



Australian Government

Department of the Environment and Energy

DECISION TO DEEM REFERRAL

Clearing of Vegetation at Kingvale Station Lot 1 on Survey Plan 280074 in Queensland, and related activities

EPBC 2016/7751

This decision is made under section 70(3) of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Proposed action

person proposing to take the action	Mr Scott Harris c/o Mr David Kempton PO Box 732 EDGE HILL QLD 4870
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ABN	NA
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proposed action	The clearing of vegetation at Kingvale Station (Lot 1 on Survey Plan 280074, Queensland) as described in the development permit issued to Mr Scott Alexander Harris on 16 April 2014 by the Queensland Department of State Development, Infrastructure and Planning, to the extent that it occurs in the areas identified as A3, A4 or A5 of the map (see Attachment 1), the subsequent use of that cleared land for the production of sorghum, and intensification of cattle grazing
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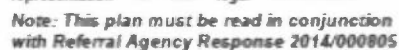
Pursuant to section 70(3) of the EPBC Act, I hereby determine that the EPBC Act has effect as if the person proposing to take the action had referred that proposed action to me under section 68(1) of the EPBC Act, on the basis of my findings at Attachment 2.

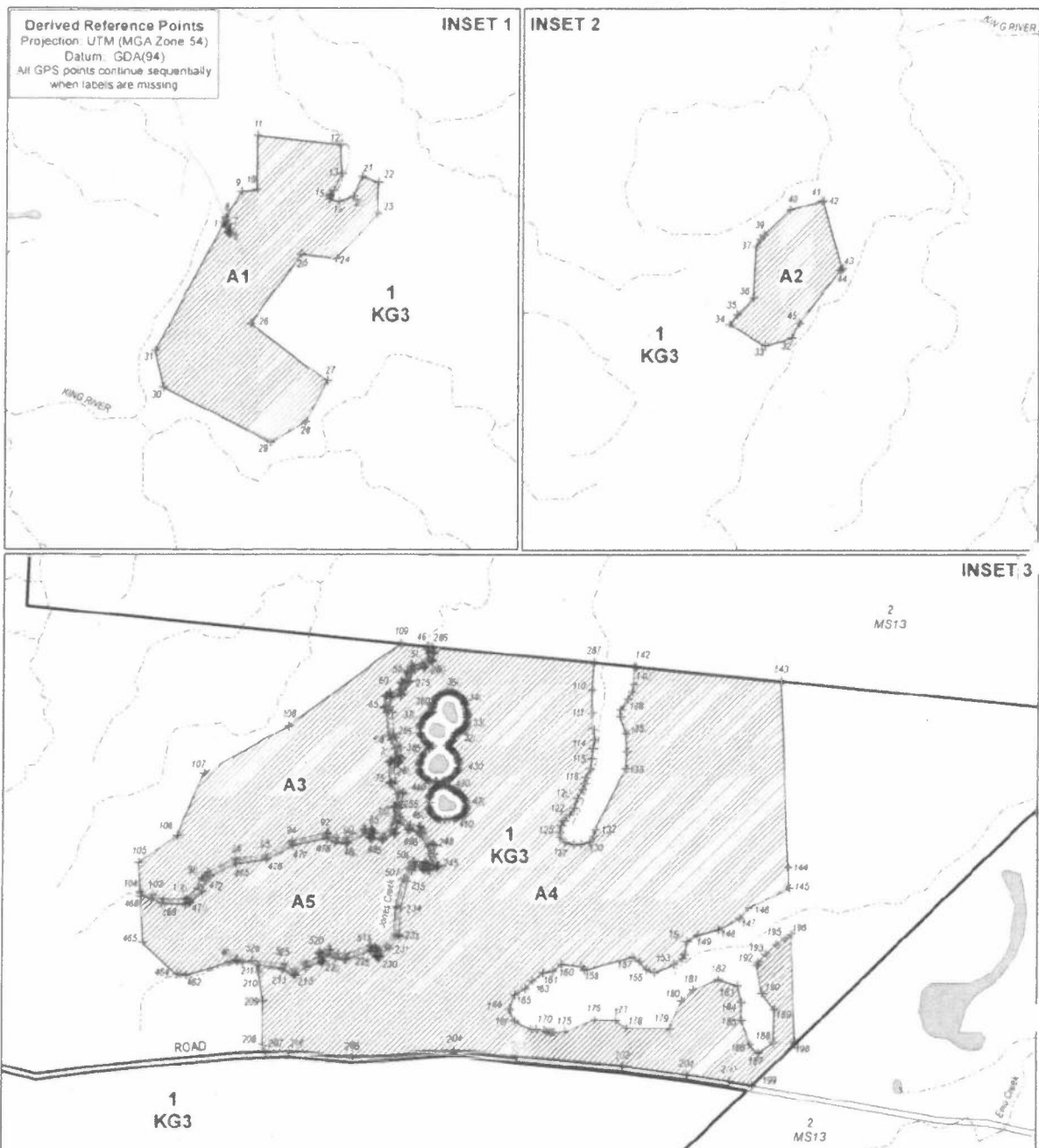
Decision-maker



name and position	Dean Knudson Deputy Secretary Department of the Environment and Energy In his position as delegate to the Minister of the Environment and Energy
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signature	
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date of decision	8-8-16
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19621009



<p>LEGEND</p> <ul style="list-style-type: none"> • Derived Reference Points for GPS □ Subject Lot(s) ▨ Area A ~ Watercourse ■ Wetlands □ Non Remnant RE 	<p align="center">Referral Agency Response (Vegetation) Plan</p> <p align="center">Plan of Area A (Parts A1 - A5) in Lot 1 on KG3</p> <table border="1"> <tr> <td>CENTRE: TOWNSVILLE LOCALITY OF LAURA</td> <td>REGION: NORTH LOCAL GOVT: COOK SHIRE</td> </tr> <tr> <td>Map Reference: 7566,7666,7766</td> <td>Compiled from: DCDB, PVMP & VMO Notes</td> </tr> <tr> <td>File Reference: 2014/000805</td> <td>Prepared by: EMR Date: 3 March 2014</td> </tr> </table>	CENTRE: TOWNSVILLE LOCALITY OF LAURA	REGION: NORTH LOCAL GOVT: COOK SHIRE	Map Reference: 7566,7666,7766	Compiled from: DCDB, PVMP & VMO Notes	File Reference: 2014/000805	Prepared by: EMR Date: 3 March 2014	<p align="center">   RARP 2014/000805 Sheet 2 of 3 </p>
CENTRE: TOWNSVILLE LOCALITY OF LAURA	REGION: NORTH LOCAL GOVT: COOK SHIRE							
Map Reference: 7566,7666,7766	Compiled from: DCDB, PVMP & VMO Notes							
File Reference: 2014/000805	Prepared by: EMR Date: 3 March 2014							

Derived Reference Points
Projection: UTM (MGA Zone 54)
Datum: GDA(94)
All GPS points continue sequentially
when labels are missing

Point	Parcel	Easting	Northing	Point	Parcel	Easting	Northing	Point	Parcel	Easting	Northing	Point	Parcel	Easting	Northing	Point	Parcel	Easting	Northing	Point	Parcel	Easting	Northing
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2	A1	794292	8258373	90	A3	804632	8277486	178	A4	807566	8275505	266	A4	805127	8278564	354	A4	805626	8278993	442	A4	805530	8277980
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4	A1	794330	8258204	92	A3	804444	8277540	180	A4	808145	8275579	268	A4	805081	8278658	356	A4	805592	8278972	444	A4	805506	8277928
5	A1	794346	8258133	93	A3	804337	8277542	181	A4	808258	8275592	269	A4	805060	8278946	357	A4	805578	8278952	445	A4	805502	8277910
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54	A1	805259	8279317	142	A4	807655	8279272	230	A4	804992	8276252	318	A4	805775	8279593	406	A4						



Australian Government

Department of the Environment and Energy

Attachment 2

FINDINGS ON WHICH DETERMINATION WAS BASED – KINGVALE STATION

I, Dean Knudson, make the following findings in determining that, pursuant to s 70(3) of the *Environment Protection and Biodiversity Conservation Act 1999 (the Act)*, the provisions of the Act have effect as if Mr Scott Alexander Harris has referred the following action to the Minister under section 68(1) of the Act:

The clearing of vegetation at Kingvale Station (Lot 1 on Survey Plan 280074, Queensland) as described in the development permit issued to Mr Scott Alexander Harris on 16 April 2014 by the Queensland Department of State Development, Infrastructure and Planning, to the extent that it occurs in the areas identified as A3, A4 or A5 of the map (see **Attachment 1**), the subsequent use of that cleared land for the production of sorghum, and intensification of cattle grazing (**the Action**)

Request for referral of proposal and subsequent correspondence

1. On 23 June 2016, Dean Knudson, Deputy Secretary of the Department of the Environment and Energy (formerly called the Department of the Environment) (hereafter referred to as the **Department**) made a request to Mr Harris, pursuant to s 70(1) of the Act, that Mr Harris refer the Action to the Minister within 15 business days of the request. The letter making that request was transmitted to Mr Harris by email that day. A copy of that letter and its 4 attachments is attached to these findings and marked **2(i)**.
2. Also on 23 June 2016, Department officers executed a monitoring warrant at Kingvale Station. Those officers prepared a report that is attached to these findings and annexed to attachment **2(iii)**.
3. On 29 June 2016, Mr Harris' representative, Mr Kempton, responded to that request and asked for additional information. A copy of that letter is attached to these findings and marked **2(ii)**.
4. On 4 July 2016, a Department representative wrote to Mr Kempton, as Mr Harris' representative, and provided the information requested by in Mr Kempton's letter of 29 June 2016, or provided a hyperlink to that information where it was publicly available. A copy of that letter is attached to these findings and marked **2(iii)**.
5. By Originating Application dated 7 July 2016, Mr Harris made an application to the Federal Court of Australia for review of the request made under section 70(1) of the Act to him on 23 June 2016.
6. In a letter dated 13 July 2016, Mr Kempton, as Mr Harris' representative, wrote to the Department enclosing the Originating Application and advising that Mr Harris 'does not intend to refer the action pursuant to section 70 EPBC Act...'. A copy of that letter is attached to these findings and marked **2(iv)**. Mr Kempton also served an Applicant's Genuine Steps Statement relating to the Originating Application on the Australian Government Solicitor.

Findings on the criteria under s 70(3) of the Act

7. On the basis of the correspondence I have described, I find that:
 - a. Mr Harris was given a request to refer the Action under s 70(1) of the Act on 23 June 2016, and by 4 July 2016 Mr Harris had been provided with all requested supporting information.

- b. Mr Harris has not referred the Action in response to the request made pursuant to s 70(1) of the Act, within the period for compliance with that request, fixed at 15 July 2016.
 - c. Mr Harris has not made a request for a longer period within which to refer the proposed action, and instead has informed the Department that he does not intend to refer the Action.
 - d. The 20th business day after the end of the period for compliance is 12 August 2016, being 20 business days after 15 July 2016.
8. In light of the findings set out in paragraph 6 above, I conclude that the criteria set out in s 70(3) of the Act have been met so as to give the Minister or Minister's delegate the power to determine that the Act has effect as if Mr Harris (being the requested person) had referred the proposal to the Minister under subsection 68(1) at the time this determination was made.
9. The Minister has delegated his power to make decisions under s 70 to me in my capacity as a Deputy Secretary of the Department.

Decision to exercise power under s 70(3) of the Act

10. I consider that a determination should be made under s 70(3). I formed this view for the same reasons as set out in the letter of 23 June 2016 that is attached to these findings and marked **2(i)**, namely that:
- a. on the basis of reasons set out in Attachment 3 to that letter, I think that the Action may be a controlled action as that term is defined in the Act; and
 - b. I consider that the appropriate way to determine if the Action is a controlled action, and if so, whether it should be approved under the EPBC Act, is by using the statutory assessment process set out in the Act.
11. In forming the view I describe in paragraph 10 above, I considered the letter sent by Mr Kempton to the Department dated 13 July 2016 and attached to these findings and marked **2(iv)**. In that letter Mr Kempton explains that he is instructed that Mr Harris did not intend to refer the Action pursuant to s 70, on the basis that the Action:
- a. is not an action that results, or will result, or be likely to result in a significant impact (as defined in the EPBC Act) in the Great Barrier Reef Marine Park
 - b. not a controlled action, and that on that basis and in the circumstances there were no grounds upon which the Minister may have formed the requisite belief under s 70 of the EPBC Act.
12. I do not consider either of these submissions to be a reason why a determination should not be made under s 70(3). This is because:
- a. I am satisfied that there is, and was as at 23 June 2016, a sound evidentiary basis for the view that the Action may be a controlled action, on the basis of the reasons set out in Attachment 3 to the letter of 23 June 2016;
 - b. the proper basis for determining if the Action is a controlled action is, in all the circumstances, to use the statutory assessment process set out in the Act;
 - c. no material has been provided that suggests that the evidence referred to in the 23 June 2016 letter is inaccurate or misleading or otherwise does not provide a basis for thinking the Action may be a controlled action; and
 - d. satellite imagery of Kingvale Station taken on 9 July 2016 and 22 July 2016 showed that the action had not yet been taken.

13. In forming the view I describe in paragraph 10 above, I also had regard to the report of the execution of the monitoring warrant that took place on 23 June 2016. Nothing in that report affected my assessment that the Action maybe a controlled action, or my assessment that Mr Harris intends to carry out the Action.
14. The fact that Mr Harris has filed an Originating Application in the Federal Court of Australia challenging the making of the request pursuant to s 70(1) of the Act does not automatically prevent me making a decision under s 70(3) of the Act. Mr Harris has not sought, and the Federal Court has not made, any orders that would require me not to make a decision under s 70(3) of the Act.
15. Nor do I consider that the fact of Mr Harris having filed this Originating Application provides a reason why I should refuse, on a discretionary basis, to make a decision under s 70(3) of the Act.

