From: Barker, James
To: s22
Subject: FW: Kingvale Station [SEC=UNCLASSIFIED]
Date: Thursday, 2 August 2018 2:49:27 PM
Attachments: image001.png

Just fyi and for records

From: Barker, James
Sent: Thursday, 2 August 2018 2:48 PM
To: s47F
Subject: RE: Kingvale Station [SEC=UNCLASSIFIED]

Hi s47F

Yes, we'll aim to provide you with a statement of reasons within the timeframe under the ADJR Act (28 days).

Regards

James

From: s47F
Sent: Thursday, 2 August 2018 12:56 PM
To: Barker, James
Subject: Kingvale Station

Mr James Barker
Assistant Secretary
Assessments and Governance Branch
Dept Environment and Energy

Dear Mr Barker,

The Environment Council of Central Queensland Inc. (ECoCeQ) has a principal purpose to conserve our natural environment. Our organisation works with community groups with similar aims to protect environmental values across Queensland. ECoCeQ provides input to government through submissions, and provides information to the public on matters of environmental significance that are in the public interest.

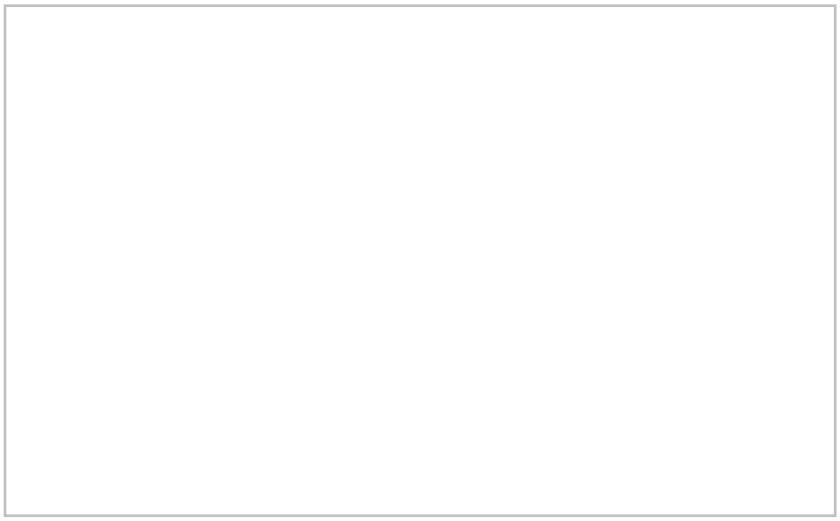
I request that you provide the Environment Council of Central Queensland with reasons for your decision dated 21 December 2017 under s 87 of the EPBC Act, to decide that assessment of the Kingvale Station land clearing (EPBC 2016/775d1) will be by way of referral information.

I look forward to hearing from you.

Yours sincerely,

s47F

Environment Council of Central Queensland
PO Box 1399
Mackay 4740
s47F



From: s22
To: s47F
Subject: Statement of Reasons - Kingvale [SEC=UNCLASSIFIED]
Date: Friday, 17 August 2018 1:00:33 PM
Attachments: 2016-7751 Referral-statement of reasons-Env Council Central QLD-cover letter-signed.pdf
2016-7751 Referral-Referral Decision Brief-signed-redacted 21 June 2018.pdf

---

Dear s47F

Please find attached a statement of reasons for the assessment approach decision made on 21 December 2017 relating to Kingvale Station.

Please contact me if you have any questions regarding the information provided.

Regards

s22

Assessment Officer
Environment Standards Division
Department of the Environment and Energy
GPO Box 787 Canberra ACT 2601
s22

DEPARTMENT OF THE ENVIRONMENT AND ENERGY

To: James Barker, Assistant Secretary, Assessments and Governance Branch

Referral Decision Brief: The clearing of vegetation at Kingvale Station, Lot 1 on Survey Plan 280074, Queensland (EPBC 2016/7751)

Timing: The statutory timeframe for a decision was 23 September 2016.

Recommended Decision	**NCA** ☐ **NCA(pm)** ☐ **CA** ☒
Designated Proponent	Mr Scott Harris c/o Mr David Kempton PO Box 732 Edge Hill QLD 4870
Controlling Provisions triggered or matters protected by particular manner	World Heritage (s12 & s15A) Yes ☒ No ☐ No if PM ☐ National Heritage (s15B & s15C) Yes ☒ No ☐ No if PM ☐ Wetlands (Ramsar)(s16 & s17B) Yes ☐ No ☒ No if PM ☐ Threatened Species & Communities (s18 & s18A) Yes ☒ No ☐ No if PM ☐ Migratory Species (s20 & s20A) Yes ☐ No ☒ No if PM ☐ C'wealth marine (s23 & 24A) Yes ☐ No ☒ No if PM ☐ Nuclear actions (s21 & 22A) Yes ☐ No ☒ No if PM ☐ C'wealth land (s26 & s27A) Yes ☐ No ☒ No if PM ☐ C'wealth actions (s28) Yes ☐ No ☒ No if PM ☐ GBRMP (s24B & s24C) Yes ☒ No ☐ No if PM ☐ A water resource – large coal mines and CSG (s24D & s24E) Yes ☐ No ☒ No if PM ☐ C'wealth heritage o/s (s27B & 27C) Yes ☐ No ☒ No if PM ☐
Public Comments	Yes ☒ No ☐ Number: 6120 See Attachment D
Ministerial Comments	Yes ☒ No ☐ See Attachment E
Assessment Approach Decision	Yes ☒ No ☐ Assessment on referral information Bilateral Applies ☐

Recommendation/s:

1. Consider the information in this brief, the referral (Attachment A) and other attachments.

Considered / Please discuss

2. Agree with the recommended decision.

Agreed / Not agreed

3. Agree to the designated proponent.

Agreed / Not agreed

4. Agree the action be assessed by assessment on referral information.

Agreed / Not agreed

5. Agree that the person undertaking the action be granted a waiver from fees under regulation 5.21 of the *Environment Protection and Biodiversity Conservation Regulations 2000* (Attachment H).

Agreed / Not agreed

6. Sign the notice at Attachment I (which will be published if you make the recommended decision).

Signed / Not signed

7. Sign the letters at Attachment J.

Signed / Not signed

Date: 21/12/17

James Barker, Assistant Secretary,
Assessments and Governance Branch:

Comments:

1. KEY ISSUES

1.1 Mr Scott Harris is proposing to clear 2100 hectares of native vegetation on Kingvale Station in Queensland and subsequently use the land for cropping and other agricultural activities.

1.2 The clearing and subsequent cropping is likely to impact on listed threatened species and result in reduced water quality in the Great Barrier Reef from increased sediment and nutrient runoff into the Reef.

1.3 Under section 70 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), proposed clearing and cropping on the northern part of Kingvale Station (around 2,100 hectares) was 'called in' on 8 August 2016.

1.4 Approximately 6100 public submissions were received on the referral of the proposed action. Most are campaign submissions, expressing concern about the likely impacts of the proposal on the Great Barrier Reef and listed threatened species. Six non

campaign submissions were received from environmental groups or individuals. Four government ministers provided a response (Attachment D).

2. BACKGROUND

Description of the referral

2.1 The referral information (Attachment A) is the information that was before the delegate when deciding under section 70(3) to deem the action referred. As a result, the referral information does not have a one-to-one correlation with the material which is required to be provided by a proponent as part of a referral under section 68.

2.2 The proponent has made submissions about a range of matters which have a bearing on your decision under section 75 of the EPBC Act. Most significantly, those submissions challenge the sufficiency of evidence on which to base a decision that the action is a controlled action.

2.3 Kingvale Station is leased from the Crown in right of Queensland by Mr Scott Harris. On 16 April 2014, the Queensland Government granted a permit to Mr Harris for the clearing of 2,863 hectares of native vegetation (Attachment B25).

2.4 The Department has been in correspondence with Mr Harris and his representatives about whether the proposed action is a controlled action since 6 May 2015 (all correspondence is provided at Attachment C). Authorised officers under the EPBC Act attended at Kingvale Station in December 2015 under a monitoring warrant, and were accompanied by two experts:

(a) Dr Shellberg, a fluvial geomorphologist, undertook an assessment and provided a report[1] looking at erosion risk from the proposed action, and potential downstream risks to the Great Barrier Reef;

(b) Dr Bruce Thomson, an ecologist, undertook an assessment and provided a report[2] looking at risks to listed threatened species from the proposed action.

2.5 Copies of these reports were provided to Mr Harris initially on 13 January 2016.

2.6 On 23 June 2016, Mr Scott Harris was requested to refer the clearing of the northern area proposed for clearing (2,100 hectares), pursuant to section 70(1) of the EPBC Act.

2.7 On 13 July 2016, Mr Harris, through his solicitor, notified the Department that he did not intend to refer the proposed action and that he had begun proceedings in the Federal Court pursuant to the *Administrative Decisions (Judicial Review) Act 1977* seeking a review of the Department's decision to request the referral of the action.

2.8 On 8 August 2016, as delegate for the Minister, Deputy Secretary Dean Knudson, determined that the action was deemed to have been referred under section 70(3) of the EPBC Act.

2.9 Public consultation was formally conducted under section 74(3) commencing on 8 August 2016.

2.10 In December 2016, the Department engaged two consultants recommended by Mr Harris to prepare further geomorphological and ecological reports which were provided to Mr Harris on 20 December 2016.

---

[1] Shellberg hydrology report prepared for the Department and received January 2016 (Attachment B20)
[2] Redleaf Environmental report prepared for the Department and received January 2016 (Attachment B7)

2.11 In January 2017, Mr Harris responded to the reports, stating there was no evidence of impacts to protected matters.

2.12 On 17 March 2017, based on the recommendations in the reports, the Department (through the Australian Government Solicitor) wrote to Mr Harris' solicitor proposing two alternative management approaches that might allow the delegate to find that the proposal is not a controlled action if it is undertaken in a particular manner (NCA-PM):

Option 1

i. No clearing will occur on land with a slope greater than 2 per cent.

ii. No clearing will occur within 100m buffers of a natural wetland or a flow line.

iii. All clearing will be undertaken pursuant to an erosion management plan, which should address strategies for erosion and sediment control, both during land clearing and during subsequent cropping activities.

Option 2

i. No clearing will occur in the western portion of the property which has the majority of the steeper slopes >2 per cent.

ii. No clearing will occur within 100m buffers of a natural wetland or a flow line.

iii. A map of 1:25,000 scale will be provided, showing ground truthed slopes, with a clearly marked boundary around the area that will not be cleared due to slope and buffers around natural wetlands and flow lines.

2.13 On 26 September 2017, the Department received a response from Mr Harris that largely accepted the second option (Attachment C31). Mr Harris' was supported by two consultant reports: one from ILA Consulting[3] which ground truthed the slopes on the Kingvale property and a report from Dr Rob Loch commenting that the ILA report suitably addresses previous concerns regarding gradients and water course locations.

2.14 On 25 October 2017, the Department responded to seek clarification of Mr Harris' proposal to clear above slopes greater than 2 per cent.

2.15 On 1 November 2017, Mr Harris revised his proposal to:

i. Propose 50m buffers and some 100m buffers where the watercourse is adjacent to slopes of >2 per cent.

ii. Otherwise not clear in mapped areas of >2 per cent gradient.

2.16 To inform our consideration of Mr Harris' alternative proposal, the Department sought expert advice from Dr Shellberg[4] who has previously been on site including during a wet season. In this advice, Dr Shellberg stated that Mr Harris' proposed 50m buffers were inadequate and many of the watercourses would benefit from buffers of 100m or more to reduce erosion risk and disturbance.

2.17 The Department also invited Dr Loch to provide comment[5] on Mr Harris' proposal and the advice provided by Dr Shellberg[6]. Dr Loch supported Mr Harris' proposal for 50m buffers.

---

[3] ILA Consulting report, prepared for Mr Harris dated August 2017 (Attachment C31)
[4] Shellberg advice prepared for the Department and received December 2017 (Attachment B23)
[5] Loch advice prepared for the Department and received December 2017 (Attachment B24)
[6] Shellberg advice prepared for the Department and received December 2017 (Attachment B23)

2.18 On 11 December 2017, the Department provided the Shellberg[7] and Loch[8] advice to Mr Harris. Mr Harris was invited to comment on the proposed decision within seven days. Mr Harris responded on 15 December 2017 and indicated that he had no further comment. He stated that the delegate should proceed to a decision without delay. While the Department had earlier indicated to Mr Harris that it would provide him with the proposed decision for comment, in light of Mr Harris' recent correspondence, the Department recommends you proceed directly to a decision under section 75 of the EPBC Act.

Description of the proposal (including location)

2.19 The proposed action is approximately 23 km south-west of Laura and 115 km south of Princess Charlotte Bay on Cape York Peninsula, Queensland.

2.20 Mr Harris obtained a permit from the Queensland Government to clear 2,863 hectares on the Station. The description of the action in documents submitted to Queensland is:

a. Pull timber after the wet season (after April) when it is dry enough to get dozers on country;

b. September – burn the fallen timber. This avoids the more intense dry period later in the year;

c. September – December – stick rake the area and ground preparation by using disc ploughs;

d. On receipt of the first showers of rain the proponents will spray weeds with ground rig and start planting using a large Multiplanter (zero tillage machines that can direct sow and have high clearance); and

e. Stubble will be retained following harvest/forage chopping throughout the year. Cattle will graze the residue sorghum stubble and reduce trash for the following cultivation/planting.

2.21 Of the 2 863 hectares permitted to be cleared by the Queensland Government, 2,100 hectares was deemed referred under the EPBC Act (Attachment 3 of Attachment A1).

2.22 The proposal to cultivate sorghum includes the application of high amounts of fertiliser, including nitrogen and phosphorus[9].

Description of the action

2.23 The deemed action is described as:

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,

[7] Shellberg advice prepared for the Department and received December 2017 (Attachment B23)
[8] Loch advice prepared for the Department and received December 2017 (Attachment B24)
[9] Spies, Pinnacle Pocket Consulting, report dated 5 February 2014, p9 (Attachment B8)

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.

2.24 The inclusion of "intensification of cattle grazing" at that time reflected the observations of Dr Shellberg[10] that:

> *"The agricultural development proposal ... suggests that cattle could be stocked inside the cleared [area] at a higher stocking rate than present. If increase stocking rates are planned, then the cattle activity along wetlands, stream channels and dambo valleys will also increase, which presents a moderate risk to increased erosion and water quality in these sensitive areas".*

2.25 The inclusion of "intensification of cattle grazing" in the description of the action was a matter of particular concern to Mr Harris. His solicitor raised, among other things, that Mr Harris had not applied for:

> *"...a development permit for tree clearing for intensification of cattle grazing in the areas described as A3, A4 or A5, or at all.*
>
> *"Intensification of cattle grazing is not a relevant purpose pursuant to s22 [of the* Vegetation Management Act 1999 (Qld)*] and in fact clearing of native vegetation for pasture improvement or cattle grazing is prohibited."*

2.26 His solicitor further advised that:

> "*The proposed tree clearing will not result in the intensification of cattle grazing on Kingvale.*"

2.27 The Department accepted this submission made on behalf of Mr Harris, and reworded the reference to the intensification of cattle grazing from the description of the action.

2.28 The Department did not accept that the Minister is confined by the terms of the State approval, however, to the effect that the proposed action is restricted to the initial clearing of vegetation, and may not include the subsequent cultivation of sorghum in the cleared area, including any use of cattle to reduce sorghum stubble and trash.

2.29 The Department accordingly refined the description of the proposed action to:

> *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) and the subsequent use of that cleared land for cropping and other agricultural activities.*

2.30 Mr Harris was given notice of this amendment to the description of the proposed action.

Description of the environment

2.31 The proposed action is located just below the eastern edge of the Kimba Plateau. Elevations within the proposed clearing area range from 150 m to 200 m above sea level with an average slope of 1.2 per cent but with greater local slopes along banks of creeks and drainage valleys.

[10] Shellberg hydrology report prepared for the Department and received January 2016 (Attachment B20)

2.32 The proposed area to be cleared drains via several watercourses to the Hann and Kennedy rivers which drain into the Great Barrier Reef approximately 200 km downstream at Princess Charlotte Bay.

2.33 The referral documentation describes the existing vegetation in the project area as open Eucalypt forest and *Melaleuca* seasonal swamplands on sandplains, and *Corymbia* forest on basalt derived red earths and erosional surfaces.

2.34 The sandy ridges are the targeted soils for agricultural development on Kingvale Station. The soils in these areas are generally deep sandy soils that grade from fine sand to sandy loam to sandy clay loam at depth[11]. They are generally of low fertility and have low water-holding capacity[12].

3. RECOMMENDED DECISION:

3.1 Under section 75 of the EPBC Act, you must decide whether the action that is the subject of the proposal referred is a controlled action, and which provisions of Part 3 (if any) are controlling provisions for the action. In making your decision, you must consider all adverse impacts the action has, will have, or is likely to have, on the matter protected by each provision of Part 3. You must not consider any beneficial impacts the action has, will have or is likely to have on the matter protected by each provision of Part 3.

3.2 Kingvale Station is located in a part of Cape York Peninsula that has not been subject to extensive environmental studies in the past. In making a decision however, you have the benefit of information and advice provided by several technical experts at the request of the Department or the proponent that is specific to the proposed action. A summary of this information is at Attachment B26.

3.3 In addition, research is available in relation to impacts to the Great Barrier Reef from farming activities including from erosion and sediment dispersal (Attachments B1 to B26).

3.4 In March 2017, two management approaches (see paragraph 2.12) were proposed to Mr Harris that might allow the Minster's delegate to find that the proposal is not a controlled action if it is undertaken in a particular manner (NCA-PM).

3.5 Between September and November 2017, Mr Harris put forward alternatives to the two proposed management approaches that included, among other things, more limited buffers from defined watercourses.

3.6 Without adequate watercourse buffers or a commitment to specific management measures, the action is considered likely to have a significant impact on the Great Barrier Reef through diffuse nutrient and sediment runoff, and on listed threatened species primarily through the removal of potential habitat.

3.7 The Department recommends that you decide that the proposal is a controlled action, because there are likely to be significant impacts on the matters protected by the following provisions of Part 3 of the EPBC Act:

- The World Heritage values of a declared World Heritage property (section 12 & section 15A);

[11] Shellberg hydrology report prepared for the Department and received January 2016 (Attachment B20)
[12] Shellberg hydrology report prepared for the Department and received January 2016 (Attachment B20)

- The National Heritage values of a National Heritage place (section 15B & section 15C);
- The Great Barrier Reef Marine Park (section 24B & section 24C); and
- Listed threatened species and communities (section 18 & section 18A).

3.8 These impacts are discussed respectively below.

3.9 A decision under section 75 was initially due to be made by 5 September 2016, but this timeframe was extended by agreement with the proponent until 23 September 2016 and was not further extended. That period has now expired, but this does not affect your ability to now make a valid decision under section 75 (see section 518(1)).

World Heritage Area[13]

3.10 As noted at paragraph 2.32 above, the proposed area to be cleared drains via several watercourses to the Hann and Kennedy rivers, which in turn drain into the Great Barrier Reef World Heritage Area (GBRWHA) at Princess Charlotte Bay. The Hann and Kennedy rivers form part of the Normanby catchment.

3.11 Because the area proposed for clearing and cropping is within a catchment for the Great Barrier Reef, there is potential for that change in land use to lead to erosion causing increased amounts of sediment and nutrients to be transported from Kingvale Station into the GBRWHA.

3.12 The risk of erosion and sedimentation associated with changes in land use are outlined in the *EPBC Act Referral Guidelines for the Outstanding Universal Value of the Great Barrier Reef World Heritage Area* (2014) (the Guidelines) (Attachment B16).

3.13 The Guidelines state that land use change that contributes to sediment, nutrient and pesticide run-off is a known and potential threat to the Great Barrier Reef. The Guidelines also state that substantive land use change in the catchments of the GBWHA has a high risk of significant impact, and that referral of land use change is recommended.

3.14 The proposed action involves four elements relevant to assessing the potential for increased sediment and nutrient load:

i. the initial removal of vegetation to allow for cropping;

ii. the tilling of the soil to plant the crops;

iii. the application of fertiliser to the crops (which is planned to include high levels of nitrogen and phosphorous)[14]; and

iv. the use of cattle to reduce the stubble and trash by grazing following harvest.

3.15 The Department has reports and advice which relate to the potential for increased amounts of sediment and nutrients to enter the GBRWHA.

3.16 The first of these was prepared in 2014 by Peter Spies, Pinnacle Pocket Consulting[15] for Mr Harris, as part of an application for a high value agriculture approval from the Queensland Government. That report came to the conclusion that "Clearing and subsequent cultivation, with stubble retention through zero or minimum tillage, will not

[13] Sections 12(1) and 15A(2) EPBC Act
[14] Appended to the Guidelines at Attachment B16
[15] Peter Spies, Pinnacle Pocket Consulting, report dated 5 February 2014 (Attachment B8)

result in soil erosion stemming from mass movement, gully erosion, rill erosion, sheet erosion, wind erosion or scalding"[16].

3.17 The second of these was prepared in 2015 by Dr Shellberg[17] on behalf of the Department, to assist the Department to assess the soil erosion and downstream sedimentation risks associated with the proposed action. That report came to the conclusion that:

i. the Peter Spies report[18] conclusion relating to the risks associated with the proposed action for was incorrect;

ii. soil erosion will increase following the proposal as it now stands. This increase will come from a variety of cumulative sources on site: sheet erosion, rill and gully erosion, bank erosion, road and fence erosion, and possible sub-surface erosion (piping);

iii. nutrient and herbicide loads could also increase[19]; and

iv. fine sediment pollution from Kingvale Station is likely to contribute to poor water quality in the GBRWHA.

3.18 The third was prepared in December 2016 by Dr Loch[20] on behalf of the Department, to assist the Department to assess the soil erosion and downstream sedimentation risk associated with the proposed action. That report concluded that:

i. the existing data on elevations and gradients within the area of proposed cropping do not appear to be adequate and ground truthing is required;

ii. further investigations of elevations and gradients is desirable as erosion modelling indicates that clearing and cropping should be constrained to areas with gradients <2 per cent;

iii. more accurate delineation of watercourse locations and properties also appears desirable

iv. existing information on the soils present does not appear to be adequate and further investigation is desirable;

v. likely rates of sediment mobilization from the cropped area are unlikely to have a significant impact on the large volumes of sediment mobilization within the Normanby catchment and delivered from that catchment to the Great Barrier Reef.

3.19 The fourth was prepared by Mr Garozzo[21] of I.L.A. Consulting on behalf of Mr Harris to ground truth the site of the proposed action to help determine the risk of erosion associated with slope and watercourses on the project site. The report concluded that:

i. the previous slope map (DEM slope map) did provide a general indication of slope trends as rise and fall;

ii. when the DEM slope map was considered in conjunction with underlying landscape elements such as watercourses, the relationship of surveyed areas

---

[16] Ibid. Page 10

[17] Shellberg hydrology report prepared for the Department and received January 2016 (Attachment B20)

[18] Peter Spies, Pinnacle Pocket Consulting, report dated February 2014 (Attachment B8)

[19] Ibid. Page 28

[20] Loch advice prepared for the Department and received December 2016 (Attachment B22)

[21] ILA Consulting report, prepared for Mr Harris dated August 2017 (Attachment C31)

of greater than 2 per cent, particularly greater than 3 per cent, proved telling in what broader areas are likely encumbered by slopes of this nature;

iii. almost all of the site of the proposed action to the east of the watercourse cluster is flat at below 2 per cent slope. Minor incursions of higher slope are regularly below 2.5 per cent slope with unusual incidence of >2.5 per cent slope within very localised spots;

iv. the western section of the site is associated with watercourses. The area though dominated by slopes <2 per cent also demonstrated large moderately sloped areas marginally above 2 per cent but not greater than 2.5 per cent. These areas are associated with rises from watercourses and general slightly rougher topography between watercourse confines;

v. limited area of >2.5 per cent slope were associated with watercourse margins and smaller localised rises. Those areas did not dominate the landscape outside of limited watercourse associations.

3.20 In correspondence between September and November 2017 (Attachments C31, C33 and C35), Mr Harris made an offer through his solicitor to:

i. not clear in areas that have a slope greater than 2 percent;

ii. not clear within 100 m of a natural wetland;

iii. not clear within 50 m of the edge of identified watercourses; and

iv. not clear within 100m of watercourses where the adjacent land has a slope greater than 2 percent.

3.21 Mr Harris' proposal did not include a commitment to additional management measures such as the 100m buffers of watercourses as described by Dr Loch[22].

3.22 In December 2017, the Department obtained further advice from Dr Shellberg[23] and Dr Loch[24] regarding the proponent's proposed 50m buffers and their adequacy to mitigate the risk of erosion and sedimentation. Dr Shellberg maintained the view that 100m buffers are required to adequately mitigate the risk of erosion whereas Dr Loch concluded that the 50m buffer was adequate.

3.23 While Dr Loch stated that 50m buffers should be used, this advice appears reflect Queensland State documents outlining buffer guidance for the *Water Act 2000 (Qld)*, rather than site specific features described by Dr Shellberg. Dr Loch's comments also appear to assume that other effective erosion mitigation measures will be undertaken by Mr Harris.

3.24 The Department retains the view that given the size and nature of the proposed action, the geomorphology of the site and location in relation to the Great Barrier Reef, 100m buffers are required to adequately mitigate the risk of erosion consistent with the recommendations of Dr Shellberg.

3.25 Without a commitment to adequate watercourse buffering or other specific mitigation measures the action is likely to increase the amount of sediment and nutrients entering the GBRWHA.

---

[22] Loch hydrology report prepared for the Department and received December 2016 (Attachment B22) and advice received September 2017 (Attachment C31) and December 2017 (Attachment C37)

[23] Shellberg advice prepared for the Department and received November 2017 (Attachment C37)

[24] Loch advice prepared for the Department and received December 2017 (Attachment B24)

3.26 Accordingly, the Department recommends that you find that the proposed action is likely to result in an increased amount of fine and coarse sediment, and nitrogen and phosphorous, entering into the Normanby catchment from Kingvale Station as a result of the action, from where it will flow into the GBRWHA.

3.27 It is well established that sediment and nutrients entering the GBRWHA reduces the water quality significantly. For example, the Great Barrier Reef Water Science Taskforce - Final Report (2016) (Attachment B6) states that the greatest water quality risks to the reef are: excess nutrients (especially nitrogen from fertiliser); fine sediments; and pesticides, and that agricultural land uses are the main source of nitrogen, sediment and pesticides entering the Reef. It also notes that fine sediment can smother seagrasses and corals, making it harder or impossible for them to grow, survive and reproduce.

3.28 Reduced water quality has an adverse impact on the Outstanding Universal Value (OUV)[25] of the World Heritage Area, particularly its beauty, integrity and diversity, through undermining the health of key elements of the ecosystem.

3.29 The Great Barrier Reef Strategic Assessment Report (2014) highlights the extensive areas of seagrass beds and high conservation value of Princess Charlotte Bay. Princess Charlotte Bay provides habitat for a number of threatened and migratory species including largetooth and green sawfish, estuarine crocodiles, dugongs, green turtles and Australian snubfin and Indo-Pacific humpback dolphins. The advice from the Department's Heritage Branch (Attachment F) concludes that the diversity of species found in the Great Barrier Reef and the habitats it provides for the conservation of biological diversity are important attributes of the OUV of the property.

3.30 The advice from Great Barrier Reef Marine Park Authority (GBRMPA) (Attachment F) notes that the proposed action is likely to impact key values and attributes of the GBRWHA through increasing the amount of fine sediments, and nutrients entering the Great Barrier Reef. Increase in sedimentation and nutrients may result in loss of biodiversity by promoting algae growth and reducing the light availability for coral, seagrass, and benthic organisms; which may result in detrimental impacts to the marine ecosystem.

3.31 Accordingly, the Department recommends that you find that the proposed action will or is likely to have an adverse impact on the World Heritage values of the Great Barrier Reef World Heritage Area.

3.32 Whether an adverse impact will be significant depends on its context and intensity. To be significant, it must not be minor or negligible, but must instead be notable or of consequence. The Department considers that the relevant context for the action is the current state of health of the GBRWHA, the current pressures on it from water quality issues and its corresponding sensitivity to additional adverse impacts.

3.33 The Department notes that sedimentation and nutrients coming in to the area from the Normanby catchment have been identified as a matter of particular concern for the health of the Great Barrier Reef.

3.34 The Normanby catchment has been identified as an erosion hotspot and as such the catchment has been nominated as a priority for erosion mitigation measures. The

[25] The OUV are reproduced in the Guidelines at Attachment B16

Normanby has been identified as one of the 10 priority river systems exporting significant loads of sediments and nutrients to the Great Barrier Reef.

3.35 Intensive agricultural activity can be a periodic source of intensified water runoff and erosion, especially where cover is reduced at the start of the wet season[26].

3.36 Advice provided by GBRMPA states that the proposed action is certain to increase erosion and it is almost guaranteed that the erosion from large scale clearing will result in fine sediment entering Princess Charlotte Bay during flood events.

3.37 The Great Barrier Reef Strategic Assessment Report (2014) (Attachment B2) characterises the adverse impact of nutrients and sediment on coral reefs as very high, meaning that the effects of these impacts are widespread to the extent that the outstanding universal values of that habitat are severely compromised.

3.38 The Department notes that 2,100 hectares (21 km^2) is a large area, with the result that even low rates of erosion create a potential for large amounts of sediment and nutrient movement into waterways over time. Given the size of the area, and the concerns raised about erosion management in Shellberg[27], the Department considers that it is open to you to find the action will result in a significant amount of sediment entering the Normanby catchment, even though it has not at this time been quantified.

3.39 In the context of:

i. the scale of the clearing;

ii. the current known impact of sediment and nutrient run off on the OUV of the GBRWHA to date; and

iii. the recent assessment (Shellberg[28], Loch[29] and Attachments B11, B12 and B13) of the risks posed to the northern Great Barrier Reef from sedimentation and nutrients entering the Normanby catchment,

the Department recommends that you find that substantial sediment and nutrient run off into the Normanby catchment from the proposed action is likely to have a significant impact on the World Heritage values of the Great Barrier Reef World Heritage Area.

National Heritage places

3.40 In making a decision under s75 of the EPBC Act, you are required to consider whether sections 15B and 15C (National Heritage places) are controlling provisions for the action. Relevant to the proposed action, sections 15B and 15C prohibit a person taking an action that:

i. is likely to have a significant impact on the National Heritage values of a National Heritage place;

ii. in an area in respect of which Australia has obligations under Article 8 of the *Biodiversity Convention*,

---

[26] Brooks, A. *et al.* (2013). *An Empirically-based sediment budget for the Normanby Basin: Sediment Sources, Sinks and Drivers on the Cape York Savannah*. Australian Rivers Institute, Griffith University (Attachment B13)

[27] Shellberg hydrology report prepared for the Department and received January 2016 (Attachment B20)

[28] Shellberg hydrology report prepared for the Department and received January 2016 (Attachment B20) and advice prepared for the Department and received November 2017 (Attachment C37)

[29] Loch advice prepared for the Department and received December 2017 (Attachment B24)

but only if the prohibition of the action is appropriate and adapted to give effect to Australia's obligations under Article 8 of the Biodiversity Convention.

National Heritage values

3.41 The GBRWHA is a National Heritage place. The National Heritage values of this National Heritage place are same as its World Heritage values[30]. The World Heritage values of the area are its Outstanding Universal Values.

3.42 We have recommended (at paragraphs 4.11 and 4.16) above, that you find the action is likely to have a significant impact on the World Heritage values of the Great Barrier Reef World Heritage Area. On the same basis, we consider that it is open to you to find that the action is likely to have a significant impact on the National Heritage values.

Biodiversity Convention

3.43 The Department considers that the Great Barrier Reef National Heritage Place is an area in respect of which Australia has obligations under Article 8 of the Biodiversity Convention. Further, and given the risks posed to the Reef's National Heritage values by nutrients, pesticides and sediment (see paragraphs 3.31 to 3.38), we think that you could be satisfied that the prohibition of the proposed action is appropriate and adapted to give effect to Australia's obligation under Article 8 of the Biodiversity Convention in respect of the Great Barrier Reef National Heritage place.

3.44 If you agree with the Department's advice, then the Department recommends that you decide that the action is likely to have a significant impact on the National Heritage values of an area in relation to which Australia has obligations under Article 8 of the *Biodiversity Convention*. If you make this decision then sections 15B(5) and 15C(10) will be controlling provisions for this action.

Great Barrier Reef Marine Park

3.45 The proposed action does not take place within the Great Barrier Reef Marine Park (the Park), but still has an impact on the environment within the Park[31].

3.46 The Department considers that the proposed action will have, or is likely to have, a significant impact on the environment of the Park, having regard to increased nutrient and sediment flowing from Kingvale Station into the Normanby catchment. For a discussion of the mechanisms of nutrient and sediment entering the catchment, please see the examination of these issues in relation to World Heritage above at 3.10 to 3.38.

3.47 This view is informed by advice from the Great Barrier Reef Marine Park Authority (GBRMPA) (Attachment F), which makes reference to the objectives described in the Reef 2050 Long Term Sustainability Plan (2015) and the Great Barrier Reef Region Strategic Assessment Report (2014) and the Great Barrier Reef Coastal Zone Strategic Assessment Program Report (2013) (Attachment B1 – B5).

3.48 The advice from GBRMPA (Attachment F) notes that the proposed action is likely to impact key values and attributes of the Park through increasing the amount of fine sediments, and nutrients entering the Great Barrier Reef. Increase in sedimentation and nutrients may result in loss of biodiversity by promoting algae growth and reducing the light availability for coral, seagrass, and benthic organisms; which may result in detrimental impacts to the marine ecosystem.

---

[30] Determination regarding the inclusion of World Heritage places in the National Heritage List, 15 May 2007

[31] See subsections 24B(2), 24C(5) and 24C(7) of the EPBC Act

3.49 The definition of 'environment' includes ecosystems and their constituent parts, and the heritage values of places (section 528 of the EPBC Act).

3.50 Coral, seagrass and benthic organisms are constituent parts of the marine ecosystem of the Park.

3.51 The Department considers that impacts to the Park are largely commensurate with the impacts from the project on the GBRWHA.

3.52 The area of the Park is a subset (approximately 98 per cent) of the GBRWHA. The GBRWHA includes a further, small area in State waters.

3.53 Accordingly, the sediment and nutrient from Kingvale Station is likely to enter the Park.

3.54 Much of the seagrass, coral and benthic organism which would be affected by the sediment and nutrient from the action is located in the Park.

3.55 Given the conclusion regarding the impacts to World Heritage values as noted in the previous sections above, the Department recommends that you decide that the proposed action is likely to have a significant impact on the environment in the Great Barrier Reef Marine Park.

Listed threatened species and communities

3.56 The Department's Environment Reporting Tool (ERT) identifies that 19 species and no listed threatened ecological communities may occur within 10 km of the proposed action (see the ERT report at Attachment G). The Department has also considered the advice provided by Redleaf Environmental[32] and Preece[33] when considering the likely impacts on listed threatened species and communities.Based on the location of the action, and likely habitat present in the area of the proposed action, the Department considers that impacts potentially arise in relation to the following matters.

Bare-rumped Sheathtail Bat (*Saccolaimus saccolaimus nudicluniatus*) – Vulnerable[34]

3.57 The Bare-rumped Sheathtail Bat usually occurs in wet eucalypt and riparian forest along the north east coast of Cape York. Bare-rumped Sheathtail Bats roost in tree hollows and forage over adjacent woodlands and forests. In Australia, all known roost sites are from deep tree hollows in *Eucalyptus platyphylla, Eucalyptus miniata* and *Eucalyptus tetrodonta*.

3.58 The referral information describes the vegetation in the project area as open Eucalypt forest and *Melaleuca* seasonal swamplands on sandplains, and *Corymbia* forest on basalt derived red earths and erosional surfaces. In information submitted by Peter Spies, Pinnacle Pocket Consulting on behalf of Mr Harris, the canopy is identified as being broken and "made up mostly of the dominant Darwin Stringybark *(E. tetrodonta)* and bloodwoods"[35] (emphasis added).

3.59 The extent and geographic location of current populations is poorly known, as is the movement of the species. However, there is a recent known record of the species from

[32] Redleaf Environmental report prepared for the Department and received January 2016 (Attachment B7)
[33] Preece ecology report prepared for the Department and received December 2016 (Attachment B21)
[34] See subsections 18(2) and 18A(2) of the EPBC Act
[35] Spies (2014) Proposed Dryland Cropping of Sorghum and Forage Sorghum for green chop at Kingvale Station west of Laura (Attachment B8)

a site 50 km east of Laura on the Normanby River. There are also other known records of the species at some distance to the east and north of Kingvale Station.

3.60 Advice from the Department's Biodiversity Conservation Division (Attachment F), states that the project site is within the species range and that the Bare-rumped Sheathtail Bat is likely to occur on the project site.

3.61 Redleaf Environmental[36] and Preece[37] state that the project area provides suitable habitat for the Bare-rumped Sheathtail Bat. The results of echo-location surveys done on the project site are consistent with the Bare-rumped Sheathtail Bat being present, but they do not definitively identify that particular species of bat.

3.62 The recovery plan states that the primary threat to the Bare-rumped Sheathtail Bat is habitat loss and competition for tree hollows (which may be under threat by land clearance due to agricultural and urban development).

3.63 The proponent has not identified any avoidance or mitigation measures to reduce the impacts to the species. Instead, Mr Harris disputes (in correspondence dated 15 February 2016) the occurrence of the Bare-rumped Sheathtail Bat "within 100 km of the permitted clearing area." Mr Harris also maintained this position in general terms in his 21 September 2016 submission (Attachment C11), and later correspondence, mainly on the basis of the species not being seen on the property in the course of cattle grazing operations.

3.64 While the Department accepts that it does not have a conclusive detection of this species on Kingvale Station at this time, it does not consider that this is necessary to assess the impact of the proposed action on occupancy and foraging habitat for the Bare-rumped Sheathtail Bat.

3.65 On the information provided by Redleaf Environmental[38] and Preece[39], the Department considers that you may properly find that it is likely that the clearing of vegetation on Kingvale Station will reduce the area of occupancy of the species and adversely affect foraging habitat of this species based on the advice (outlined above) that the project area contains suitable habitat for the species.

3.66 The Department considers that you may find that the impact of the action is likely to be significant, having regard to the fact that it will remove habitat of this species, particularly potential roosting trees.

Northern Quoll (*Dasyurus hallucatus*) – Endangered[40]

3.67 The current distribution of Northern Quoll is discontinuous across northern Australia, with core populations in rocky and/or high rainfall areas (Hill and Ward (2010) see Attachment B9). In Queensland, some populations of Northern Quoll have persisted following colonisation by cane toads. These areas include, but are not restricted to, upland rocky areas and several coastal sites in north and central Queensland.

3.68 Advice from the Department's Biodiversity Conservation Division (Attachment F), states that the project site is within the species range and that the Northern Quoll is likely to occur on the project site.

---

[36] Redleaf Environmental report prepared for the Department and received January 2016 (Attachment B7)
[37] Preece ecology report prepared for the Department and received December 2016 (Attachment B21)
[38] Redleaf Environmental report prepared for the Department and received January 2016 (Attachment B7)
[39] Preece ecology report prepared for the Department and received December 2016 (Attachment B21)
[40] See subsections 18(3) and 18A(2) of the EPBC Act

3.69 Redleaf Environmental[41] states that the Northern Quoll is likely to occur along rocky ridges and extend into open woodlands in the project area and that the proposed action is likely to clear suitable foraging habitat for the Northern Quoll and impact population connectivity for the species.

3.70 Preece[42] supports this view that suitable habitat for the Northern Quoll is present on the site and that the species is likely to be impacted by the proposed action.

3.71 There is a known 2009 record of the Northern Quoll from 106 km south east of the proposed action.

3.72 Peter Spies, Pinnacle Pocket Consulting[43] states that a number of measures would be put in place which would mitigate the impact of the action on the Northern Quoll. These include retention of corridors of connectivity, buffering of watercourses, and conservation of escarpment areas. Redleaf Environmental[44] stated that the clearing of vegetation is likely to impact population connectivity of the species. The Department notes that Mr Harris has not put forward specific mitigation measures in relation to the Northern Quoll.

3.73 The Department therefore considers that you may find that the impact of this reduction in habitat would be significant, having regard to the fact that the species is at very high risk of extinction in the wild, such that relatively small, adverse changes to its overall habitat have a substantial effect on the species as a whole, particularly where they adversely impact both food sources and breeding.

Golden-shouldered Parrot (*Psephotus chrysopterygius*) – Endangered[45]

3.74 The Golden-shouldered Parrot is a small granivorous parrot that once occurred across most of Cape York Peninsula, but is now restricted to two small areas to the north and south of the proposed action. The species nests in termite mounds.

3.75 There is a known 2015 record of the species from 35 km north east of the proposed action. Redleaf Environmental[46] states that the species has been recorded north and south of the proposed action. This report also observes that there are termite mounds (that is, potential nest sites) within the proposed clearing area.

3.76 Preece[47] states that the project site included suitable foraging habitat for the Golden-shouldered Parrot, particularly during the dry season when they feed on fallen seeds of annual grasses.

3.77 Advice from the Department's Biodiversity Conservation (Attachment F), states that the project site is within the species range and that the Golden-shouldered Parrot is likely to occur on the project site.

3.78 Clearing of vegetation and planting of sorghum as part of the proposed action will remove termite mounds used for breeding. Peter Spies, Pinnacle Pocket Consulting[48] identifies breeding habitat as critical habitat for the species.

---

[41] Redleaf Environmental report prepared for the Department and received January 2016 (Attachment B7)
[42] Preece ecology report prepared for the Department and received December 2016 (Attachment B21)
[43] Peter Spies, Pinnacle Pocket Consulting, report dated February 2014 (Attachment B8)
[44] Redleaf Environmental report prepared for the Department and received January 2016 (Attachment B7)
[45] See subsections 18(3) and 18A(2) of the EPBC Act
[46] Redleaf Environmental report prepared for the Department and received January 2016 (Attachment B7)
[47] Preece ecology report prepared for the Department and received December 2016 (Attachment B21)
[48] Peter Spies, Pinnacle Pocket Consulting, report dated February 2014 (Attachment B8)

3.79 Critical habitat identified in the recovery plan (Garnett and Crowley (2002) see Attachment B10) includes *Eucalyptus cullenii* woodland and *Eucalyptus tetrodonta* woodland which occur on the area proposed for clearing.

3.80 The proponent has not proposedany avoidance or mitigation measures to reduce the impacts to the species from the proposed action.

3.81 The Department considers that you may find that it is likely that the clearing of vegetation and planting of sorghum on Kingvale Station will adversely affect breeding habitat critical to the survival of the species. As the species is at very high risk of extinction in the wild in the near future, the Department considers that you may properly find that the proposed action is likely to have a significant impact on this species.

Other listed species

3.82 On the basis of all the information available to the Department, including the ERT and advice from Redleaf Environmental[49] and Preece[50], which suggest the presence of the following species in the area of the proposal, the Department considers that there is a real chance or possibility that project activities will significantly impact on the following through destruction of potential habitat:

i. Red Goshawk (*Erythrotriorchis radiatus*) - Vulnerable[51]

ii. Gouldian Finch (*Erythrura gouldiae*) - Endangered[52]

iii. Buff-breasted Button-quail (*Turnix olivii*) - Endangered[53]

iv. Masked Owl (*Tyto novaehollandiae kimberli*) - Vulnerable[54]

v. Black-footed Tree-rat (*Mesembriomys gouldii rattoides*) – Vulnerable

vi. Ghost Bat (*Macroderma gigas*) - Vulnerable

4. PROTECTED MATTERS THAT ARE NOT CONTROLLING PROVISIONS:

Listed Migratory Species	The ERT identifies 11 migratory species that may occur within 5 km of the proposed action (see the ERT report at Attachment G). The Department considers that the proposed action is unlikely to substantially modify, destroy or isolate an area of important habitat for migratory species or seriously disrupt the lifecycle of an ecological significant proportion of the population of a migratory species. Thus, the Department considers that the proposed action is unlikely to have a significant impact on any listed migratory species.
Ramsar Wetlands	The ERT did not identify any Ramsar listed wetland of international importance within, or in sufficient proximity to the proposed action area. Consequently, the Department considers that the action is unlikely to have significant impact to the ecological character of a Ramsar listed wetland.

[49] Redleaf Environmental report prepared for the Department and received January 2016 (Attachment B7)
[50] Preece ecology report prepared for the Department and received December 2016 (Attachment B21)
[51] See subsections 18(4) and 18A(2) of the EPBC Act
[52] See subsections 18(3) and 18A(2) of the EPBC Act
[53] See subsections 18(3) and 18A(2) of the EPBC Act
[54] See subsections 18(4) and 18A(2) of the EPBC Act

Commonwealth Marine Area	The proposed action is not being undertaken in a Commonwealth marine area. The closest Commonwealth marine area is considered to be too far away (50 km) from Princess Charlotte Bay, for the plume to carry sufficient amounts of sediment and nutrients into that area. Accordingly, the Department doesn't consider that the proposed action is likely to have a significant impact on the environment in a Commonwealth marine area.
Commonwealth action	The person proposing to take the action is not a Commonwealth agency.
Commonwealth land	The action is not being undertaken in, or in sufficient proximity to, Commonwealth land for the action to be likely to have a relevant significant impact.
Nuclear action	The proposed action is not a nuclear action as defined in the EPBC Act.
Commonwealth Heritage places overseas	The proposed action is not being taken outside the Australian jurisdiction.
A water resource, in relation to coal seam gas development and large coal mining development	The proposed action does not involve coal seam gas or a large coal mining development.

5. SUBMISSIONS

Submissions from the proponent

5.1 As noted above, the Department and the proponent have been in correspondence about whether or not the proposed action is likely to have a significant impact on a matter of national environmental significance since May 2015. The Department has taken into account correspondence, noted in Attachment C, from the proponent and his representatives in preparing this brief.

5.2 The proponent was invited by the Department to make submissions about whether the action is a controlled action, and was advised of the particular controlling provisions likely to be of relevance, and the materials the Department proposed at that time to consider. This reflected that the action was deemed referred, as opposed to being referred by the proponent.

5.3 The proponent's solicitor made submissions on his behalf on 21 September 2016 (Attachment C11).

5.4 Those submissions conveniently summarise the proponent's position in four key points:

Submission 1 – The only proposed action which the Minister can properly consider pursuant to section 75 of the EPBC Act is that for which the proponent sought development approval from Queensland, being operational work – vegetation clearing for the purposes of high value agriculture (dryland sorghum);

Submission 2 – There have been no matters of national environmental significance identified on Kingvale Station in the material provided by the Department of the Environment;

Submission 3 – At no time prior to 6 May 2015 or since has the Minister undertaken an assessment of the State regulation or planning process that applied to the development approval to satisfy himself that the "risks" were not eliminated by the State regulation in response of the proposed tree clearing. Mr Harris has not pointed to any specific requirements to advance his case that the permit requirements eliminate these risks; and

Submission 4 – There is no evidence of a matter of national environmental significance on Kingvale Station that will, or may, suffer significant impact as a result of the proposed tree clearing. Further, there is no evidence that the proposed tree clearing will, or may have, an impact upon any matter of national environmental significance.

5.5 Mr Harris made further submissions by his solicitor on 16 and 18 October 2016 27 January 2017 and 18 September 2017 which went both to Submission 2, and to processes by which matters of national environmental significance might be better scoped, and potential impacts on them mitigated.

5.6 The submission made by Mr Harris on 18 September 2017, also provided ground truthed slope data for the property prepared by ILA Consulting and advice provided by Dr Loch.

5.7 To the extent that these submissions are relevant to your determination of whether the proposed action is a controlled action, they have been addressed in this brief in the assessment of the action against the controlling provisions in the EPBC Act.

5.8 Given that the issue of sufficiency of evidence was a matter of particular concern for the proponent, and was also raised by the Minister for Agriculture and Water Resources, and the Minister for Resources and Northern Australia (Attachment E), the Department considers it useful to expand on common issues in addressing evidence for section 75 assessments.

a. The fact that a listed threatened species has not been sighted, or otherwise detected, on a particular property is not conclusive of whether it has a relevant presence on that property for EPBC Act purposes (although detections are clearly valuable data).

    i. When a species is low in numbers this mitigates against the likelihood of detection without targeted surveys, particularly in sparsely populated areas.

    ii. The habits of a particular species may mean that it is more unlikely to spot during the day, or at particular times of year, or without specialist equipment.

    iii. Species move through the landscape and between properties.

b. A listed threatened species does not need to have a current or historical presence on a particular property, for there to be sufficient evidence that an action there will have, or is likely to have, a significant impact on that species.

c. Information about vegetation, water bodies and geology of a property, taken together with data about the kinds of species typically found in the bioregion, is

important for the Department in determining whether a proposed action will have, or is likely to have, an impact.

d. This allows the Department to draw conclusions about whether the property contains habitat of particular value to listed threatened species.

e. If relevant habitat is identified on the property, the Department can then assess the likely presence of the species and impact of the action, by reference to the importance of that habitat to the species.

5.9 The significance of an impact is assessed by reference to its context and intensity. This means that the Department may have recourse to information about the current state of matters of national environmental significance, and the known impacts of particular kinds of actions on those matters.

5.10 While management or mitigation measures can reduce the impact of an action on a protected matter to a level below significant, Mr Harris has not put forward detailed proposals for such measures to allow the Department to assess their effectiveness (for example through demonstrated application, studies or surveys) and the degree of certainty about the avoidance of impacts or the extent to which impacts will be reduced.

5.11 Accordingly, the Department submits that the recommendations put to you in this brief are based on a reasoned and reasonable approach to the evidence available to the Department at this time.

Public submissions

5.12 The proposal was published on the Department's website on 8 August 2016 and public comments were invited until 22 August 2016. Approximately 6100 public submissions were received. Most are campaign submissions. Seven non campaign submissions were received (Attachment D) from environmental groups, individuals or parliamentarians.

5.13 The submissions raised issues including:

i. that the proposed clearing would cause increased sediment to flow into the Great Barrier Reef;

ii. that the proposed clearing would cause further impact on coral that has recently suffered severe bleaching;

iii. that the proposed clearing would result in loss of habitat for listed threatened species;

iv. impacts related to altered hydrology;

v. that sediment and nitrogen pollution need to be reduced by 50 percent and 80 percent respectively, to meet the Reef 2050 targets that were put before the World Heritage Committee;

vi. plans to strengthen Queensland's tree clearing laws failed and it is therefore crucial that the federal government ensures that sediment does not increase;

vii. that a large amount of government funding has been spent addressing threats to the Great Barrier Reef, such as sedimentation, on Cape York Peninsula; and

viii. what evidence does the Department have to indicate that any matters protected by Part 3 of the EPBC Act, apart from the Great Barrier Reef, are relevant to the proposed action.

Comments from Commonwealth Ministers

5.14 By letter dated 8 August 2016, the following ministers were invited to comment on the referral:

i. The Hon Barnaby Joyce MP, then Minister for Agriculture and Water Resources; and

ii. Senator the Hon Matt Canavan, Minister for Resources and Northern Australia.

5.15 Minister Joyce responded on 22 August 2016 (Attachment E) and noted that:

i. the clearing of land at Kingvale Station as a proportion of the whole catchment represents a small area;

ii. there is insufficient evidence to determine that the proposed action will cause a decline in water quality; and

iii. the approval of land clearing at Kingvale Station by the State Government and subsequent intervention by the Commonwealth government demonstrates the difficulties farmers face dealing with different jurisdictions.

5.16 Minister Canavan responded on 25 August 2016 (Attachment E) and noted that:

i. there is insufficient evidence for the Minister to request the person proposing to undertaken the action to refer the proposal;

ii. that the level of significance was not established at the time the proposed action was deemed referred under the EPBC Act;

iii. there is insubstantial evidence that the action in question may be or is a controlled action; and

iv. he expects that a permit issued by the Queensland Government would have had environmental impacts investigated prior to the granting of the approval.

Comments from State Ministers

5.17 By letter dated 8 August 2016, Mr Chris Loveday, delegate of the Queensland Minister for Environment and Heritage Protection was invited to comment on the referral.

5.18 Dr Bill Dixon, Queensland Department of Environment and Heritage Protection responded on 19 August 2016 and advised that the proposal will not be assessed using the Environmental Impact Statement (EIS) process in chapter 3 of the *Environmental Protection Act 1994* and that the Coordinator-General has not received a request for declaration of this proposal as a coordinated project under Part 4 of the *State Development and Public Works Organisation Act 1971*. He also advised that the Department of Infrastructure, Local Government and Planning has not advised that the proposed development will be assessed under Chapter 9, Part 2 of the *Sustainable Planning Act 2009* (Attachment E).

6. ASSESSMENT APPROACH

6.1 If you agree that the action is a controlled action, you must decide on the approach for assessment in accordance with section 87 of the EPBC Act. The Department

recommends that this proposal be assessed on referral information under Part 8 of the EPBC Act.

6.2 Under subsection 87(3)(a) of the EPBC Act, you must consider the information relating to the action given to the Minister in the referral of the proposal to take the action, when determining the assessment approach.

(a) In the case of Mr Harris, the referral came to the Minister under section 70, rather than under section 68. This means that Mr Harris has not submitted the referral information required under the Environment Protection and Biodiversity Regulations 2000 (the Regulations), and the information before the Department instead consists of information otherwise obtained by the Department, including expert ecological and hydrological advice prepared for the Department and Mr Harris, to allow it to assess the potential impact of the action.

(b) The information collected is considered adequate to allow you to assess whether there is likely to be a significant impact on a matter of national environmental significance.

(c) Under subsection 87(3)(b) of the EPBC Act, you are required to consider any other relevant information available about the relevant impacts of the action, including information in a report on the impacts of actions under a policy, plan or program under which the action is to be taken that was given to the Minister under an agreement under Part 10 (about strategic assessments).

(d) While the proposed action is not subject to the strategic assessment regime in Part 10 of the EPBC Act, it does have an impact on matters of national environmental significance covered by strategic assessment agreements, and reports endorsed under those agreements. As such, these reports are considered to be an important resource for identifying the relevant impacts of the action, and therefore a relevant consideration in making a decision under section 87.

(i) A number of documents relating to the Strategic Assessment of the Great Barrier Reef (*Reef 2050 Long-Term Sustainability Plan, 2015; Great Barrier Reef Region Strategic Assessment – Strategic Assessment Report, 2014; Great Barrier Reef Region Strategic Assessment – Supplementary Report, 2014; Great Barrier Reef Coastal Zone Strategic Assessment – Strategic Assessment Report, 2013 and Great Barrier Reef Coastal Zone Strategic Assessment – Supplementary Report, 2014*) are provided at Attachment B of the brief for your consideration.

(e) As such, the Department considers that there is substantial, useful and verified scientific information available about the kinds of impacts which are anticipated from the project, in relation to the Great Barrier Reef World Heritage Area and National Heritage place.

6.3 Under subsection 87(3)(c) of the EPBC Act, you are required to consider any relevant information received in response to an invitation under subparagraph 74(2)(b)(ii)

(a) The delegate of the Queensland Minister for Environment and Heritage Protection advised that the proposal will not be assessed under the *Environmental Protection Act 1994*, the *State Development and Public Works Organisation Act 1971* or the *Sustainable Planning Act 2009* (Attachment E).

Where appropriate, assessment between the Commonwealth and the State are aligned to avoid unnecessary duplication. In the absence of further assessment of the proposed action by the Queensland Government there is no opportunity for the delegate to align with or take account of the State assessment approach when deciding the assessment approach under the EPBC Act.

Criteria for an assessment on referral information

6.4 Under subsection 87(3)(d) of the EPBC Act, you are required to consider the matters (if any) prescribed by the regulations; and under section 87(3)(d), the guidelines (if any) published under subsection (6). These are set out as follows:

6.5 Regulation 5.03A(1) provides the criteria for a decision to assess a controlled action by assessment on referral information. The decision may only be made if the Minister is satisfied that the action meets the following criteria:

(a) *The potential scale and nature of the relevant impacts of the action can be predicted with a high level of confidence;*

(i) Kingvale Station is located in a part of Cape York Peninsula that has not been subject to extensive environmental studies in the past. In understanding the impacts, you have the benefit of information and advice provided by several technical experts at the request of the Department or the proponent that is specific to the proposed action. A summary of this information is at Attachment B20.

(ii) The clearing and subsequent cropping is likely to impact on listed threatened species and result in reduced water quality in the Great Barrier Reef from increased sediment and nutrient runoff into the Reef.

(iii) Information about the likely impacts of diffuse nutrient and sediment runoff to the Great Barrier Reef is available from existing research on the sediment loads and sediment movement within the Normanby Catchment (Attachments B1 – B6, B11 – 13). In addition, advice and reports prepared for the Department have investigated the risk of erosion from the proposed clearing and subsequent cropping and agricultural activities (Attachments B8, B21 – B24 and F).

(iv) Information about the likely impacts to listed threatened species is available from the Department's Environment Reporting Tool (Attachment G), the Species Profile and Threats Database (SPRAT) and advice provided by Redleaf Environmental[55] and Preece[56].

(v) In conclusion, the Department considers there is sufficient information available to allow you confidently predict the scale and nature of the relevant impacts.

(b) *The relevant impacts are expected to be short term, easily reversible or small in scale;*

(i) The relevant impacts from the proposed action are limited in scale. The Department considers that those impacts could be further limited by practical and easily achieved management measures (for example, buffers from watercourses) to be further considered in the recommended assessment.

[55] Redleaf Environmental report prepared for the Department and received January 2016 (Attachment B7)
[56] Preece ecology report prepared for the Department and received December 2016 (Attachment B21)

(c) *Adequate information is available about relevant impacts on the matters protected;*

(i) Available information is described in paragraph 6.5 a). The Department considers this is information is adequate.

(d) *The action is likely to have a significant impact on only a small number of protected matters or elements of each relevant protected matter;*

(i) The proposed action is likely to have significant impacts on the Great Barrier Reef through impacts on water quality, and on a defined number of listed threatened species, as outlined in this brief, for which the area of proposed clearing contains potential habitat.

(e) *If the information is available—the person proposing to take the action has a satisfactory record of responsible environmental management and compliance with environmental laws;*

(i) The Department is aware that Mr Harris has been charged with offences under Queensland legislation relating to unauthorised vegetation clearing at another of his properties, Strathmore Station. Mr Harris is charged with 14 counts under s578(1) of the *Sustainable Planning Act 2009* and two counts under s611(2).

These charges have not yet been heard by a court and the outcome of proceedings is unknown. Therefore, at this time, there is no evidence that the proponent has an unsatisfactory record of responsible environmental management or non-compliance with environmental laws.

(ii) Mr Harris has put forward proposals for environmental mitigation measures on Kingvale Station in correspondence between September and November 2017. While the Department does not consider that those proposals would be sufficient to avoid likely significant impacts, Mr Harris' representative has stated that they have been put forward in good faith.

(f) *The degree of public concern about the action is, or is expected to be, moderately low.*

(i) Seven individual submissions were received and approximately 6100 campaign emails. The campaign emails were generated by an online petition page established by the Australian Marine Conservation Society. Given the ease with which social media is now able to extend the reach of any online petition beyond the usual interested audience and beyond Australia's borders, the Department considers response numbers of this order of magnitude to be moderate.

(ii) The campaign emails did not comment extensively on this particular proposal, but expressed more general concerns about the effect of State regulation of land clearing in Queensland.

6.6 In making a decision on an assessment on referral information, you must not consider financial or economic factors.

6.7 In summary, there are a range of factors supporting the use of assessment on referral information as an appropriate method of assessing the impacts of the proposal on the identified controlling provisions. These include the scale and nature of relevant impacts of the action and the number of matters likely to be impacted.

7. OTHER MATTERS FOR DECISION-MAKING:

Significant impact guidelines

7.1 The Department has reviewed the information in the referral against the EPBC Act Policy Statement 1.1 Significant Impact Guidelines – Matters of National Environmental Significance (2013) and other relevant material. While this material is not binding or exhaustive, the factors identified are considered adequate for decision-making in the circumstances of this referral. Adequate information is available for decision-making for this proposal.

Precautionary principle

7.2 In making your decision under section 75, you are required to take account of the precautionary principle (section 391). The precautionary principle is that a lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment where there are threats of serious or irreversible environmental damage.

Bioregional plans

7.3 The proposed action will not impact on Commonwealth land or a Commonwealth Marine Area and there no bioregional plans relevant to the area.

Cost Recovery

7.4 The Department recommends that the person undertaking the action be granted a waiver from fees waivered under regulation 5.21 of the EPBC Regulations (Attachment H).

7.5 Under regulation 5.21(b)(ii) of the EPBC Regulations the Minister may, at the Ministers discretion, waive the fees if the Minister considers that it is in the public interest to do so; or there are other exceptional circumstances justifying the waiver.

7.6 The Department considers the exceptional circumstances requirement is met in this case noting that: this action, is the first action which has been deemed referred under section 70(3); and Mr Harris has contested the basis on which the proposal was deemed referred under that section.

7.7 If you decided to grant a waiver, you are still required to provide the proponent a copy of the fee schedule, a copy of the fee schedule and justification table for your consideration is at Attachment L. A copy of the fee schedule for the proponent is at Attachment M.

[redacted]

Director
Queensland North Assessments Section
Assessments and Governance Branch
Ph: [redacted]

[redacted]

Queensland North Assessments Section
Ph: [redacted]

ATTACHMENTS

A: Referral documentation

A1 Also referred to as B2(i) - Correspondence (23 June 2015). Department to Mr Harris. Request to refer.

A2 Also referred to as B 2(ii) - Correspondence (29 June 2016). Kempton to Department. Request for information.

A3 Also referred to as B 2(iii) - Correspondence (4 July 2016). Department to Kempton providing information including Shellberg Report (2016) and Compliance Inspection Report (2016).

A4 Also referred to as B 4(iv) - Correspondence (13 July 2016). Kempton to Department. Harris does not intend to refer.

A5 Correspondence (8 August 2016). Department to Mr Harris notifying of deemed referral.

A6 Decision instrument (8 August 2016). Decision to Deem Referral. Includes findings on which determination was based.

B: Other information used for recommendations

B1 *Reef 2050 Long-Term Sustainability Plan (2015).* (Provided on USB).

B2 *Great Barrier Reef Region Strategic Assessment – Strategic Assessment Report (2014).* (Provided on USB).

B3 *Great Barrier Reef Region Strategic Assessment – Supplementary Report (2014).* (Provided on USB).

B4 *Great Barrier Reef Coastal Zone Strategic Assessment – Strategic Assessment Report (2013).* (Provided on USB).

B5 *Great Barrier Reef Coastal Zone Strategic Assessment – Supplementary Report (2014).* (Provided on USB).

B6 *Great Barrier Reef Water Science Taskforce - Final Report (2016).* (Provided on USB).

B7 Redleaf Environmental (2016) *Kingvale Station - MNES Preliminary Survey, December 2015, and assessment of species occurrence. Produced for the Department of the Environment.*

B8 Peter Spies, Pinnacle Pocket Consulting (2014). *Proposed Dryland Cropping of Sorghum and Forage Sorghum for green chop at Kingvale Station west of Laura.*

B9 Hill, B. & S. Ward (2010). *National Recovery Plan for the Northern Quoll* Dasyurus hallucatus. *Department of Natural Resources, Environment, The Arts and Sport, Northern Territory.*

B10 Garnett, S.T. & G.M. Crowley (2002). *Recovery Plan for the Golden-shouldered Parrot* Psephotus chrysopterygius *2003-2007.* Brisbane: Queensland Parks and Wildlife Service.

B11 Shellberg, J. (2012). *Alluvial Gully Erosion;* A *dominant erosion process across tropical northern Australia,* A Brooks. Griffith University.

B12 Shellberg, J. (2013). *Alluvial Gully Prevention and Rehabilitation Options for reducing Sediment loads in the Normanby Catchment and Northern Australia,* A Brooks. Griffith University, Australian Rivers Institute. (Provided on USB).

B13 Andrew Brooks, John Spencer, Jon Olley, Tim Pietsch, Daniel Borombovits, Graeme Curwen, Jeff Shellberg, Christina Howley, Angela Gleeson, Andrew Simon, Natasha Bankhead, Danny Klimetz, Leila Eslami-Endargoli, Anne Bourgeault (2013). *An Empirically-based sediment budget for the Normanby Basin: Sediment Sources, Sinks and Drivers on the Cape York Savannah*. Australian Rivers Institute, Griffith University. (Appendices not included).

B14 A notice of decision given under section 334 of the *Sustainable Planning Act 2009* (Qld) for Kingvale Station _ Lot 1 of KG3 dated 16 April 2014.

B15 EPBC Act Policy Statement 1.1 Significant Impact Guidelines – Matters of National Environmental Significance (2013). Commonwealth of Australia.

B16 EPBC Act referral guidelines for the Outstanding Universal Value of the Great Barrier Reef World Heritage Area, Commonwealth of Australia 2014.

B17 EPBC Act Policy Statement - 'Indirect consequences' of an action: Section 527E of the EPBC Act http://www.environment.gov.au/resource/epbc-act-policystatementindirect-consequences-action-section-527e-epbc-act

B18 EPBC Act Policy Statement - Definition of 'Environment' under section 528 of the advice about potential impacts of the proposed action from the Great Barrier Reef Marine Park Authority and relevant areas of the Department of the Environment and Energy.

B19 Consultation material in relation to the listing review of the Bare-rumped Sheathtail Bat

B20 Shellberg, J. (2016). Soil Erosion and Downstream Sedimentation Risk Associated with Proposed Vegetation Clearing for Agricultural Development on Kingvale Station, Lot 1 on Plan KG2, Cape York Peninsula. Prepared for Department of Environment. January 2016.

B21 Preece, N. (Dec 2016) Kingvale Station Matters of National Environmental Significance Stage 1 – Reconnaissance survey, desktop study and report. Prepared for Department.

B22 Loch, R. (Dec 2016) Kingvale Station – Geomorphology and hydrology assessment of potential impacts of proposal to clear approximately 2100ha for agricultural development. Prepared for Department.

B23 Shellberg, J. (Dec 2017) Review of Buffer Zone Adequacy to Reduce Soil Erosion and Downstream Sedimentation Risks Associated with Proposed Vegetation Clearing for Agricultural Development on Kingvale Station, Lot 1 on Plan KG2, Cape York Peninsula. Prepared for the Department.

B24 Loch, R. (Dec 2017) Advice provided to the Department dated 1 December 2017.

B25 Queensland Department of State Development, Infrastructure and Planning (16 April 2014) Development permit for operational work –vegetation clearing for the purposes of high value agriculture (dryland sorghum).

B26 Summary of information and advice information and advice provided by several technical experts at the request of the Department or the proponent

C: Correspondence

C1 Correspondence (6 May 2015) Department (Compliance) to Mr Harris. Show cause

C2 Correspondence (10 June 2015) Mr Peter Anderson, Harris Operations Pty Ltd to Department (Compliance and Enforcement Branch). Response to show cause. Attached: Correspondence (9 June 2015). Spies to Department (Compliance).

C3 Correspondence (13 January 2016). Department (Compliance) to Mr Kempton. Expert advice.

C4 Correspondence (15 February 2016). Mr Kempton to Department (Compliance). Expert advice.

C5 Correspondence (23 June 2016). Department (Compliance) to Mr Harris. Request to refer.

C6 Correspondence (4 July 2016). Department (Compliance) to Mr Kempton.

C7 Correspondence (13 July 2016). Mr Kempton to Department (Compliance). Mr Harris does not intend to refer.

C8 Correspondence (8 August 2016). Department to Mr Harris. Deemed referral.

C9 Correspondence (26 August 2016). Department (Assessments) to Mr Harris. Next steps and invitation to make a submission.

C10 Correspondence (2 September 2016) Department (Assessments) to Mr Kempton. Notice of extension of time to 23 September 2016.

C11 Correspondence (21 September 2016). Mr Kempton to Department (Assessments) Submission with 17 attachments.

C12 Correspondence (21 September 2016). Department (Assessments) to Mr Kempton Response to submission.

C13 Correspondence (21 September 2016) Mr Kempton to Department (Assessments) maintaining action will not impact on MNES and offering 50m buffers.

C14 Correspondence (23 September 2016). Department (Ministers Office) to Mr Kempton.

C15 Correspondence (5 October 2016). Department (Assessments) to Mr Kempton. Clarification of submission and description of action.

C16 Correspondence (6 October 2016). Mr Kempton to Department (Assessments) Clarification of submission attachments.

C17 Correspondence received 16 October 2016 (dated 14 October 2016). Mr Kempton to AGS. Further information in relation to way the action could be taken.

C18 Correspondence (18 October 2016). Mr Kempton to AGS. Further information in relation to listed threatened species, and use of correspondence marked 'without prejudice' for assessment purposes.

C19 Correspondence (20 October 2016). Kempton to AGS. Confirming that correspondence of 14 and 18 October on an open basis.

C20 Correspondence (21 October 2016) AGS to Mr Kempton. Guidance on providing additional information.

C21 Correspondence (24 October 2016). Mr Kempton to AGS. A suggestion that the Department engage particular experts.

C22 Correspondence (24 October 2016). Mr Harris to Minister Frydenberg. Information in relation to the proposed action and suggested experts.

C23 Correspondence (28 October 2016) Minister Frydenberg to Mr Harris

C24 Correspondence (28 October 2016) AGS to Mr Kempton. Response to request that Department engage particular experts.

C25 Correspondence (31 October 2016). Mr Kempton to AGS requesting further extension of time for decision.

C26 Correspondence (7 November 2016). Mr Kempton to AGS. Requesting the Department to engage experts and stating that Mr Harris is no longer proposing any mitigation measures.

C27 Correspondence (20 December 2016). AGS to Mr Kempton providing Preece and Loch reports and inviting comment from Mr Harris.

C28 Correspondence (27 January 2017). Mr Kempton to AGS responding to Preece and Loch reports.

C29 Correspondence (17 March 2017). AGS to Mr Kempton proposing options for progressing the matter as an NCA-PM.

C30 Correspondence (4 April 2017). Mr Kempton to AGS stating that Mr Harris will undertake field surveys.

C31 Correspondence (26 September 2017). Mr Kempton to AGS (dated 18 September 2017) providing ILA Consulting report and letter from Dr Loch.

C32 Correspondence (25 October 2017). AGS to Mr Kempton requesting justification for proposed buffers.

C33 Correspondence (1 November 2017). Mr Kempton to AGS revising proposed buffers.

C34 Correspondence (13 November 2017). AGS to Mr Kempton reiterating need for commitment to 100m buffers on watercourses.

C35 Correspondence (14 November 2017). Mr Kempton to AGS. Further information regarding proposed buffers.

C36 Correspondence (24 November 2017). AGS to Mr Kempton. Intention to obtain advice regarding the adequacy of proposed buffers.

C37 Correspondence (11 December 2017). AGS to Mr Kempton providing advice from Dr Shellberg and Dr Loch and inviting comment.

C38 Correspondence (15 December 2017) Kempton to AGS stating that there is no evidence that there will be an Impact on MNES and the delegate should proceed to a decision.

D: Public comments

E: Ministerial comments

F: Departmental advice

G: Department's Environmental Reporting Tool (ERT) (dated 21 December 2017)

H: Section 5.21 of the EPBC Regulations

I: Decision notice FOR SIGNATURE

J: Letters to the proponent and Ministers FOR SIGNATURE

K: Map of project area including watercourses and slope greater than 2 per cent

L: Fee schedule (with justifications)

M: Fee schedule (without justifications – for proponent)

Australian Government
Department of the Environment and Energy

EPBC Ref: 2016/7751

s47F

Environment Council of Central Queensland
PO Box 1399
Mackay 4740

By email: s47F

Dear s47F

Statement of Reasons for decision on assessment approach—clearing of vegetation at Kingvale Station, Queensland

I am writing in response to your request, received on 2 August 2018, for a statement of reasons for my decisions that the proposal by Mr Scott Harris to clear 2100 hectares of vegetation at Kingvale Station, Queensland would be assessed on referral information. I made the decision as a delegate of the Minister for the Environment and Energy, under section 87 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

This response, including its attachments, is my statement of reasons.

My decisions were based on my consideration of the decision brief[1] prepared by the Department of the Environment and Energy. I considered that the information in the brief was sufficient for me to make the relevant decisions.

In making my decisions, I considered all the information and matters contained in the brief referenced above. I agreed with the Department's advice, findings of fact, and reasoning iterated in, the briefing. On that basis, I decided that the proposed action was a controlled action and would be assessed on referral information on 21 December 2017.

Yours sincerely

James Barker
Assistant Secretary
Assessments and Governance Branch
17 August 2018

[1] I have redacted the names of junior officers.