not need approval under Part 9 for the purposes of a specified provision of Part 3.
- E. The Minister makes such a declaration in this Agreement and, for the purposes of section 306A(2) of the EPBC Act, is satisfied that actions in the specified class of actions are not likely to have a significant impact on the Grey-headed Flying-fox.
- F. For the purposes of section 305(2) of the EPBC Act, the Minister is satisfied that:
  - (a) the implementation of this Agreement will result in a net benefit to the conservation of biodiversity; and
  - (b) the Agreement is not inconsistent with any recovery plan, threat abatement plan or wildlife conservation plan.
- G. Pursuant to section 307 of the EPBC Act, this Agreement is binding on the Commonwealth and the Council.

# Agreed terms

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## 1. Definitions and interpretation

### 1.1 Definitions

In this Agreement, except where the contrary intention is expressed, terms have the meaning they are given in the EPBC Act and otherwise the following definitions are used:

<b>Activity Objectives</b>	the Activity Objectives described in clause 5.1 of this Agreement.
<b>Activity Particulars</b>	The Activity Particulars described in clause 5.2 of this Agreement.
<b>Agreement</b>	this agreement between the Minister and the Council including its Schedules and Annexures, as amended from time to time in accordance with section 308 of the EPBC Act or clause 8.3 of this Agreement.
<b>Agreement Details</b>	Schedule 1 of this Agreement.
<b>Business Day</b>	in relation to the doing of any action in a place, any day other than a Saturday, Sunday or public holiday in that place.
<b>Class of Actions</b>	the class of actions specified in clause 5.3 of the Activity Particulars.
<b>Commonwealth</b>	the Commonwealth of Australia.
<b>Council</b>	the Sunshine Coast Regional Council.
<b>Council Representative</b>	the person identified in Item 4 of the Agreement Details, or other person notified to the Department by the Council.
<b>Department</b>	the Commonwealth agency responsible for administering the EPBC Act, currently the Department of the Environment.
<b>Department Representative</b>	the person identified in Item 2 of the Agreement Details or other person notified to the Council by the Department.
<b>Electronic Communication</b>	has the same meaning as in the <i>Electronic Transactions Act 1999</i> (Cth).
<b>EPBC Act Flying-fox Guidelines</b>	the Department's <i>Referral guideline for management actions in Grey-headed and Spectacled flying-fox camps</i> published August 2015.
<b>Grey-headed Flying-fox</b>	The Grey-headed Flying-fox ( <i>Pteropus poliocephalus</i> ) listed as vulnerable under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth).

<b>Habitat</b>	is Grey-headed flying-fox roosting habitat, as defined in the RFFMP.
<b>LGA</b>	Sunshine Coast Local Government Area as defined by the Australian Statistical Geography Standard, January 2014. The Sunshine Coast LGA map is available at the Queensland Treasury <a href="#">website</a> .
<b>Minister</b>	the Minister administering the EPBC Act or a delegate of the Minister pursuant to section 515(1) of the EPBC Act.
<b>Nationally-important flying-fox camp</b>	a camp which meets the criteria for a nationally important flying-fox camp as specified in the EPBC Act Flying-fox Guidelines.
<b>Period of significant population stress</b>	a period during which events place significant stress on a national population of the Grey-headed flying-fox as outlined in the EPBC Act Flying-fox Guidelines.
<b>RFFMP</b>	the <i>Regional Flying-fox Management Plan</i> as developed by the Sunshine Coast Regional Council to address concerns relating to the management of flying-fox in urban areas, and attached at Schedule 2 of this Agreement.
<b>Report</b>	the report that the Council is required to produce and provide to the Department in accordance with clause 6.2.
<b>Review</b>	the review the parties agree to undertake in accordance with clause 7 of this Agreement.

## 1. Interpretation

In this Agreement, except where the contrary intention is expressed:

- (b) the singular includes the plural and vice versa, and a gender includes other genders;
- (c) another grammatical form of a defined word or expression has a corresponding meaning;
- (d) the meaning of general words is not limited by specific examples introduced by meaning of, for example or similar expressions;
- (e) a reference to a clause, paragraph, Schedule or Annexure is to a clause or paragraph of, or Schedule or Annexure to, this Agreement;
- (f) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (g) a reference to AUD, A\$, \$A, dollar or \$ is to Australian currency;
- (h) a reference to time is to the time in the place where the obligation is to be performed;
- (i) a reference to a party is to a party to this Agreement and includes the party's executors, administrators, successors and permitted assignees and substitutes;
- (j) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity; and
- (k) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and
- (l) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it.

## 2. Agreement Period

- (a) This Agreement commences on the date of execution by the last party.
- (b) This Agreement ends and ceases to be of any effect on the date the Agreement is terminated under clause 8.

## 3. Priority of documents

If there is any inconsistency between any of the documents forming part of this Agreement those documents will be interpreted in the following order of priority to the extent of the inconsistency:

- (a) the 'Agreed terms' of this Agreement (being clauses 1 through to 11);

- (b) Schedule 2 – RFFMP;
- (c) Schedule 1 - Agreement Details;
- (d) any Annexure(s) in their order of appearance; and
- (e) documents incorporated by reference in this Agreement.

## **4. Grey-headed Flying-fox management**

- (a) The declaration in clause 6 only applies where:
  - (i) Council acts in accordance with the RFFMP in the taking of an action that affects the Grey-headed Flying-fox and its habitat; and
  - (ii) the action does not involve the dispersal of a Nationally-important Grey-headed Flying-fox camp during a Period of significant population stress.
- (b) The parties acknowledge:
  - (i) this Agreement does not require Council to act in accordance with the RFFMP in all circumstances; and
  - (ii) where Council does not act in accordance with the RFFMP, Council (as the person proposing to take the action) should consider whether the proposed action needs to be referred for a decision on whether assessment and approval under the EPBC Act is required before it can proceed.

## **5. Activity**

### **5.1 Activity Objective**

The Activity Objective is to protect and conserve the Grey-headed Flying-fox populations and its habitat in the Sunshine Coast LGA.

### **5.2 Activity Description**

- (a) Where the Council makes a decision in relation to actions that may affect the Grey-headed Flying-fox and its habitat and Council decides to apply the RFFMP, it must:
  - (i) act in accordance with the RFFMP; and
  - (i) impose the relevant mitigation standards described in the EPBC Act Flying-fox Guidelines.
- (b) Council and the Department will also pursue a range of actions in the Sunshine Coast LGA to support the conservation and recovery of the Grey-headed Flying-fox, either independently or in collaboration.
  - (i) Council will:
    - (A) implement conservation strategies detailed in the RFFMP, including:
      - o identification, protection and enhancement of additional foraging habitat;

- provision of additional, low conflict roost opportunities; and
- undertaking works to enhance key existing roost habitats.
- (B) identify and where possible prevent future residential/flying fox land use conflict issues through the use of planning instruments such as development buffers;
- (C) undertake monthly monitoring of the Grey-headed Flying-fox population and publish relevant information from those assessments for the purposes of supporting research and greater understanding of Grey-headed Flying-fox ecology;
- (D) conduct quarterly surveys of the Grey-headed Flying-fox and its habitat and provide the findings to the National flying-fox monitoring program; and
- (E) participate in research to improve knowledge of Grey-headed Flying-fox ecology.
- (ii) The Department will:
  - (A) develop, finalise and publish the National recovery plan for the Grey-headed Flying-fox.
- (iii) Both Council and the Department will:
  - (A) develop and publish information to improve community understanding of, and capacity to manage the Grey-headed Flying-fox and its habitat.
- (iv) Council and the Department will pursue options for:
  - (A) supporting research into the ecology and management of the Grey-headed Flying-fox; and
  - (B) identifying and promoting the protection of key foraging and roosting habitats used by the Grey-headed Flying-fox.

### 5.3 Class of Actions

The class of actions is any action in relation to the management of Grey-headed Flying-fox and its habitat:

- (a) that is identified in the RFFMP; and
- (b) that is carried out in accordance with the mitigation standards described in Part 3 of the EPBC Act Flying-fox Guidelines.

Note: If Council wishes to undertake actions that fall outside the Class of Actions described above, Council should consider the need to refer the actions to the Department for a decision under the EPBC Act.



## **6. Declaration**

- (a) Pursuant to section 306A of the EPBC Act and subject to clause 4(a), the Minister declares that actions in the Class of Actions at clause 5.3 do not require approval under Part 9 of the EPBC Act for the purposes of sections 18 and 18A of the EPBC Act.

## **7. Review and reporting of this Agreement**

### **7.1 Review**

- (a) A review of the operation of this Agreement, including the Schedules, must be undertaken by the parties if Council revises or amends the RFFMP, or at least once every three years.
- (b) If a Review is to be undertaken the parties will agree in writing on:
  - (i) the terms of the Review;
  - (ii) the scope of the Review; and
  - (iii) the date by which the Review will be completed.
- (c) A Review may be linked to a Report requested under clause 7.2.
- (d) Failure to undertake the Review contemplated by clause 7.1(a) does not invalidate this Agreement.
- (e) This clause does not limit the Minister's powers to terminate or vary this Agreement under section 308 of the EPBC Act.

### **7.2 Reporting**

- (a) Council must publish the RFFMP on the Council website within three months of the commencement of the Agreement.
- (b) Council must, within 20 Business Days of a request in writing, provide the Department with a report on the operation of this Agreement. The Report will not be requested more than once within a 12 month period. The Department may publish the Report on its website.
- (c) Council must provide the Department with a Report on the effectiveness of the RFFMP in achieving its objectives every three years.

### **7.3 General**

Subject to any written agreement to the contrary, each party must bear its own costs of any Review undertaken, and Reports prepared, pursuant to clauses 7.1 and 7.2.

## **8. Dispute resolution**

### **8.1 Dispute resolution**

- (a) If a dispute arises in relation to the conduct of this Agreement, a party must comply with this clause 8.1 before starting court proceedings (except proceedings for urgent interlocutory relief). After a party has sought or

obtained urgent interlocutory relief, that party must comply with this clause 8.1.

- (b) The parties agree that any dispute arising during the course of this Agreement will be dealt with as follows:
- (i) either party may give written notice of a dispute to the other party which will state that it is a notice under this clause and will specify the details of the dispute concerned;
  - (ii) management representatives of each of the parties will endeavour in good faith to agree upon a resolution of the dispute;
  - (iii) if the management representatives fail to reach a solution within 10 Business Days of receipt of a notice of dispute (or a timeframe agreed in writing between the parties), the dispute will be taken to senior executive representatives of each of the parties;
  - (iv) senior executive representatives will endeavour in good faith to agree upon a resolution of the dispute;
  - (v) if the senior executive representatives fail to resolve the dispute within 10 Business Days (or other timeframe agreed in writing between the parties), the dispute will be taken to the:
    - (A) Chief Executive Officer of Council; and
    - (B) Secretary of Department,who will endeavour to reach agreement regarding the dispute.
- (c) If agreement cannot be reached in accordance with clause 8.1(b), the parties must endeavour to resolve any dispute under this Agreement by mediation or other alternative dispute resolution method before they commence legal proceedings (except proceedings for urgent interlocutory relief).

## **8.2 Costs**

Each party to a dispute must pay its own costs of complying with this clause. The parties to the dispute must equally pay the costs of any mediator or other alternative dispute resolution provider.

## **8.3 Breach of this clause**

If a party to a dispute breaches clause 8.1 to 8.2, the other party does not have to comply with those clauses in relation to the dispute.

# **9. Termination or variation**

## **9.1 Termination by agreement**

This Agreement may be terminated by agreement between the Minister and Council in accordance with section 308(3)(a) of the EPBC Act.

## **9.2 Termination or variation by order**

- (a) Notwithstanding any other provision of this Agreement, this Agreement may be terminated or varied by the Minister by order published in the *Gazette* in accordance with section 308(4) of the EPBC Act.

- (b) If the Minister varies this Agreement by an order made under section 308(4) of the EPBC Act, this Agreement may be terminated by Council in accordance with section 308(7) of the EPBC Act.
- (c) In accordance with section 308(8) of the EPBC Act, if the Agreement is terminated or varied by an order, Council is not entitled to any compensation in respect of the termination or variation.

### **9.3 Variation**

Subject to clause 9.2 and the Minister's rights under section 308 of the EPBC Act, no agreement or understanding varying or extending this Agreement is legally binding upon a party to this Agreement unless the agreement or understanding is in writing and signed by the parties.

## **10. Notices**

### **10.1 Service of notices**

- (a) A party giving notice or notifying under this Agreement must do so in English. The notice must be given in writing or by Electronic Communication:
  - (i) directed to the other party's contact person at the other party's address (as set out in Item 5 of the Agreement Details or subsequently notified by the first party); and
  - (ii) hand delivered or sent by prepaid post or Electronic Communication to that address.
- (b) A party to this Agreement must ensure it provides current and correct contact details to the other party.

### **10.2 Effective on receipt**

A notice given in accordance with clause 10.1 takes effect when it is taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the sixth Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia); or
- (c) if sent by Electronic Communication, at the time that would be the time of receipt under the *Electronic Transactions Act 1999* (Cth), but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the notice is taken to be received at 9.00am on the next Business Day.

## **11. General clauses**

### **11.1 Rights and powers of the Minister**

The rights and powers of the Minister under this Agreement are in addition to any rights and powers the Minister has under the EPBC Act.

## **11.2 Ownership of Agreement**

All copyright and other intellectual property rights contained in this Agreement remain the property of the Commonwealth.

## **11.3 Approvals and consents**

Except where this Agreement expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Agreement.

## **11.4 Assignment and novation**

A party may only assign its rights or novate its rights and obligations under this Agreement with the prior written consent of the other party.

## **11.5 Costs**

A party must pay its own costs of negotiating, preparing and executing this Agreement.

## **11.6 Counterparts**

This Agreement may be executed in counterparts. All executed counterparts constitute one document.

## **11.7 Entire agreement**

This Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

## **11.8 Further action**

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Agreement and any transaction contemplated by it.

## **11.9 Severability**

A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the terms of this Agreement continue in force.

## **11.10 Waiver**

Waiver of any provision of or right under this Agreement:

- (a) must be in writing signed by the party entitled to the benefit of that provision or right; and
- (b) is effective only to the extent set out in any written waiver.

## **11.11 Relationship**

- (a) The parties must not represent themselves, and must ensure that their officers, employees, agents and subcontractors do not represent themselves as being an officer, employee, partner or agent of the other party, or as otherwise able to bind or represent the other party.
- (b) This Agreement does not create a relationship of employment, agency or partnership between the parties.

#### **11.12 Governing law and jurisdiction**

This Agreement is governed by the law of the Australian Capital Territory and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

## Schedule 1 – Agreement Details

Item No.	Description	Clause reference	Details
1.	<b>Department details</b>	1.1	Commonwealth of Australia as represented by the Department of the Environment ABN 34 190 894 983
2.	<b>Department Representative</b>	1.1	Name: James Barker Position: Assistant Secretary Phone: 02 6274 2694 Email: james.barker@environment.gov.au
3.	<b>Council details</b>	1.1	Sunshine Coast Council ABN 37 876 973 913
4.	<b>Council Representative</b>	1.1	Name: Mr Chris Allan Position: Manager Environmental Operations Phone: 07 5420 8993 Email: chris.allan@sunshinecoast.qld.gov.au
5.	<b>Address for notices</b>	9.1	<b>Department:</b> Geoff Richardson Protected Species and Communities Branch Department of the Environment Postal address: GPO Box 787, Canberra, ACT, 2601 Email: geoff.richardson@environment.gov.au <b>Council:</b> Name: Chris Allan Position: Manager Environmental Operations Postal address: Locked Bag 72, Sunshine Coast Mail Centre, QLD, 4560 Email: chris.allan@sunshinecoast.qld.gov.au

# Schedule 2 – Grey-headed flying-fox management

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*Sunshine Coast Council Regional Flying-fox Management Plan*

# Execution page

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**EXECUTED** as a Conservation Agreement under the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*

**SIGNED** on behalf of the **Commonwealth of Australia** as represented by the delegate of the Minister for the Environment

Greg Hunt  
Name

Minister for the Environment  
Position

[Signature]  
Signature

4-5-16  
Date

Christina McGuffie  
Name of witness (print)

Adviser

[Signature]  
Signature of witness

4-5-16  
Date

**SIGNED** on behalf of the **Sunshine Coast Regional Council** by an authorised representative

Michael Whittaker  
Name

Chief Executive Officer  
Position

[Signature]  
Signature

19/04/2016  
Date

Sharyn Eyles  
Name of witness (print)

PA to CEO

[Signature]  
Signature of witness

19/04/2016  
Date



