



# Mammal Mail

Newsletter of the Tree Kangaroo and Mammal Group

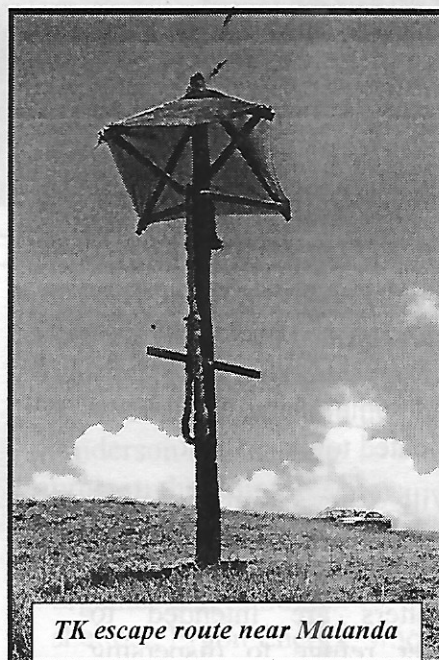
April 2002

## Shelter-Pole Project

By John Kanowski, Rainforest CRC, Environmental Sciences, Griffith University Nathan Qld

Of all the forest types throughout its range, Lumholtz's tree-kangaroo is most abundant in rainforests on fertile soils on the Atherton Tablelands (complex notophyll and mesophyll rainforest, types 5a, 5b and 1b of Tracey 1982). The trees and vines which grow on these fertile soils typically have highly nutritious foliage, an important determinant of habitat quality for leaf-eating mammals. However, forests on fertile soils have been extensively cleared for agriculture and most of the remnant forests are small. The persistence of tree-kangaroos in small remnants is presumably dependent on the continued dispersal of animals across the landscape – to prevent inbreeding, to recolonise vacant territories, and so on. Tree-kangaroos are capable of dispersing many kilometres between remnants, but they are vulnerable to attack by dogs and dingoes when crossing

open ground. For this reason, corridors of vegetation probably increase the likelihood that tree-kangaroos can disperse



TK escape route near Malanda

successfully between remnants. While considerable effort has gone into planting rainforest corridors between remnants on the tablelands, most of these corridors have been located on steep creek banks. Landholders tend to be less willing to return productive agricultural land

to forest and for this reason a number of remnants on the tablelands are likely to remain relatively isolated. The challenge is to find ways of helping tree-kangaroos disperse across cleared land, without significantly reducing the agricultural potential of that land.

The concept of "shelter poles" arose as a possible solution to this challenge. Shelter poles are artificial trees, strategically placed in the landscape to allow dispersing tree-kangaroos to escape from marauding hounds. The idea was raised by the Tree Kangaroo and Mammal Group (TKMG) in its report on the community survey of tree-kangaroos on the tablelands. Well, that's the theory – but would it work?

The opportunity came to test the practicality of the shelter pole concept on the farm of Mark and Peter Mappas, near Malanda. This farm is one of the case-

## SHELTER-POLE PROJECT

studies examined by TKMG in the project, *Conservation of remnant rainforest on private property on the Atherton Tablelands*. Mappas's farm is also the focus of revegetation work carried out under the *Anderson Rd Linkage project*, run by Trees for the Evelyn and Atherton Tablelands (TREAT) in conjunction with QPWS Centre for Tropical Restoration. The project aims to restore a corridor of complex mesophyll (type 1b) rainforest along a creek that flows between Peeramon Scrub and the North Johnstone River, a distance of some 2 km. Most of the banks of the creek are very steep and have reverted to regrowth or been replanted with rainforest. However, the lower reaches of the creek are relatively flat and support pasture, forming a break in the corridor several hundred metres long. This 'break in the corridor' was the area chosen to test the poles.

Four shelter poles were erected on the Mappas farm in December 2001 (see pictures). The design used old electricity poles as the uprights, with a simple shelter at the top to allow tree-kangaroos to rest once they'd climbed the poles. The shelters were located 5 m off the ground, well above the reach of dogs. Each shelter consisted of four 100 mm treated-pine rounds, bolted to the pole at an angle and bolted at their ends to 100 x 50 mm

rafters. The rafters were covered with shade-mesh to provide some protection from the elements for any tree-kangaroo stranded in the shelter during the day. To help tree-kangaroos negotiate the poles, we roughed up the bottom section of each pole with a chainsaw, added another cross-bar half-way up the pole and draped a length of ship's rope from the shelter to this cross-bar.

Each shelter took about two-thirds of a day for two workers to build. We were forced to do most of the work on the upright poles, as Ergon could only help erect the poles the day after they were delivered to the site. It would have been much quicker and safer to construct the entire shelter on the ground, standing up the shelter once complete (maybe next time). The cost in materials was \$125 per shelter, although the poles and some of the wood were donated to the project.

Will they work? Who knows – but that is the point of the exercise. As the shelters are intended to offer refuge to dispersing tree-kangaroos, especially those being pursued by dogs, use of the shelters is likely to be episodic, at best. We plan to periodically monitor use of the shelters by checking for scratches, scat and other sign.

One function of the poles is to act as a catalyst of discussion and ideas to best help the tree-kangaroos cross hostile open ground.

Whilst the poles are not in a prominent position, they have engendered considerable publicity to date. During their construction, the poles were featured in the *Tablelander* and *Tablelands Advertiser*, the *Cairns Post*, and on *Win TV* news. Ergon will also be featuring the poles in a video newsletter sent to their members throughout Queensland. John Winter is the TKMG's talking head for the video. Ergon have promised TKMG a copy.

### Viewing the poles

You can see the poles from Anderson Road, between house numbers about 40 to 50, if you look into the valley to the south east. A close-up look of the poles can be made only from the Mappas property. Mark has been a bit upset because some people have driven down to the poles without checking with him first. **So please contact Mark first if you wish to visit the poles.** Perhaps TKMG can arrange viewings of the poles when we monitor them for tree-kangaroo activity.

### Concluding thoughts

Building the shelter poles was hard work and they are likely to have a limited life-span, perhaps 5 – 10 years, depending on the vagaries of the weather. While I was perched on a platform 5 m up the poles for three days, I had occasion to consider alternatives to the shelter pole concept. In my mind,



## SHELTER-POLES PROJECT

the simplest alternative would be to use an actual rather than an artificial tree, or better still, a row of trees. It doesn't take long to plant a tree and, once established, trees can be self-maintaining for decades. Sure, trees may not provide shelter for tree-kangaroos for some years, but in most cases that won't matter, as the dispersal of tree-kangaroos in the agricultural landscape is a problem over the longer term. Probably any tree capable of surviving in paddock situation would be suitable, as the tree doesn't have to provide food, only temporary shelter. In my view, though, hoop pine (*Araucaria cunninghamii*) would have to be one of the best options, as it is tap-rooted, doesn't cast a lot of shade and only needs protection from cattle for one or two years. Furthermore, there are many examples of hoop pine, grown as single trees or rows of tree, coexisting with cows in paddocks across the tablelands. Half the work has been done already!

So that's my solution: rows of hoop pine along boundary fences! What are your thoughts? Please write to me at [J.Kanowski@mailbox.gu.edu.au](mailto:J.Kanowski@mailbox.gu.edu.au).

### Acknowledgements

The shelter pole project could not have been done without the kind help of many people and organisations. Significant contributions were made by QPWS Centre for Tropical Restoration, who provided logistical help, skilled labour, materials and tools - thanks to Nigel Tucker,

the filming of her captive female tree-kangaroo; Sue Mathams, who negotiated with landholders; Margit Cianelli, who provided my accommodation for a week and who came to the site on two days with 'Wallace' to help publicise the project; Jon Nott, who lent the pole platforms which made the construction work possible;

the Yoga Centre on Fig Tree Close, who lent us a ladder; and Mark and Peter Mappas, who allowed the shelters to grace the creek flat on their property.

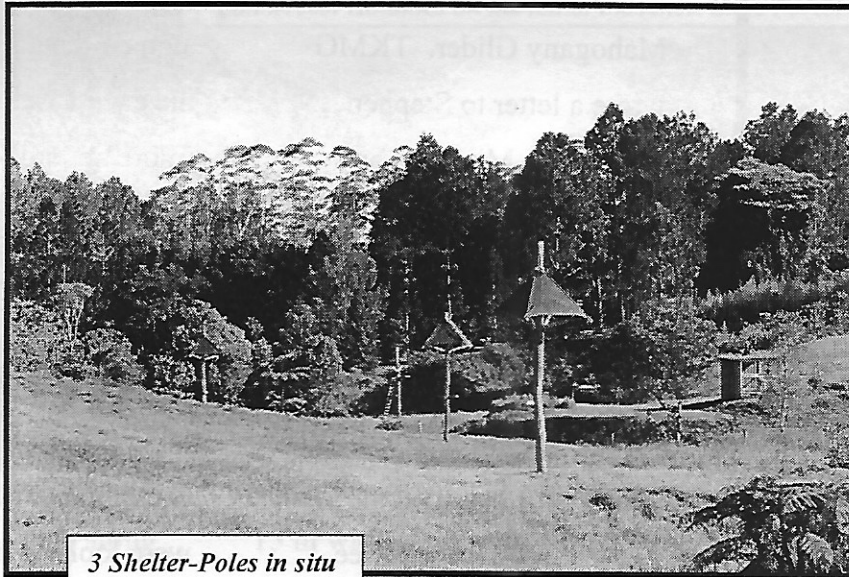
### Further reading

#### Tree-

*Kangaroos on the Atherton Tablelands: Rainforest Fragments as Wildlife Habitat. Information for Shire Councils, Land Managers and the Local Community.* Tree-Kangaroo and Mammal Group Inc., Atherton. 36pp

Kanowski, J., Felderhof, L., Newell, G., Parker, T., Schmidt, C., Wilson, R. and Winter, J.W. (2001)

Community survey of the distribution of Lumholtz's Tree-kangaroo on the Atherton Tablelands, north-east Queensland. *Pacific Conservation Biology* 7, 79-86.



3 Shelter-Poles in situ

Tania Simmons, Peter Dellow, Peter Snodgrass, Phil Anning and Kev Gray. Also TREAT, who run the Anderson Rd Linkage project; the Rainforest CRC, who paid my wage for the week it took to organise and build the shelters; Ergon Energy, who provided and erected the poles; and volunteers (many from TKMG) including Rigel Jensen, who contributed 3 days to building the shelters; John Winter and Lars Kazmeier, who helped with the design and location of the poles; Neil McLaughlan, who came up with a prototype of the shelters; Karen Coombes, who helped with

*Photos by John Kanowski*

## CLEARING IN GLIDER HABITAT

# **Droving Laneways through Mahogany Glider habitat: crisis or opportunity?**

*By John Winter*

The prospect of 40 metre wide droving laneways cleared through Mahogany Glider critical habitat alarmed the TKMG, but what has transpired may provide an opportunity for liaison between landholder and conservationist.

In early August last year I heard about a *Tree Clearing Permit* issued by Department of Natural Resources for a 40 metre-wide, seven kilometre long droving laneway through

critical habitat of the Mahogany Glider. A 40 m-wide clearing is considered too wide for a glider to cross in a single glide and is much wider than the 10 m recommended in the Conservation Plan for the Mahogany Glider. TKMG wrote a letter to Stephen Robertson, Minister for Natural Resources and Mines, asking him to revoke the permit for clearing in Mahogany Glider critical habitat. Soon after sending our letter, I heard on the grape vine that the lessee had already completed the clearing. Nevertheless, we needed to make the minister aware of our grave concerns for the glider, and the minister replied some weeks later to the effect that all reasonable consultation had been undertaken and that the permit would stand.

Subsequently, when Helen and I visited Townsville at the end of August we went looking for this 40 m swathe through the forest.

We had no idea where it was, other than it was on Lannercost Holding which is bisected by the Wallaman Falls Road. At the boundary between the holding and the State Forest we found some clearing along a fence line but not to the extent we had expected (more about that later). Continuing on the road up the steep escarpment we could see over most of Lannercost. Still no obvious clearing. We contemplated that either we were looking in the wrong place completely, or the clearing was not as drastic as feared.

The Environmental Defender's Office of North Queensland had also been made aware of the permit and they were investigating the implications for an endangered species. The office acquired the permit through Freedom of Information legislation and later sent me a copy that shows the proposed location



## CLEARING IN GLIDER HABITAT

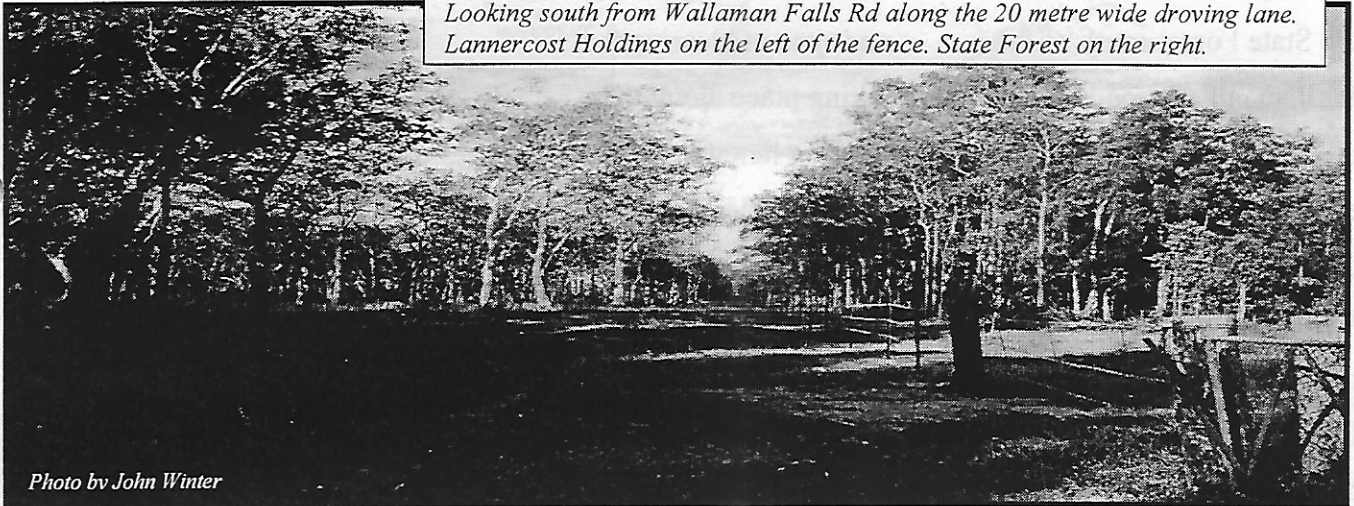
of the laneways. They radiate as three spokes from the point where the Wallaman Falls road crosses the boundary between Lannercost Holding and the State Forest; one to the north for

the undergrowth had been cleared but the canopy trees left standing. More importantly, on the State Forest side was a 30 m wide, lawn-like fire break between the fence and pine plantations. To the south

estimates only and we could see no more than about half a kilometre along the State Forest boundary to the north and south.

Within the past month, March 2002, local Ingham

*Looking south from Wallaman Falls Rd along the 20 metre wide droving lane. Lannercost Holdings on the left of the fence. State Forest on the right.*



*Photo by John Winter*

about 3 km, one to the south for about 1.5 km, both along the State Forest boundary, and one to the east for about 1.5 km on the north side of the Wallaman Falls road.

This is exactly where Helen and I had stopped to look at the clearing that had taken place and not been overly concerned with what we saw.

To the north on the Lannercost side of the fence was a five metre wide clearing along the fence line then a further 5-10 m where

along the fence line was a 15 m wide cleared swathe on the Lannercost side and a 5 m one on the State Forest side resulting in a 20 m wide gap through the eucalypt woodland which occurred along both sides of the fence. To the east along the main road, understorey vegetation - but no canopy trees - appeared to have been cleared for width of about 10 m on the Lannercost side of the fence. The road and its verges are about 25 m wide. All these measurements are

residents have noted more clearing activity along these laneways. However, it seems the clearing is of undergrowth only and the canopy trees have been untouched.

How serious then is this clearing on Lannercost Holding for the gliders? The greatest barriers to glider movement are the Wallaman Falls road and the wide firebreak within the State Forest. The Lannercost clearing does increase the width of these

## CLEARING IN GLIDER HABITAT

two barriers but without any additional impact to the gliders, particularly as canopy trees are left in the droving laneways. The greatest potential barrier to the movement of the gliders is along the boundary with the State Forest south of the Wallaman Falls road where there is no existing road and eucalypt woodland occurs on both sides of the fence. Whilst the 20 metre wide break in the forest along the fence line is approaching the limit of a glider's ability to cross it, there may be sufficient overhanging tree canopies to substantially reduce the width of the gap. Here the greatest danger to

the gliders is becoming snagged by the barbed-wire fence.

### What now?

First, we need to keep up to date on the width, length and type of clearing that is taking place along the droving laneways as the permit to clear is current until 22 July 2003. This can be done by driving the Wallaman Falls road and by walking the fence lines on the State Forest side - a permit to traverse is required if you wish to drive along the State Forest roads. If anyone is able to do this please contact me. Clearing

to the full 40 metres along the State Forest boundary to the south of the Wallaman Falls road could lead to a crisis for the glider.

Secondly, the lessee appears to be acting responsibly with regard to the glider by not clearing the full 40 metres allowable and by leaving canopy trees along the droving laneways. The opportunity is that TKMG can contact the lessee to let them know that we appreciate the restraint they have exercised in the extent of clearing and encourage them to maintain this attitude to the forest in their care.

See page 7 for the DNR&M map of the droving lane on Lannercost Holding

### Photographic Register Library on the TKMG website

Are you willing to donate photos of mammals to our web site with acknowledgement and/or register your name and contact details on the web site if you wish to be contacted privately to sell photos?

Please contact Larry Crook on  
4096 8423

E-mail: [larryec@austarnet.com.au](mailto:larryec@austarnet.com.au)

### TKMG Inc.

(ABN 66 316 466 220)

### Membership / Renewal

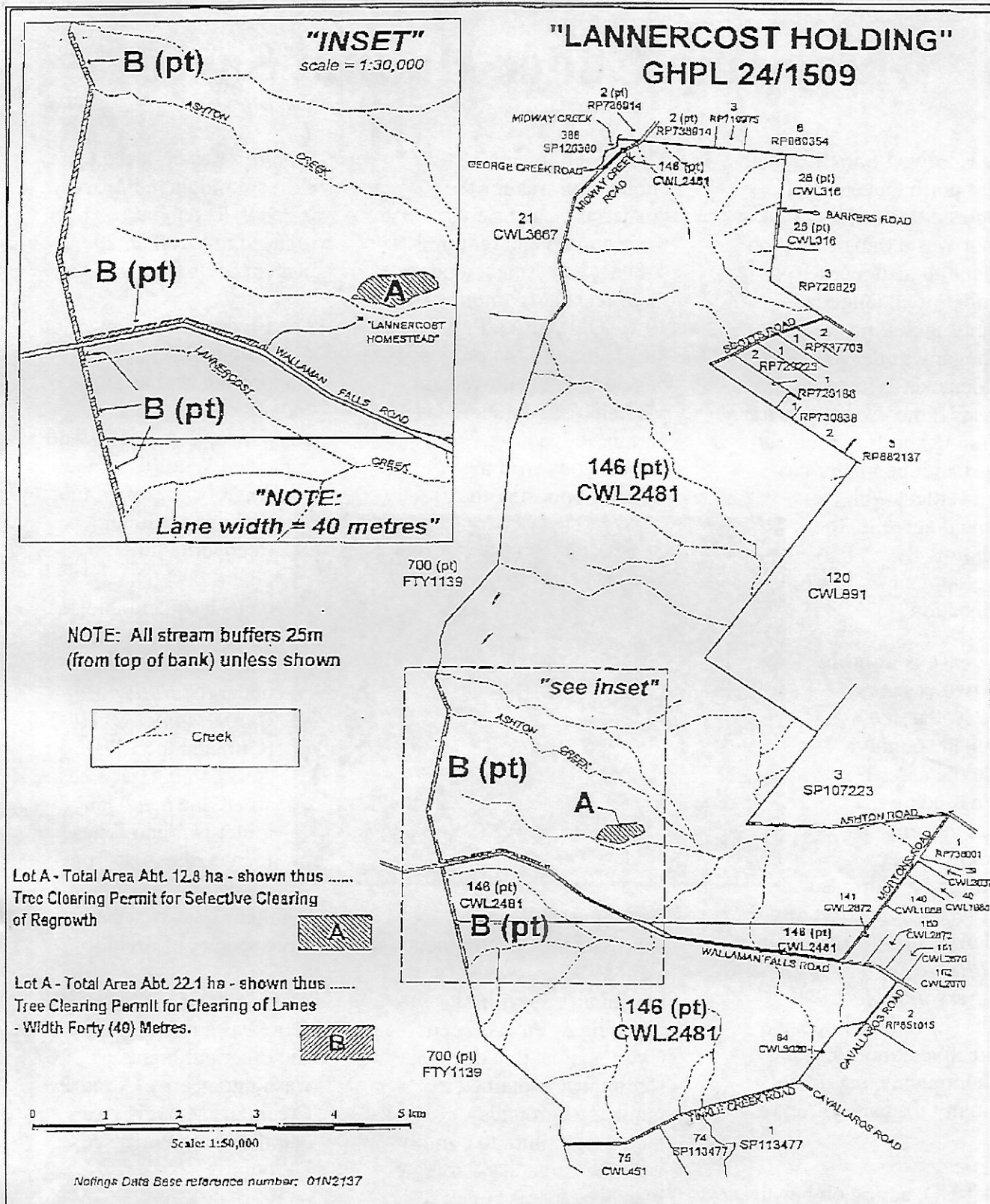
Subscription is \$11 (incl. GST) per year per couple or single (\$11 = one vote) and is due June 30.

Cheques to be made out to Tree Kangaroo and Mammal Group Inc.

Mail with name and address to  
TKMG, PO Box 1409, ATHERTON  
4883



# CLEARING IN GLIDER HABITAT



**Queensland  
Government**  
Natural Resources  
and Mines

Prepared by the Vegetation Management Group  
Townsville

## Plan of Lots A & B

TREE CLEARING PERMIT:  
For 40 Metre Wide Laneway  
over part of Lot 146 on CWL2481

PARISH OF LANNERCOST  
COUNTY OF CARDWELL  
LOCALITY OF LANNERCOST

NORTH REGION  
TOWNSVILLE DISTRICT  
LOCAL GOVERNMENT: HINCHINBROOK

Map reference: 8060-11213  
File reference: TAS2001/2560

Compiled from: DCDB & diagram on File  
Prepared by: G.P.Nelson-Willis Date: 06/08/2001



NORTH

AP5690

## MAMMALS AND THE LAW

# Mahogany Glider Habitat Saved

By Matt Patterson, Solicitor, Environmental Defenders Organisation -NQ

The Cardwell Shire Council in far north Queensland proposed the building of a minor waste transfer station on land that supports a number of endangered species including the mahogany glider. Local resident Ms Wieruszewski appealed the proposal in the Planning and Environment Court and the matter has been settled, with the Council agreeing to withdraw its development application.

### The case is notable for two reasons;

Firstly, that the Council sought to have the appeal dismissed on the basis that an objection was incorrectly addressed and secondly the use of the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC) to impose protective conditions on developments that do not formally trigger the Act.

### Facts:

EDO-NQ, acting on behalf of the appellant, Ms Wieruszewski, filed an appeal in December 2000 against Council's decision to approve its own development application to build a waste transfer station on land opposite her property near Euramo.

The development application was for the "material change of use" of the premises and required "impact assessment" under the *Integrated Planning Act 1997* (Qld) (IPA). Public notification of the proposed development followed and Ms Wieruszewski and her partner lodged two submissions with the Council opposing the



development. Council approved the development and Ms Wieruszewski lodged an appeal in the Planning & Environment Court against that decision. Her appeal contained a number of grounds including failure to comply with the Council's Strategic Plan. The site is zoned agricultural and is surrounded by many cleared grazing and agricultural properties. It therefore forms part of an important wildlife corridor and is habitat for the endangered mahogany glider. The mahogany glider (*Petaurus*

*gracilis*) was believed to be extinct until its rediscovery in 1989. Its habitat has been reduced to less than 20 percent of its former size.

The Environment Protection Authority (EPA) has mapped the land as an endangered regional ecosystem, and Queensland Parks and Wildlife Service had recently published the

Mahogany Glider Recovery Plan 2000-2004. The recovery plan indicates that a number of species listed as endangered under the *Nature Conservation Act 1992* (Qld) and the EPBC Act, also inhabit areas where the mahogany glider is found. These include the mist-frog, waterfall frog, the

Southern Cassowary and three species of orchid.

As the site was flood-prone there was a risk that litter and other pollutants would wash into nearby Corduroy Creek, the Murray River and the Great Barrier Reef Lagoon.

### Application to Dismiss

In the course of the proceedings, Council's solicitors filed an application to have the appeal dismissed on the limited ground that the appellant had no right of appeal under the IPA



## MAMMALS AND THE LAW

because the resident's submission was not properly made. The basis for that contention was that the appellant and her partner had not correctly put their address on their letter to Council outlining their objections to the proposed development.

### Held:

In a written judgment delivered on 24 May 2001, His Honour Judge White noted that the appellant did not receive a postal service and collected her mail from Euramo Post Office. He rejected Council's argument, stating:

"I have no doubt that any servant of the Cardwell Shire Council with reasonable knowledge of the local authority area would have no difficulty in locating the appellant's property for the purposes of delivering a notice."

The application was dismissed and the Council ordered to pay the resident's costs.

### EPBC Act:

During the course of proceedings, and following requests from EDO-NQ, the respondent referred the development proposal to

Environment Australia pursuant to s68 of the EPBC Act, for the Commonwealth Minister's decision on whether the proposal was a "controlled action" or not. Following submissions, the Minister published his decision on 10 July 2001 that the action was not controlled and approval under the federal scheme was not required. That is, the action was not going to have a significant impact on listed threatened species.

In making its decision however, the Commonwealth stated that the action would not be controlled provided it was taken in a certain manner. The manner in which the proposed action would have to be taken was:

- 90% of the site would not be developed [as per the proposal]; and
- That Council must seek to ensure conservation and protection from future development of the remaining 90% through a covenant under the *Land Title Act* 1994 (Qld).

On one view, failure to comply with these conditions would assist in

proving an offence under the EPBC Act, that is a breach was an action that has or will have a "significant impact" on a listed threatened species under the EPBC Act. There is no universal test for what constitutes a "significant impact" and much would presumably turn upon the facts of each case. It is hoped that the judgment of Her Honour Justice Branson in the Federal Court Flying Fox case [Booth v Bosworth & Anor] will provide some judicial guidance on the meaning of "significant impact". (See Sept. 2001 *Mammal Mail*)

### Comment

The Court's decision on the interlocutory application is important in protecting rural and remote residents' appeal rights in planning decisions under IPA. The Judge took a commonsense approach to the matter in ruling that it was within a local government's capacity to take positive steps to locate residents. Furthermore, the case demonstrates that the EPBC Act can be used to impose protective conditions upon land use even when an action is not declared "controlled".

Reprinted from *Environmental Defenders News* October 2001. To receive this newsletter phone (07) 4031 4766 Cairns or (07) 3210 0275 Brisbane.

Quoll, Tree-kangaroo and Platypus Polo & T-shirts are available  
at TKMG meetings in white, beige or grey. Sizes S,M,L,XL  
Polo shirts \$27.50 T-shirts \$22

## MAHOGANY GLIDER RECOVERY PLAN 2000-2004

### ■ **Current conservation status**

The mahogany glider is one of Australia's most threatened mammals. The species is classified as endangered under the Queensland Nature Conservation Act 1992 and the Commonwealth Environment Protection and Biodiversity Conservation Act 1999. Its geographic range is limited to the area between Crystal Creek and the Hull River in the Wet Tropics biogeographical region in north Queensland, a north to south distance of 110km and an area of about 720sq.km. Suitable habitat is severely fragmented, and has been reduced to almost 20 percent of its original extent and is at risk of further clearing. The population is estimated to have decreased in range and abundance by up to 80 percent over the last 50 years, based on loss of habitat (Van Dyck 1993). At the time of preparation of this plan, about 20 percent of the species' remaining habitat occur within protected areas. Long-term survival in the wild therefore requires a broad-based approach to habitat protection outside national parks and declared critical habitat areas. A population viability analysis suggests that a minimum area of 8000ha containing 800 individuals is required

for a population to be viable in the long term (Jackson 1999a). Areas that are smaller than this and that have smaller and isolated populations have a lower chance of long-term survival unless habitats are linked and populations dispersed between fragments. Therefore, it is important that as much habitat as possible is retained by landholders, and connecting corridors between small isolated habitats are enhanced. This will assist the creation of sustainable populations. While the recovery team has recommended that a minimum of 3-4 populations be managed for the long-term viability, it also recognises the inherent difficulties associated with the identification of viable populations for protection. Long-term survival requires a co-operative community-based recovery program to augment areas protected under the Nature Conservation Act 1992 and limit further habitat loss and fragmentation. Since the species' rediscovery in 1989, its taxonomy, ecology, distribution, population densities, habits and conservation status have been studied. In 1995, expansion of the cane industry into mahogany glider habitat resulted in the State Government issuing Interim Conservation

Orders over areas under threat from land clearing. In the same year, the joint Commonwealth-State Sugar Coast Environmental Rescue Package (SCERP) was negotiated, and a draft mahogany glider conservation plan and management program released for public comment (Queensland Department of Environment and Heritage 1995). Acquisition of significant areas of mahogany glider habitat has occurred since.

### ■ **Estimated cost of recovery**

The total estimated cost is approximately \$1 million. These funds may be supplemented by in-kind contributions from QPWS, DNR&M, landholders and others.

### ■ **Biodiversity benefits**

The conservation of the mahogany glider is an important national, state and regional priority. It also focuses attention on a range of other regional conservation and land use issues. The protection of mahogany glider habitat will help protect ecological communities of conservation concern, such as coastal lowland forests situated in a highly disturbed region of the Queensland coast.

Reprinted from the *Mahogany glider recovery plan 2000-2004*, which was prepared by members of the mahogany glider recovery team and staff of the Queensland Parks and Wildlife Service. A copy of the complete plan may be obtained from the QNPWS.



## TKMG CASE STUDIES PROJECT

### Field Day Focuses on Tablelands Nature Tourism

A field day for landholders interested in nature tourism was held at Yungaburra on Sunday November 11 and attracted over 35 people.

The field day was jointly organised by the Tree Kangaroo and Mammal Group and the Land for Wildlife program, which are both funded by the Federal Government's Natural Heritage Trust.

Participants visited two nature tourism businesses, Mt Quincan Crater Retreat at Pearamon and Jungle Farm on Peterson Creek at Yungaburra. The property visits provided the opportunity to meet the landholders involved in nature tourism and listen to talks on wildlife and habitat by local experts.

Both properties are currently participating in a case studies project with the Tree Kangaroo and Mammal Group, which aims to showcase what some landholders are doing

to enhance wildlife habitat. Although these two properties each contain only a few hectares of remnant rainforest they are important for local wildlife, both as habitat and to aid movement of animals (such as Lumholtz's tree-kangaroo) between larger remnants.



Kerry & Barb Kehoe receive their Land for Wildlife sign from Cr Ray Byrnes Photo by Sue Mathams

Landholders Kerry & Barb Kehoe (Mt Quincan Crater Retreat) and Raffi Shlomi (Jungle Farm) have recently joined the Land for Wildlife program, which provides signage and information for private landholders who manage areas of their property as wildlife habitat. At the field day Eacham

Shire Councillor Ray Byrnes presented the Kehoe's with their Land for Wildlife sign.

Land for Wildlife has the support of Tablelands councils and other local authorities in north Queensland. More than 120

properties are currently registered with the program in the region, including other nature-based tourism enterprises such as Lotus Bird Lodge (Cook Shire), Fur 'n' Feathers (Eacham Shire), Kingfisher Park Birdwatchers' Lodge (Mareeba Shire) and Daintree Eco-Lodge (Douglas Shire).

Councillor Ray Byrnes said "The field day provided a good opportunity for landholders to meet and discuss how to combine biodiversity with business. It was also a good example of co-operation between different projects with the Tree Kangaroo and Mammal Group and Land for Wildlife joining forces to organise the day."

**Reasons for attending Field Day:** To see a tree kangaroo (30% responded YES to this question), To visit other properties (55%), To meet other landholders (45%), To learn about wildlife and habitats (75%), To find out more about nature tourism (60%).

**What did you like best?** Visiting properties (72% responded YES to this question), Meeting other landholders (40%), Talks on wildlife and habitat (85%).

**Would you consider changing the way you managed your land?** 48% said Yes while 20% said they were already managing well. 32% said either they weren't sure or No.

## LOCAL GOVERNMENT BIODIVERSITY PLANNING

### Eacham to Assess Natural Assets

The Eacham Shire Council has been successful in obtaining funding from Environment Australia's Natural Heritage Trust to carry out an assessment of the shire's natural assets.

The Shire Council has appointed local Topaz based botanist Kylie Freebody to manage the project, officially titled *Eacham Shire's Strategic Planning of Natural Assets For Sustainable Management*

"The assessment will assist in making planning decisions that will help manage the local environs in a sustainable way and help to conserve biodiversity," said Ms Freebody.

"Approximately 60% of the shires natural vegetation has been cleared with the remaining vegetation occurring outside of the World Heritage Area on freehold land and is highly fragmented".

Many of these vegetation fragments are classified as 'endangered' (less than 10% of its original extent exists) or 'of concern' (between 10% & 30% of its original extent exists).

"These fragments are valuable natural assets because they contain rare and threatened plants and provide habitat for important local fauna such as the Tree Kangaroo, Spotted Quoll and Cassowaries," Ms Freebody said.

"These fragments also occur in the upper catchments of two economically important rivers, the Johnstone and Barron, providing

river bank stabilisation and protection from soil erosion. These rivers support considerable areas of highly productive land in the shire".

This project aims to identify vegetation areas that are important for biodiversity, conservation, waterway protection and tourism. Ms Freebody will also provide management recommendations to assist with the long-term preservation of the shire's natural assets. At present the Eacham Shire Council does not have any natural resource information in a format that will assist them to preserve those aspects of the shire that make it so attractive (eg. natural areas and wildlife for tourism, highly productive dairy land) to both locals and tourists. This project will incorporate vegetation mapping and other natural resource information into a Geographical Information System (GIS) digital database for easy accessibility.

#### **Next TKMG meeting**

**7.30pm Thursday June 6**

**Malanda Hotel Ballroom-Guest speaker**

**All are warmly welcome!**

**The next business meeting will be held at the same venue on Thursday May 2**

**Contact John on 4097 6503 for details**



# ENVIRONMENTAL LAW IN THE PUBLIC INTEREST

## The Value of Strategic Litigation

By Elisa Nichols, Solicitor, EDO (Qld)

The success of a public interest litigation cannot, must not, be judged purely on the basis of what the ruling says. The process may be as important as (if not more important than) the outcome.'

*Michael Ochieng Odhiambo, Resources Conflict Institute (RECONCILE), Nakuru, Kenya*

Queensland has a broad and complex environmental legal system that continues to rapidly evolve, absorbing the growing body of scientific evidence of environmental damage and Australia's increasing international environmental obligations. Despite the increasing legal regulation of the environment, government is often criticised for failing to enforce existing legislation. The question is then what role does the law have in protecting the environment if the government, for whatever reason, is failing to take action under its legislation?

Where the public have rights of standing, strategic litigation in the public interest can have a measurable effect on achieving good conservation outcomes. These outcomes highlight the benefit of increased participation by the community in the protection of the environment through legal means. The effect is felt not only through the results of any action but through the process of litigation and the surrounding campaign.

The Federal Court case of *Booth v Bosworth* (otherwise known as the *Flying Fox* case) is a good illustration of good outcomes that have been achieved through the process of litigation independent of the ultimate result in court.



### The Evidence

(The facts of this case were more fully described in the September 2001 *Mammal Mail*).

Evidence gathered by Dr Carol Booth indicated that on one 60ha lychee orchard at Kennedy in far north Queensland, 10,000-30,000 spectacled flying foxes (SFFs) per year were being electrocuted on 14 electrical grids with a total length of 6.4km in order to protect a lychee crop. This number was considered to be an underestimate as it only included animals whose bodies remained on the wires. Animals that had fallen from the wires or who had flown away to die elsewhere and babies who died without their mothers were not counted.

The SFF is protected as common wildlife under the Qld Nature Conservation Act 1992. This is despite count evidence that the SFF has declined in number from 800,000-1 million 15-20 years ago to around 80,000 in November 2000. The decline over this period can be attributed to a number of factors including habitat loss, tick paralysis and pest control in orchards. This classification means that in order to legally 'take' the species, a damage mitigation permit must first be obtained from Queensland Parks and Wildlife Service (QPWS). As Mr Bosworth did not have a permit, QPWS issued a retrospective permit to kill 500 SFFs by use of the electric grids and shooting. Subsequent

information provided by Dr Booth and NQ Conservation Council that the permitted numbers were being grossly exceeded was ignored.

Approaches were also made to Environment Australia, the Federal environmental agency. The SFF lives only in or around rainforests in far north Queensland, 90% of which are included in the Wet Tropics World Heritage Area (WTWHA). As a seed disperser, the SFF is vital in maintaining the ecological functioning of the WTWHA as well as having intrinsic value as part of the biodiversity of the area. The Environment Protection and Biodiversity Conservation Act 1999 (Cth) (EPBC Act) makes it an offence (both civil and criminal) to take an action that has, will have or is likely to have a significant impact on the world heritage values of a declared World Heritage Area without approval from the Commonwealth Minister for the Environment. Dr Booth considered that the action of killing between 10,000 and 30,000 SFFs per year, given the context that it is a species in decline with only approximately 80,000 remaining, constituted a significant impact on the WTWHA. The response of Environment Australia, however, was to request further information.

### The Legal Options

In the face of short-term inaction at both a State and Federal level, Dr Booth sought legal advice as to the options available to her to put an end to the killing. A major obstacle to legal proceedings was Dr Booth's standing to sue. The obvious target for challenge was the damage mitigation permit issued under the Nature Conservation Regulation 1994. As a concerned conservationist, however, Dr Booth did not have standing to challenge the permit, either in the manner for which the regulations provide or by judicial review. The Nature Conservation Act and Regs provide rights only for the government and for permit applicants. As a result, in the face of government inaction or inappropriate govt action, no means is provided for the community to act as a watchdog or to take proceedings themselves. As the Act does not provide for any means of public involvement, it effectively locks out the community from participation in the Act or assistance in its enforcement.

The other applicable Qld legislation is the Environmental Protection Act 1994. This Act makes it an offence to unlawfully cause serious or material environmental harm. Arguably, the scale of Mr Bosworth's actions could fall within one of these categories as 'environment' is broadly defined and includes wildlife. Standing provisions for third parties are provided in this legislation in s.505 to take a restraining order. The person seeking leave from the

## ENVIRONMENTAL LAW IN THE PUBLIC INTEREST

court must provide a significant amount of evidence in support of their application as well as taking the step of having requested the Minister to take action and allowing reasonable time for that action to be taken. In terms of urgent matters, as matters where conservationists get involved often are, this requirement is a significant hold up in getting a matter to court. In this case, the relevant request was sent and a response which stated only that the matter was being investigated was received some two months later. A final response has not yet been received. Accordingly, this option was not viable.

### The Federal legislation

The EPBC Act has taken a more modern approach to standing in environmental matters. Section 475 allows the federal Minister for the Environment or an interested person to make an application for an injunction to the Federal Court where a person has engaged, engages or proposes to engage in conduct that constitutes an offence or other contravention of the Act.

An interested person is defined in subs.(6) as being an Australian citizen or resident whose interests are or would be affected by the conduct, or an individual who has engaged in a series of activities for protection or conservation of, or research into, the environment at any time in the 2 yrs immediately before the conduct or, if the conduct is proposed, the making of an application for an injunction. Accordingly, conservationists are given special standing rights under the EPBC Act.

This definition is an important step forward in terms of environmental litigation by conservationists. While a test is still imposed, it is minimal and easily satisfied with brief affidavit evidence. Further it is not subject to the leave of the court, removing the necessity for a hearing in relation to standing. While open standing provisions are desirable in environmental legislation, it is a positive step to include standing provisions that provide little in the way of a bar to conservationists taking action when necessary.

Accordingly, purely from a practical perspective, an action under the Cth legislation was the only real alternative due to the relaxed standing provision and the ability to bring urgent proceedings. Strategically, such an action was also valuable as it presented the opportunity to test the new Cth legislation and establish precedent.

### The interim action

Given the ongoing nature of killing in November 2000, it was decided to make an application for an urgent interim injunction. This application was heard in the Federal Court before Justice Spender. While clearly concerned by the scale of the respondent's actions and the impact on World Heritage values, His Honour declined to grant the injunction principally due to the short time remaining in the lychee season. While the Damage Mitigation permit was dated until the end of

January 2001, the respondent testified that he intended to use the grids for only 10 more days.

### The full trial

The full trial was heard before Justice Branson on 18-20 July 2001. The applicant, Dr Booth sought a prohibitory injunction restraining the respondents from causing, procuring or allowing the death or injury, whether by electrocution, shooting or otherwise of flying foxes on or about the respondents' property; and an order that the respondents and/or their agents dismantle any construction or device on the respondent's property used for killing flying foxes by electrocution. (Her Honour granted an injunction. See Sept. 2001 *Mammal Mail*).

While the Federal Court litigation was proceeding, an important adjunct was the campaign to list the SFF as endangered and to ban the use of electric grids. Dr Booth considered that the use of the grids were both unsustainable and inhumane in accordance with the requirements of the Nature Conservation Regulation as well as being almost impossible to police on the ground by QPWS rangers. Accordingly, a detailed submission to the Qld Environment Minister was prepared outlining the need to ban the use of electric grids. Meetings were also arranged with the Minister and advisors to discuss the issues.

The result of the campaign was that the Minister announced in Parliament that no more damage mitigation permits were to be issued for electrical grids. The reason cited was that the Minister had taken advice from the RSPCA to show that the use of the grids were inhumane. The Minister also advised that his Department was looking at methods to assist farmers in employing non-lethal crop protection methods in their orchards and a trial of these methods has been announced for the upcoming season. The effective result is that the respondent will not be able to operate his grids legally. Accordingly the battle has been won by policy change to protect flying foxes from large-scale slaughter in the name of crop protection.

Similarly, pleas to the Federal Minister for the Environment have resulted in detailed investigations into the conservation status of the SFF. The result is that the Threatened Species Advisory Committee have recommended to the Minister that the SFF be listed as vulnerable under the EPBC Act. The Minister has made a decision to list which is now awaiting gazettal. Given that the vast majority of the SFF range is contained within Qld, it is hoped that Qld will follow suit by listing the SFF under the Nature Conservation Act. This will increase protection for the species as no damage mitigation permits for lethal methods will be able to be issued under the regulations except under a conservation plan.

How has the litigation contributed to this outcome? The achievements of the campaign at a policy level would not have occurred so quickly without the





## ENVIRONMENTAL LAW IN THE PUBLIC INTEREST

simultaneous running of the Federal Court litigation. This is for a number of reasons:

Firstly, the case generated media attention. It was seen as a 'greenies V. farmer' battle and therefore had the potential for spark. The case was looked at as infringing upon the rights of farmers to protect their crops. This is an oversimplification of the case as the vast majority of farmers using electric grids will be unaffected should the Applicant win at trial given that their operations mostly do not target SFFs near the WWHA and therefore do not have the potential to impact upon world heritage values. However, the media attention and obvious concern of conservationists and farmers forced the government to take action on the issue prior to the next growing season.

Secondly, the need to obtain affidavit evidence in accordance with the court timeline meant that a number of detailed scientific documents were produced for the case. This body of detailed evidence, as well as being used for court proceedings was available to support Dr Booth's campaign in relation to the effect of the use of electric grids and the need for listing of the species.

Thirdly, the quality of the evidence and the legitimacy which the presentation in court gave it, was such that it gave the government little option but to take action. This was bolstered by the fact that it was widely

perceived as being an issue for which the government had responsibility.

Finally, the court action also gave the operation of the EPBC Act more prominence among the industry sector. The full extent of the operation of the provisions of the new legislation had not been entirely perceived by industry. Over the first year of operation, the number of projects being referred to the Commonwealth for approval has increased. This case, as the first case under the Act, has assisted in spreading the awareness of the new legislation and its requirements.

### Summary

The contribution strategic litigation has made to the effectiveness of an environmental campaign is evident. The success of the campaign prior to judgment indicates the value of third party standing provisions. Further, litigation can assist in the gathering of evidence for a campaign, increasing pressure on government and forcing a result in a shorter period of time. This can only have a positive effect on environmental protection. In addition, as this is a test case of the new Cth environmental legislation, it can be expected that valuable precedent will be obtained regardless of the outcome. Strategic litigation should be considered another item to add to the environmentalist's toolbox.

Reprinted from *Environmental Defenders News* October 2001

## Do Tree kangaroos live south of the Herbert River Gorge?

A couple camped at Wallaman Falls National Park was convinced they saw a tree kangaroo in the camping ground. Chris and Megan Bool of Carbrook, Qld, told John Winter they saw the tree-roo on 18 September 2001.

"We saw it in the early morning at dawn, about 5.30 am three quarters of the way up a tree and in the fork of the branch.", Chris told John, continuing. "It was still there when we left at 10 am. It was much larger than a possum, definitely not a possum. We are familiar with ringtails brushtails in SE Qld. It was about the size of a pouffe (foot rest). Its head, a thick head, was tucked between its front feet and its tail was wrapped round in front. Its tail was bushy like a bottlebrush and as thick as a fist. It had very short ears, a very light tan colour round and down the side of the face and a dark greyish face."

John passed the information onto Dave Green, QPWS ranger in charge of Lumholtz National Park who, despite several visits to the Park, has not seen the animal so far.

To date this is the only record we have of a tree kangaroo south of the Herbert River Gorge. However the record does need corroborating. So if anyone is visiting the Wallaman Falls area, keep your TK antennae up and come back with photographs, scats or fur for John. John's contact details are on the back page.

**Have you seen any tree kangaroo road kills near Malanda Falls or on Topaz Road? If so, please contact Paul English on 4096 5909 or 4095 1331 A/H**



***In this issue:***

- Shelter-Pole Project
- Droving lanes thru Mahogany glider habitat
- Glider habitat saved
- Glider Recovery Plan
- Eacham Shire Biodiversity Assessment
- TKMG Field Day
- Environmental law and you
- Plant ID workshops

*Photo by Steve Parish*



## Mammal Mail

**April 2002**

**Newsletter of the Tree Kangaroo and Mammal Group**

PO Box 1409, Atherton, Q, 4883



Lumholtz's  
TREE-KANGAROO

*Drawing by W. Cooper*

**Please post to:**

## ***Tree Kangaroo and Mammal Group Inc (TKMG)***

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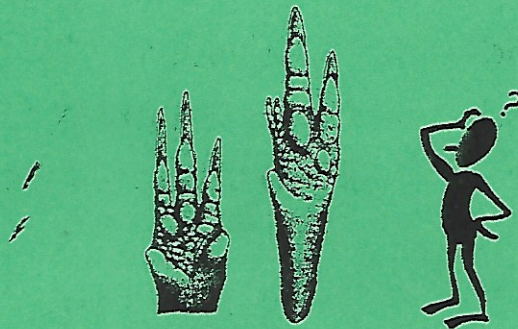


# HERE'S THE GOOD NEWS !

TKMG Case Study Project Continuing Until  
December 2002.....VOLUNTEERS NEEDED

Here is a  
*Great Opportunity....*

- ☺ to be involved in an important and exciting environmental study
- ☺ for personal development while learning new stuff and having fun

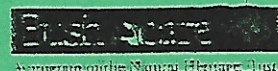


*You Can Help With...*

- Tree Planting
- Photography
- Co-ordination
- TK Workshop/Surveys



Contact Sue Mathams  
Phone 4095 1424  
Email [matlat@bigpond.com](mailto:matlat@bigpond.com)





# Plant ID anyone?

Greening Australia are currently developing some Bushcare plant identification workshops for 2002



If you are interested in any of the following workshops please let us know by completing this form or giving us a call.

**(All Bushcare workshops are free)**

(please tick any workshops you are interested in)

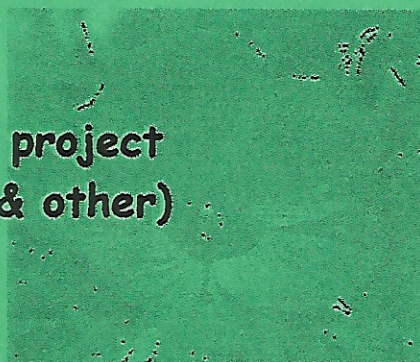
- ☐ Introduction to Eucalypt ID (Herberton area)
- ☐ Introduction to Heath plant ID (Herberton area)
- ☐ Weed ID & control techniques

Other possible workshops include:

- ☐ Fauna & habitat requirements
- ☐ Monitoring & Evaluation of your project
- ☐ Plant identification (Rainforest & other)

Your preferred times for workshops:

- ☐ Half day      ☐ Full day



Your contact details (for finalised workshop details)

Name:.....

Address:.....

Phone:..... Email:.....

Please return form or contact us by 30 April (Post/Fax/Email/Phone)

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**Bushcare**