



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
ABN	NA
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

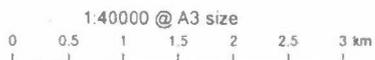
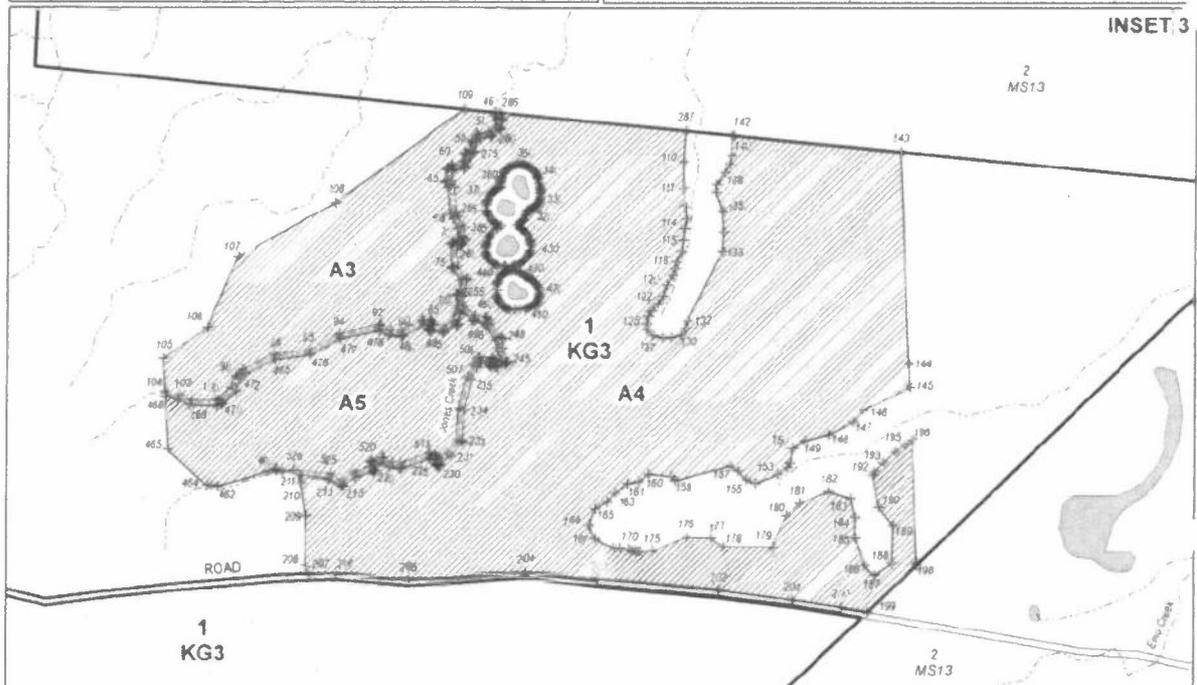
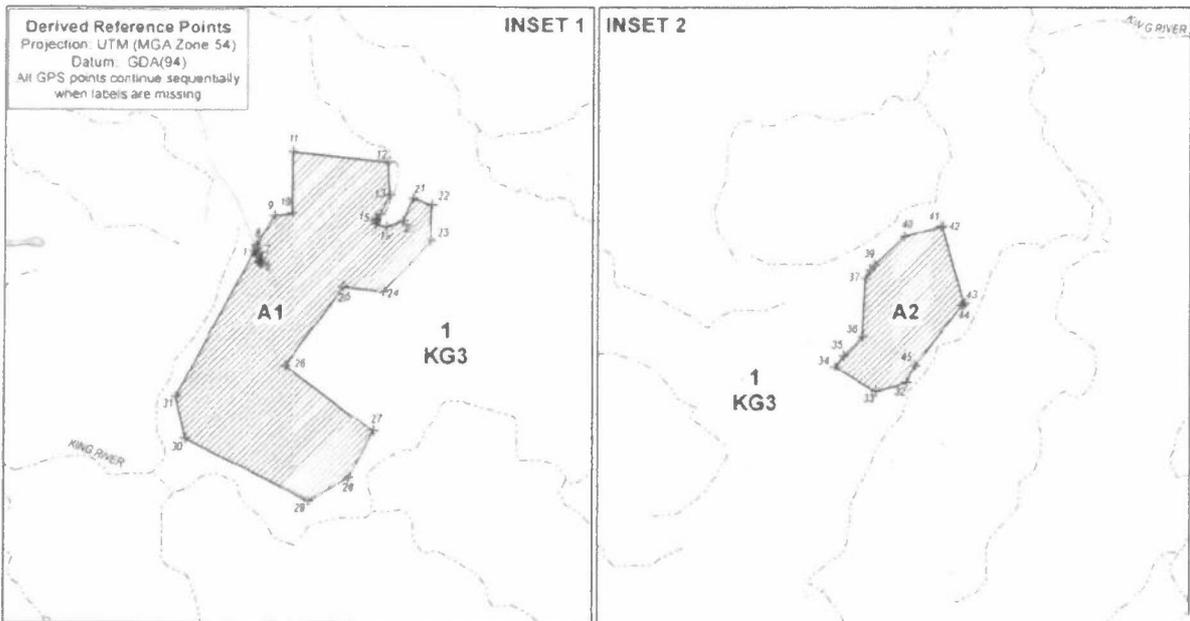
Pursuant to section 70(3) of the EPBC Act, I hereby determine that the EPBC Act has effect as if the person proposing to take the action had referred that proposed action to me under section 68(1) of the EPBC Act, on the basis of my findings at Attachment 2.

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 

date of decision 8-8-16



Projection: UTM (MGA Zone 54) Datum: GDA94

Note: Derived Reference Points are provided to assist in the location of the Referral Agency Response boundaries. Responsibility for locating these boundaries lies solely with the landholder and delegated contractor(s).

The property boundaries shown on this plan are APPROXIMATE ONLY. They are NOT an accurate representation of the legal boundaries.

Note: This plan must be read in conjunction with Referral Agency Response 2014/000805

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

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

Point	Parcel	Easting	Northing																
1	A1	794271	8258415	89	A3	804817	8277581	177	A4	807452	8275597	265	A4	805145	8278578	353	A4	805642	8279001
2	A1	794292	8258373	90	A3	804632	8277486	178	A4	807566	8275505	266	A4	805127	8278564	354	A4	805626	8278993
3	A1	794316	8258313	91	A3	804539	8277491	179	A4	808018	8275508	267	A4	805110	8278900	355	A4	805609	8278988
4	A1	794330	8258204	92	A3	804444	8277540	180	A4	808145	8275599	268	A4	805081	8278858	356	A4	805592	8278972
5	A1	794346	8258133	93	A3	804437	8277542	181	A4	808158	8275599	269	A4	805090	8278946	357	A4	805578	8278955
6	A1	794346	8258342	94	A3	804071	8277460	182	A4	808520	8275018	270	A4	805103	8278959	358	A4	805567	8278953
7	A1	794325	8258398	95	A3	803802	8277312	183	A4	808713	8275954	271	A4	805190	8278972	359	A4	805560	8278923
8	A1	794296	8258462	96	A3	803476	8277271	184	A4	808755	8275785	272	A4	805203	8278978	360	A4	805544	8278911
9	A1	794456	8258238	97	A3	803187	8277136	185	A4	808755	8275595	273	A4	805231	8279011	361	A4	805538	8278923
10	A1	794614	8258761	98	A3	803128	8277076	186	A4	808848	8275347	274	A4	805250	8279084	362	A4	805534	8278855
11	A1	794622	8259233	99	A3	803089	8276972	187	A4	808932	8275259	275	A4	805286	8279119	363	A4	805534	8278840
12	A1	795499	8259227	100	A3	802981	8276857	188	A4	809088	8275368	276	A4	805293	8279131	364	A4	805536	8278720
13	A1	795517	8258924	101	A3	802956	8276850	189	A4	809096	8275271	277	A4	805307	8279200	365	A4	805519	8278794
14	A1	795478	8259255	102	A3	802730	8276852	190	A4	808969	8277880	278	A4	805342	8279218	366	A4	805502	8278788
15	A1	795389	8258709	103	A3	802620	8276901	191	A4	808917	8276111	279	A4	805440	8279261	367	A4	805486	8278780
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17	A1	795385	8258684	105	A3	802469	8277231	193	A4	809006	8276182	281	A4	805521	8279325	369	A4	805460	8278755
18	A1	795380	8258662	106	A3	802873	8277517	194	A4	809115	8276380	282	A4	805529	8279337	370	A4	805448	8278741
19	A1	795485	8258644	107	A3	803146	8278167	195	A4	809197	8276443	283	A4	805540	8279405	371	A4	805438	8278726
20	A1	795632	8258690	108	A3	804033	8278656	196	A4	809266	8276492	284	A4	805540	8279477	372	A4	805417	8278688
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22	A1	795899	8258837	110	A4	807189	8279037	198	A4	809315	8275352	286	A4	805525	8279484	374	A4	805407	8278659
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25	A1	795095	8258084	113	A4	807220	8278506	201	A4	808197	8275026	289	A4	805575	8278076	377	A4	805409	8278576
26	A1	794559	8257368	114	A4	807204	8278419	202	A4	807524	8275510	290	A4	805638	8278079	378	A4	805414	8278559
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28	A1	795145	8256343	116	A4	807180	8278217	204	A4	805773	8275211	292	A4	805673	8278087	380	A4	805453	8278498
29	A1	794778	8256134	117	A4	807130	8278117	205	A4	804706	8275204	293	A4	805715	8278105	381	A4	805466	8278483
30	A1	793654	8256705	118	A4	807119	8278057	206	A4	804048	8275262	294	A4	805730	8278113	382	A4	805480	8278472
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39	A1	790514	8254289	127	A4	806926	8277451	215	A4	804121	8276067	303	A4	805805	8278309	391	A4	805406	8278281
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46	A1	805475	8279489	134	A4	807554	8278388	222	A4	804539	8276338	310	A4	805679	8278449	398	A4	805426	8278147
47	A1	805476	8279454	135	A4	807544	8278584	223	A4	804628	8276225	311	A4	805708	8278467	399	A4	805459	8278112
48	A1	805490	8279407	136	A4	807488	8278759	224	A4	804639	8276226	312	A4	805723	8278477	400	A4	805475	8278100
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55	A1	805245	8279149	143	A4	807652	8279123	231	A4	805008	8276336	319	A4	805792	8278595	407	A4	805766	8277691
56	A1	805210	8279115	144	A4	809236	8277183	232	A4	805189	8276470	320	A4	805809	8278601	408	A4	805778	8277693
57	A1	805203	8279102	145	A4	809245	8276975	233	A4	805193	8276484	321	A4	805812	8278608	409	A4	805795	8277699
58	A1	805189	8279038	146	A4	808824	8276755	234	A4	805206	8276766	322	A4	805835	8278616	410	A4	805811	8277707
59	A1	805174	8279020	147	A4	808732	8276658	235	A4	805277	8277046	323	A4	805850	8278626	411	A4	805838	8277723
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61	A1	805075	8278932	149	A4	808201	8276488	237	A4	805362	8277182	325	A4	805873	8278653	413	A4	805864	8277750
62	A1	805098	8278976	150	A4	807990	8276161	247	A4	805471	8277415	326	A4	805879	8278665	414	A4	805873	8277752
63	A1	805042	8278962	151	A4	808176	8276280	249	A4	805443	8277165	327	A4	805886	8278681	415	A4	805882	8277785
64	A1	805030	8278856	152	A4	808147	8276240	240	A4	805457	8277154	328	A4	805891	8278693	416	A4	805886	8277798
65	A1	805032	827																



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.

