AUSTRALIAN CONSERVATION FOUNDATION

20 FEBRUARY 2019

ACF Comment: Clearing of vegetation and associated agricultural activity at Kingvale Station, Cape York Peninsula (EPBC 2016/7751).

About ACF

ACF is Australia's peak national environmental organisation. We represent a community of more than 500,000 people who are committed to achieving a healthy environment for all Australians. For more than 50 years, ACF has been a strong advocate for the nation's forests, rivers, people and wildlife. ACF is proudly independent, non-partisan and funded by donations from our community.

There is every likelihood that significant impacts on the Outstanding Universal Values of the Great Barrier Reef World Heritage Area and on habitats for nationally listed threatened species will be irreversible and ongoing. Therefore, the proposal should not be approved.

Key Points

- Clearing 2100 hectares at Kingvale Station is likely to have a significant impact on up to nine threatened species.
- In addition, clearing and associated agricultural activity is likely to have a significant impact on water quality flowing into the Great Barrier Reef World Heritage Area.
- The previous approval, set aside by the Federal Court of Australia, was not only unlawful, was technically flawed and inconsistent with national policies and laws.
- The assessment and draft approval of land clearing at Kingvale Station has been compromised through political interference at the expense of science.
- Consultants engaged by the Department were not given adequate time to properly asses the site for values and erosion risks and almost all recommend more detailed studies.

Recommendation

Land clearing and associated agricultural activity as described in Referral 2016/7751 is not approved under the *Environment Protection and Biodiversity Act 1999* due to the demonstrable impact on nationally threatened species and water quality flowing into Princess Charlotte Bay, part of the Great Barrier Reef World Heritage Area.

AUSTRALIAN CONSERVATION FOUNDATION

Summary

The proposal to clear native vegetation at Kingvale Station in the Normanby Basin on Cape York Peninsula has been controversial from the outset.

Changes to Queensland's *Vegetation Management Act 1999* and the *Sustainable Planning Regulations 2009* made by the Newman Government allowed the clearing to be approved in 2014 without any assessment of natural values or credible assessment of environmental impacts.

Despite being made aware of their obligations under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act), the proponent actively contested the jurisdiction of the Federal Government and the role of the EPBC Act and sought a review in the Federal Court.

But in December 2015 the Federal Environment Department (the Department) gained access to the property under a monitoring warrant allowing rapid assessments by independent experts in geomorphology and ecology.

Both the ecological assessments and the soil erosion and sedimentation assessments concluded that there would be significant risks to threatened species and water quality.

When the Department determined the proposal to be a controlled action, the public were invited to comment. Over 6000 submissions were received.

Despite the level of public interest and the Department's own findings that there would be significant and ongoing impacts on threatened species and water quality, the proponent was given draft approval to clear 1848 hectares. Approximately 88% of the 2100 hectares referred.

However, this draft approval was found to be unlawful after legal proceedings were launched by the Environmental Defenders Office NSW on behalf of the Environmental Council of Central Queensland.

Only through documents obtained under Freedom of Information has it been revealed that the Department recognised the risk of extinction to threatened species due to the nature of threats represented by clearing at Kingvale Station.

However, in the Department's Draft Recommendation Report, the number of threatened species and the risk of extinction has been reduced or omitted.

Further, ACF contends that the approval of clearing at Kingvale Station will be in contravention of the Australian Government's obligations to protect the Great Barrier Reef under the World Heritage Convention.

Further, over 35,000 hectares remains slated for clearing within the Normanby Basin which is the largest Reef catchment on Cape York and flowing into Princess Charlotte Bay, one of the most significant marine wetlands of its type.

Although Princess Charlotte Bay represents all four natural World Heritage criteria, there has been no detailed assessment of the cumulative impacts of the combined development pressures in the Normanby Basin on water quality flowing into the Great Barrier Reef.

Background

Kingvale Station is a pastoral holding leased from the State of Queensland. The current lessee is Scott Harris who is also the proponent of the proposed land clearing and agricultural activity.

In 2014 the proponent was granted a permit to clear 2863 hectares of native vegetation under Queensland's *Sustainable Planning Act 2009*. Changes to Queensland's *Vegetation Management Act 1999* and the *Sustainable Planning Regulations 2009* made by the Newman Government allowed the clearing to be approved without any assessment of natural values or credible assessment of environmental impacts.

Tropical woodland in the vicinity of Kingvale Station similar to what is proposed for clearing. Photo: ACF

Subsequently, the Department first raised concerns with the proponent in May 2015 about whether the clearing and associated activity should be a controlled action under the EPBC Act.[1]

However, the proponent actively contested the jurisdiction of the Federal government and their obligations under the EPBC Act and sought a review in the Federal Court. [2] [3]

In December 2015 the proponent was contacted by the Department and asked to provide 14 days notice before commencing clearing. The Department also inspected the property in December 2015 under a monitoring warrant with independent experts in geomorphology and ecology.

But by May 2016 the proponent had already cleared approximately 700 hectares and again indicated to the Department that he had no intention of making a referral. However, by August 2016 a delegate of the Minister responded by referring the remaining area proposed for clearing, approximately 2100 ha, to the Department for assessment.

[1] Draft Recommendation Report (EPBC 2016/7751) originally obtained online via the EPBC Referrals page but no longer available
[2] Ibid, p. 7 section 1.5.
[3] Decision to Deem Referral (EPBC 2016/7751) p. 5.

Between the 8th and 22nd August 2016, the Department received approximately 6,100 submission during the first public comment phase.

However, it was not until December 2017 that the Department determined the proposed clearing and associated agricultural activity was a controlled action and that it would be assessed on the referral information alone, the least rigorous method for assessing a controlled action.

In the 16 months between the Department's referral in August 2016 and the decision to assess the action on referral information, there is evidence that suggests significant pressure was applied to both the Department's staff and the Environment Minister in what appears to be an attempt to sidestep any meaningful assessment of environmental values under the EPBC Act.

Using Freedom of Information laws, ACF obtained documents revealing Federal MPs Ian Macdonald, Barry O'Sullivan, Matt Canavan and Warren Entsch met with the Department's Environmental Standards Division and then Environment Minister Josh Frydenberg to push for the least rigorous assessment approach to approve land clearing at Kingvale.

For example, when the Department began investigating the potential for threatened species to occur on Kingvale, senators Ian Macdonald and Barry O'Sullivan wrote to Josh Frydenberg contesting the validity of this action and asked the Minister to compel his Department to produce evidence justifying this course of action.[4]

In April 2018, the Department published a draft approval report seeking public comment on proposed conditions. In its draft approval the Department identified significant impacts are likely on several threatened species and there remains a risk to water quality flowing into the Great Barrier Reef. The only proposed mitigation measure was to reduce the extent of clearing by 12% from 2100 to 1846 hectares along water courses.

However, the Federal Government recently conceded it failed to properly assess matters of national environmental significance at Kingvale Station despite providing draft approval to clear the 1846 hectares.

They made this concession as legal proceedings were brought against the Minister by the Environment Defenders Office of New South Wales (EDO) on behalf of the Environment Council of Central Queensland (ECoCeQ).

In late November last year, the Federal Court of Australia ordered that the decision to provide draft approval, a formal recommendation to the Minister, be set aside. The grounds for the Court's orders were centred on the fact that the Minister did not demonstrate they had properly considered the criteria under regulations relating to the EPBC Act.

These criteria relate to the scale and extent of impacts, their irreversibility, the amount of information available, the number of threatened species impacted and the degree of public concern about the issue. They also relate to the standing of the proponent.

As a result, we are now presented with the current process for which this submission has been prepared. While the shift in assessment process represents a theoretical improvement in rigour, it is relying on the same information used under the previous assessment by referral documentation.

[4] Letter from Ian Macdonald and Barry O'Sullivan to then Minister Josh Frydenberg dated 30/8/2016 Obtained by ACF under FOI.

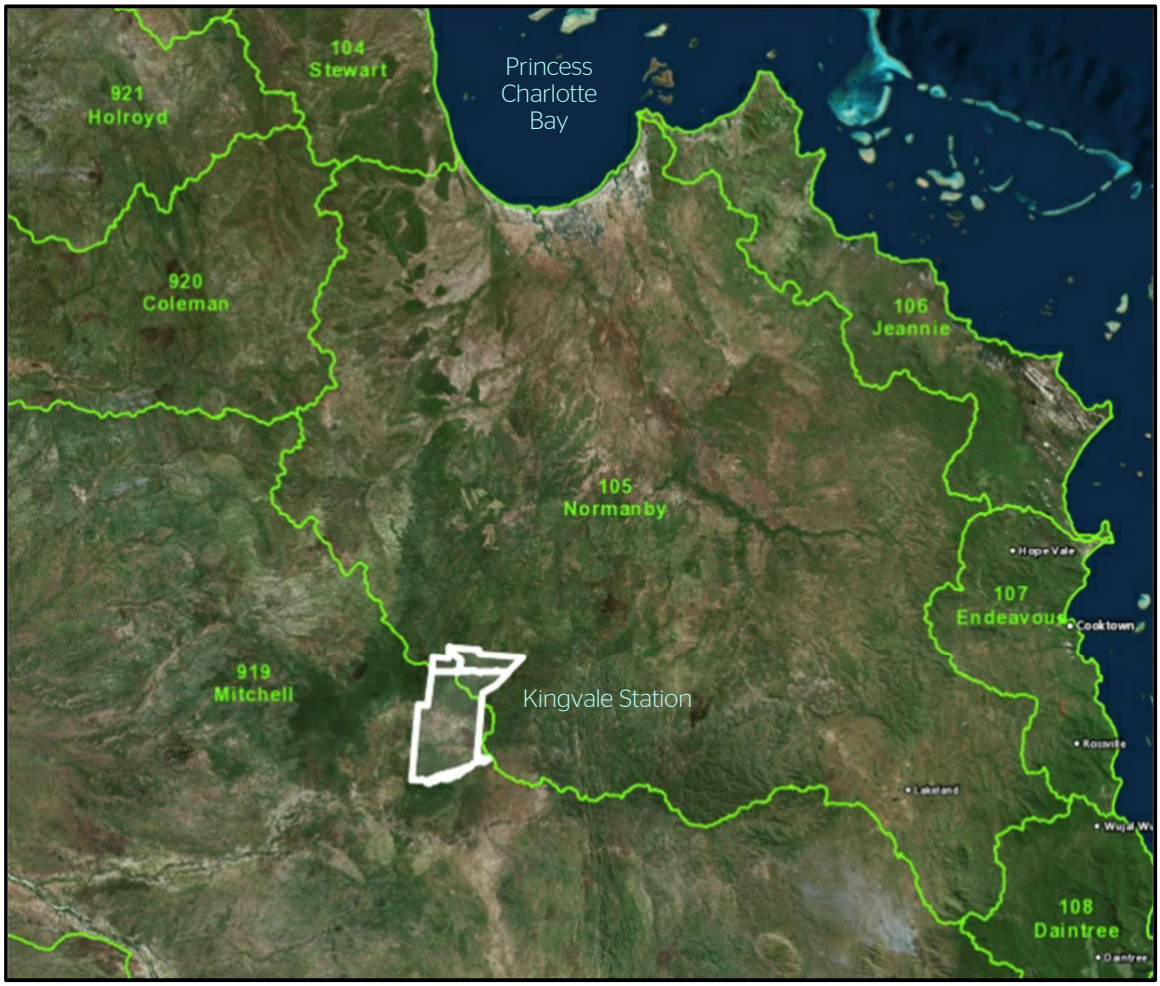
AUSTRALIAN CONSERVATION FOUNDATION

Geographic Context

Kingvale Station is located within the southern end of Cape York Peninsula and within the Laura Lowlands and the Coen-Yambo Inlier subregions. The entire property straddles the Great Dividing Range and includes catchment areas that flow into both the Gulf of Carpentaria and the Coral Sea - Great Barrier Reef Marine Park via the Mitchell and Normanby Basins respectively.

The 2100 hectares proposed for clearing is within the Laura Lowlands subregion and within the headwaters of Jones Creek which is tributary of the Hann River and part of the Normanby Basin.

At 24,353km^2, the Normanby Basin is the fourth largest catchment of the Great Barrier Reef and contributes the third largest sediment load of all Reef catchments.[5] Beginning its journey to the south-west of Cooktown, the Normanby Basin takes in the rangelands of the Laura sub-catchment before flowing out into Princess Charlotte Bay.



The north western area of Kingvale Station including the 2100 hectares proposed for clearing is within the Normanby Basin which flows into Princess Charlotte Bay. Source: Queensland Globe.

[5] McKergow LA et al. Sources of sediment to the Great Barrier Reef World Heritage Area, *Marine Pollution Bulletin*, **51,** (2005) 200-2011.

Matters of National Environmental Significance

Three of the four relevant controlling provisions under the EPBC Act relate to the Great Barrier Reef while the fourth relates to threatened species known or likely to occur within the area proposed for clearing.

Great Barrier Reef & Princess Charlotte Bay

The Great Barrier Reef is a Matter of National Environmental Significance (MNES) as a:

- World Heritage Area
- National Heritage Place, and
- Commonwealth Marine Park.

The Great Barrier Reef Marine Park and its National and World Heritage values require consideration in relation to the potential impacts of land clearing and associated agricultural activity at Kingvale Station. The discussion here is confined to addressing World Heritage values.

The Great Barrier Reef World Heritage Area (GBRWHA) was listed in 1981 and meets all four World Heritage criteria for natural values. The four natural criteria are listed below.

(vii)	contain superlative natural phenomena or areas of exceptional natural beauty and aesthetic importance;
(viii)	be outstanding examples representing major stages of earth's history, including the record of life, significant on-going geological processes in the development of landforms, or significant geomorphic or physiographic features;
(ix)	be outstanding examples representing significant on-going ecological and biological processes in the evolution and development of terrestrial, fresh water, coastal and marine ecosystems and communities of plants and animals;
(x)	contain the most important and significant natural habitats for in-situ conservation of biological diversity, including those containing threatened species of Outstanding Universal Value from the point of view of science or conservation.

Natural Criteria (7 – 10), World Heritage Operational Guidelines 2017

The GBRWHA values, including natural habitats of Outstanding Universal Value identified in criterion 10 above must also meet integrity, protection and management conditions set out by UNESCO.[6]

Outstanding Universal Value relates to the natural or cultural significance that is:

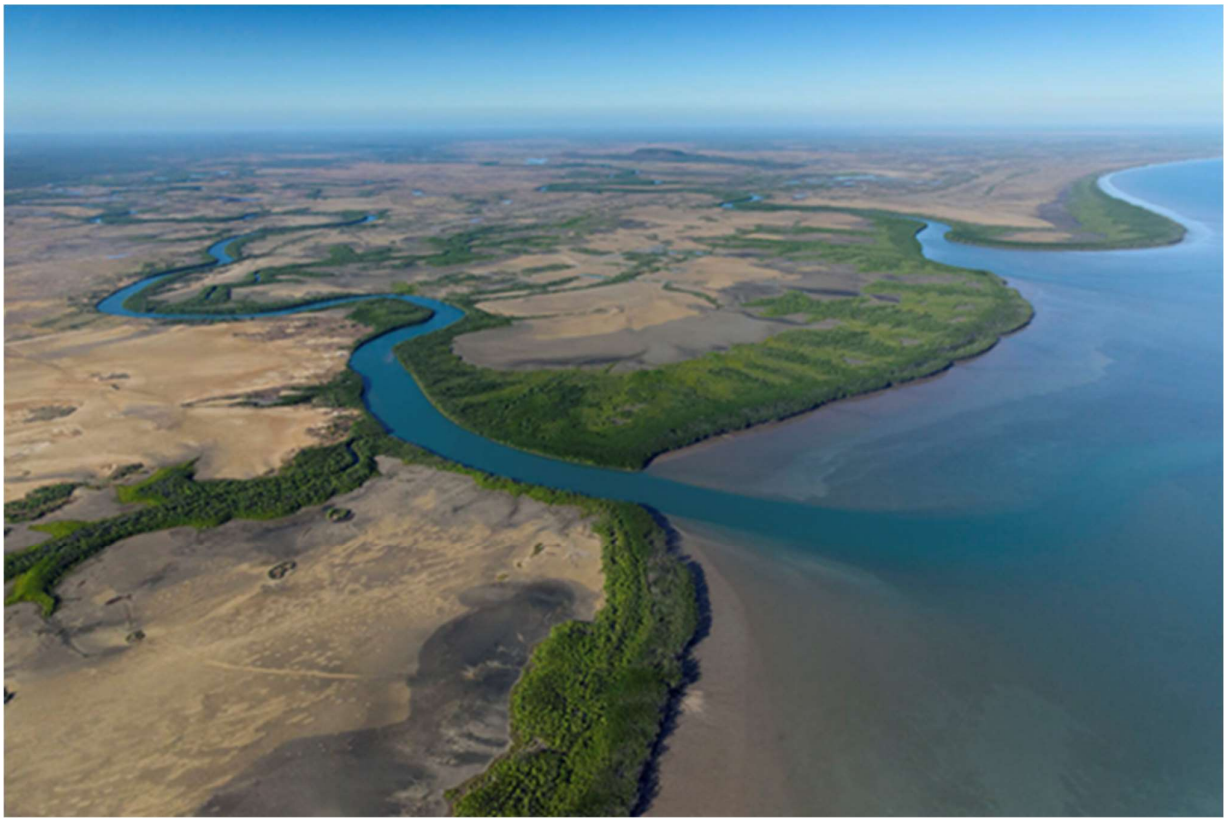
> *"so exceptional as to transcend national boundaries and to be of common importance for present and future generations of all humanity. As such, the permanent protection of this heritage is of the highest importance to the international community as a whole."*

[6] UNESCO 2017, *Operational Guidelines for the Implementation of the World Heritage Convention.*

Under the World Heritage Convention and subsequent national and state framework, the Federal and Queensland governments are obliged to protect and manage the Outstanding Universal Values of the GBRWHA.

Princess Charlotte Bay is the largest marine wetland of its type within the GBRWHA and exemplifies the Outstanding Universal Values by representing all four natural World Heritage criteria within a small geographic area.[7] Mangroves, seagrass meadows and coral reefs contribute to the diversity of marine habitats while the floodplains of the Normanby Basin provide extensive freshwater and estuarine wetlands of national importance.

Central to the international significance of Princess Charlotte Bay, are the populations of dugong, turtle and other marine and estuarine species that utilise the range of habitats. These are summarised below.



Where the Normanby River meets Princess Charlotte Bay on Cape York Peninsula in the GBRWHA supports all four natural World Heritage criteria. Photo: Kerry Trapnell.

[7] GBRMPA, 2014, "Great Barrier Reef Region: Strategic assessment report. GBRMPA, Townsville.

Dugong:

Princess Charlotte Bay was established as a Special Management Area within the Great Barrier Reef Marine Park specifically for dugong conservation and protection.[8]

Habitat degradation resulting in the loss of seagrass meadows is identified as a moderate to severe threat by the Australian Government.[9] Poor water quality is also identified as a threat to dugong habitat by Great Barrier Reef Marine Park Authority.[10]

Existing sediment and pollutants from erosion and agricultural expansion is already placing increased pressure on the marine environment within Princess Charlotte Bay.[11]

Further sediment loads from land clearing and the potential increase of chemical pollutants associated with agricultural intensification and instream mining are likely to exacerbate existing threats.

Marine turtles:

Marine Turtles are central to the World Heritage values of the Great Barrier Reef. Four species are known to occur near the Normanby River mouth with a further two considered to be likely within a 3-kilometre search buffer.[12]

Shallow seagrass meadows, such as those found in Princess Charlotte Bay, provide vital habitat for the Green Turtle and other species. Green Turtles are known to breed within the vicinity of the Normanby River.[13] Loggerhead Turtles also use seagrass meadows and are known to feed within Princess Charlotte Bay. Although less frequently, Hawksbill Turtles are also known to forage in seagrass meadows.[14]

Increased sediment flowing from the Normanby Basin is likely to reduce the quality and extent of seagrass meadows in Princess Charlotte Bay, thus reducing critical habitat for marine turtles.

Largetooth sawfish:

The Largetooth Sawfish is listed as vulnerable under the EPBC Act and critically endangered under the IUCN's Red List of Threatened Species.

Habitat modification and degradation along with fishing (by-catch, illegal and unregulated) are the principle threats to this species. According to the Recovery Plan, all populations are of high conservation value.[15]

---

[8] GBRMPA, "Great Barrier Reef Marine Park Zoning Plan 2003", 2003, Australian Government, GBRMPA

[9] Commonwealth of Australia, "Species Profile and Threats Database – Dugong", Department of Environment and Energy, viewed online http://www.environment.gov.au/cgi-bin/sprat/public/publicspecies.pl?taxon_id=28 (accessed 14 September 2016).

[10] GBRMPA, "GBRMPA Position Statement on conservation of dugongs…" 2007.

[11] Howely C. et al. "Normanby Catchment Water Quality Management Plan", 2013, Australian Rivers Institute, Griffith University.

[12] Ibid.

[13] Ibid.

[14] Commonwealth of Australia, "Species Profile and Threats Database – Hawksbill Turtle, Department of Environment and Energy, viewed online http://www.environment.gov.au/cgi-bin/sprat/public/publicspecies.pl?taxon_id=1766 (accessed 16 September 2016).

[15] DoE, (2015), Sawfish and River Sharks Multispecies Recovery Plan, Australian Government, DoE.

As juveniles, the Largetooth Sawfish inhabit freshwater rivers and upper estuarine areas and move into lower estuarine and marine environments as adults. They have been recorded up to 400km inland and can occupy isolated water holes, freshwater rivers, river mouths, estuaries and shallow coastal waters.

Objective 5 of the Recovery Plan seeks to reduce or eliminate the impacts of habitat degradation and modification. The Performance Criteria for Action 5a of the Recovery Plan requires all future assessments of proposed developments are undertaken in accordance with the EPBC Act and associated guidelines and policies, the Sawfish and River Shark Recovery Plan and that advice on likely impacts is sought from experts for all proposed activities in habitat critical to the survival of the species. This is also a priority 1 action.

The Largetooth Sawfish is known to occur in the Normanby Basin and represents the only known habitat along Australia's east coast.[16] Activities such as land clearing and agricultural intensification contribute to the sedimentation of waterways and directly threaten this species. Land clearing at Kingvale and Olive Vale Stations will likely reduce the extent and quality of habitat for this species.

Threatened Species

In December 2017, the Department identified up to nine threatened species (Table 1) likely to occur within the area proposed for clearing at Kingvale Station.[17] This information is in the Referral Decision Brief obtained by ACF under Freedom of Information.

The Department's main source of information for threatened species is its own online Protected Matters Search Tool[18] and the two ecological studies commissioned in response to the proponent's opposition to referral and assessment.

In undertaking a two-day assessment across Kingvale station, Preece (2016) noted that the:

> *"Red Goshawk, Golden-shouldered Parrot, Northern Quoll, Black-footed Tree-rat, Bare-rumped Sheathtailed Bat and Ghost Bat – may each occur as residents or regular visitors (as individuals, families or flocks) to the areas proposed for clearing. Clearing of their habitat may affect the populations of these species."*
>
> *"Each species is known to occur near the project area, and it is highly likely that they could at some time visit or occupy the project areas."*[19]

An additional survey was undertaken by Redleaf Environmental consultants and detected the occurrence of the Bare-rumped Shiethtail Bat through matching echo-location call signatures within the areas proposed for clearing.[20]

Redleaf Environmental also identified potentially suitable habitat for a further six species listed in the table above and recommended more survey effort to establish presence or absence and potential impacts from clearing.[21]

Of these other species the Northern Quoll was identified as most likely to occur within the vicinity and utilise the areas proposed for clearing as foraging habitat.[22]

---

[16] Ibid.

[17] Referral Decision Brief (EPBC 2016/7751) dated 21/12/2017 sections 3.56-3.82

[18] http://www.environment.gov.au/epbc/protected-matters-search-tool

[19] Preece N (2016) Kingvale Station matters of National Environmental Significance, Prepared for DoE. P. 35

[20] Redleaf Environmental (2016) Kingvale Station – MNES Preliminary survey, Dec 2015, and assessment of species occurrence.

[21] Ibid. p. 9-11.

[22] Ibid. p. 14.

With and appropriate level of survey effort, both consultants conclude that it is likely more species would be detected within the areas proposed for clearing.

Table 1: Nationally threatened species likely to occur, or with suitable habitat, within the area proposed for clearing.

Common Name	Scientific Name	Status	Source
Red Goshawk	*Erythrotriorchis radiatus*	V	1, 2, 3
Golden-shouldered Parrot	*Psephotus chrysopterygius*	E	1, 2, 3
Gouldian Finch	*Erythrura gouldiae*	E	2, 3
Buff-breasted Button-quail	*Turnix olivii*	E	2, 3
Masked Owl	*Tyto novaehollandiae kimberli;*	V	3
Northern Quoll	*Dasyurus hallucatus*	E	1, 2, 3
Black-footed Tree-rat	*Mesembriomys gouldii rattoides*	V	1, 2, 3
Ghost Bat	*Macroderma gigas*	V	1, 3
Bare-rumped Sheathtail Bat	*Saccolaimus saccolaimus nudicluniatus*	V	1, 2, 3

1: *Kingvale Station Matters of National Environmental Significance*, Preece N, 2016

2: *Kingvale Station – MNES Preliminary survey, Dec 2015, and assessment of species occurrence*, Redleaf Environmental 2015.

3: *Referral Decision Brief* (EPBC 2016/7751) 21/12/2017.

Impacts

The fact that clearing 2100 hectares at Kingvale Station will have and impact on water quality and threatened species habitat is unequivocal as it is the basis of the Department's referral and previous draft conditions. These two areas are discussed below.

Impacts on Water Quality & the Great Barrier Reef

Existing erosion at Kingvale Station and within the Normanby Basin is likely to be exacerbated by the proposed clearing.[23] Sediment and nutrient loads are predicted to increase in water courses leaving Kingvale Station as a consequence of the proposed clearing.[24]

In Attachment 3 of the Department's correspondence to the proponent dated 23 June 2016 we note paragraph 29 and 31 where the opinion of an external consultant and the Great Barrier Reef Marine Park Authority were summarised as follows:

- *individually, each proposal like Kingvale is certain to increase erosion;*
- *it is almost guaranteed that the resulting erosion from large scale clearing will result in fine sediment entering Princess Charlotte Bay during flood events; and*
- *GBRMPA considers that caution should be taken in approving any further clearing in the Normandy catchment because this catchment has already been subject to such a large amount of increased erosion.*[25]

Paragraph 32 goes on to state that:

> *In light of the above, I consider that the proposed action is likely to result in additional nitrogen, phosphorus and/or sediment entering the Great Barrier Reef Marine Park via the Normanby catchment, which has been scientifically linked to coral bleaching, outbreaks of crown of thorns starfish, and smothering of seagrasses and coral.*[26]

Annual flood events carry both fine sediment and dissolved nutrients that are being released by various land used practices. Nutrients can trigger phytoplankton blooms and crown of thorn outbreaks,[27] and this has direct implications for the health of both seagrass meadows and recovering coral reefs.

Recent studies have shown that nutrients and sediment originating from agricultural land uses within the Normanby Basin has the potential to negatively impact on marine ecosystems within Princess Charlotte Bay.[28] This was also noted by Shellberg regarding the siltation of estuarine habitats used by the Freshwater Sawfish.[29]

---

[23] Shellberg J (2016) *Soil Erosion & Downstream Sedimentation Risks Associated with Proposed Vegetation Clearing for Agricultural Development on Kingvale Station, Lot 1 on Plan KG2, Cape York Peninsula.* Produced for the Department of the Environment, Commonwealth of Australia, p. 21

[24] Ibid. p. 25.

[25] Attachment 3, *Request for Referral of Proposal to Take an Action – Kingvale Station,* in correspondence from the Department to the Proponent 23 June 2016.

[26] Ibid.

[27] Howley et al. (2017) Assessment of water quality from the Normanby River catchment to coastal flood plumes on the northern Great Barrier Reef, Australia. *Marine and Freshwater Research* **69** (6) 859-873. http://www.publish.csiro.au/MF/MF17009

[28] Howley et al. (2015) *Water Quality in Princess Charlotte Bay – Flood Plumes and Eastern Cape York Peninsula Flood Plume Exposure: 2012-2014.* A report prepared for the GBRMPA marine Monitoring Program. http://elibrary.gbrmpa.gov.au/jspui/bitstream/11017/3159/2/CYP_MMP_report_2012-2014_final.pdf

[29] Shellberg (2016), p. 25.

Agricultural production within the Normanby Basin has incrementally increased within the context of local, state and federal policy and changes to legislation. The proposal to clear 2100 hectares at Kingvale is precisely the kind of incremental and cumulative impact identified as a threat to the Great Barrier Reef by the Marine Park Authority above, and in the scientific community discussed below.

The 2013 Scientific Consensus Statement highlights that terrestrial run-off, nitrogen discharge, fine sediment and agricultural pollutants have contributed to the decline of the Reef. Further, an independent review identified these threats are likely to accelerate on Cape York Peninsula.[30]

The 2017 Scientific Consensus Statement makes numerous references to the impacts of land clearing and land use change on the reef:

> *"In addition to climate change and major infrastructure project risks, described above,* ***additional pressures on the reef can arise from increased vegetation clearing, changing land use such as proposals to expand agricultural production across northern Australia****, and the lack of economic valuation of ecosystem services.*[31] (Emphasis added)

> *"Clearing of forest can result in a doubling of run-off (Cowie et al., 2007; Thornton et al., 2007). Cropped and grazed catchments export higher quantities of sediment and phosphorus than the virgin Brigalow catchments (Elledge and Thornton, 2017). Trend analysis of recent stream-flow records (1920-2007) using pre- and post-clearing river flow data in the Upper Burdekin suggest that there has been a decrease in base flow following tree clearing and an increase n event storm flow during large rainfall events (Peña-Arancibia et al., 2012). Storm flow is largely responsible for erosion and delivery of sediments from rangelands. In general, if tree clearing and any associated land use change expose and/or disturb the soil surface, then water and sediment loss are likely to increase.*[32]

Increased land clearing and agricultural runoff within the Normanby Basin will undoubtedly contribute to the ongoing decline in water quality flowing into Princess Charlotte Bay. This was identified in the Strategic Assessment.[33]

> *"The projected increase in economic development of the adjacent catchment area is likely to increase pressure on the biodiversity and heritage values of Princess Charlotte Bay, which are predicted to decline in condition in the coming decades. Contributing factors include the current outbreak of crown-of-thorns starfish in the area; extreme weather events that are likely to affect the condition of coral reefs and other habitats; and likely clearing and modifying of additional land in the catchment for agriculture."* [34]

Although Princess Charlotte Bay represents all four natural World Heritage criteria, there has been no detailed assessment of the cumulative impacts of the combined development pressures in the Normanby Basin on water quality flowing into the Great Barrier Reef.

Impacts on Threatened Species

Habitat loss and deforestation are one of the major drivers of biodiversity decline globally. Further, Australia has become a global hotspot for deforestation and we have the highest modern extinction rate.

Departmental advice to the Minister from 2017 states:

---

[30] Great Barrier Reef Region Strategic Assessment - Independent Review Repot, SKM 2014.

[31] Scientific Consensus Statement 2017, Ch.4, p. 41

[32] Ibid. Ch.2 p.30

[33] Great Barrier Reef Region Strategic Assessment Report, section 9 http://elibrary.gbrmpa.gov.au/jspui/handle/11017/2861

[34] Ibid. p. 9-21.

> *"the Department considers that there is a real chance or possibility that project activities will significantly impact on the* [threatened species] *through destruction of potential habitat."*[35]

Referring to the Golden-shouldered Parrot, the Department went on to say the species was:

> *"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."*

The Department raised similar concerns about clearing habitat for the Bare-rumped sheath tail bat, and the Northern quoll.

It is also worth noting that the Golden-shouldered Parrot has recently been the subject of focussed studies as part of a review of the Recovery Plan yet to be published.

Consultants Redleaf Environmental noted:

> *"The degree to which the proposed clearing would impact on these species is difficult to assess, however both roosting and foraging habitat would be destroyed by the clearing in the case of the sheathtail bat, and foraging habitat and population connectivity may be affected in the case of the quoll."*[36]

> *"…the Northern Quoll may occur in proximity to the proposed clearing areas and that vegetation removal may diminish foraging areas and impede the movement of animals between key habitat areas, fragmenting populations and contributing to long term population decline."*[37]

In addition, Preece noted:

> *"…this clearing proposal will detrimentally affect a number of these species due to loss of habitat and direct disturbance.*[38]

Land clearing within the Normanby Basin, Cape York Peninsula. Photo: ACF

[35] Referral Decision Brief (EPBC 2019/7751) 2017, p. 17.
[36] Redleaf Environmental 2016, p. 5
[37] Ibid. p. 14
[38] Preece 2016. p.35

AUSTRALIAN CONSERVATION FOUNDATION

Limitations of Environmental Assessments

A consistent view amongst the environmental consultants engaged by the Department is that the area proposed for clearing at Kingvale Station has not been subject to an adequate environmental assessment to determine the presence or absence of threatened species and the impacts of clearing.

For example, Preece noted:

> *"These identified species should be subject to further field assessment to determine their presence or absence..."*[39]

In the Discussion and Conclusion on page 35 of the report by Biome 5, Preece also noted that significant survey effort is required over longer periods as some species are very hard to detect with specific reference to the Black-footed Tree-rat and the Golden Shouldered Parrot.

Notwithstanding the detectability issues, Preece recommended survey methods for each species and concluded his report with:

> *"The recommended surveys should be conducted in case the species are present and that some management practice or alternative clearing method can be implemented."*

In addition, Redleaf Environmental noted that the exceedingly dry conditions were not optimal:

> *"At the time of the field survey, wildlife activity was suppressed due to the exceedingly dry conditions"*

Redleaf Environmental went on to say that determinations of presence or absence were difficult without further data. And in the case of the Northern Quoll, "*Further surveys warranted."*

In concluding his report on soil erosion and downstream sediment risk Shellberg noted the need for a full Environmental Impact Assessment:

> *"Both rapid assessments by Spies (2014) and Shellberg (2016 this report) are insufficient to fully and properly assess the potential risks to erosion and downstream sedimentation from agricultural clearing and development in Area 1 at Kingvale. Nor are they sufficient to design a development plan to properly mitigate any potential impacts during the construction and implementation phases. It is recommended that a more detailed environmental impacts assessment (EIA) be implemented by independent geomorphologists, soil scientists and hydrologists for soil erosion assessment. Other disciplines and assessments might also be appropriate for a fully balanced EIA."*[40]

[39] Ibid. p. 31
[40] Shellberg, 2016, p.28

AUSTRALIAN CONSERVATION FOUNDATION

Comment on Previous Draft Conditions & Recommendation Report

Clearing 1,846 hectares, 88% of the 2100 hectares currently proposed was recommended for approval by the Department in December 2018.[41] This was despite the significant risk of permanent and ongoing impacts of the clearing and agricultural activity on water quality and threatened species habitat.

For example, the Department's Recommendation Report notes:

> *"The Department has received reports from Dr Shellberg (2016 and 2017) that advise that implementing the conditions of the Queensland Development Permit and the additional measures offered by the proponent on 1 November 2017 will not adequately reduce the risk of erosion and of sediment entering the GBRWHA. Shellberg (2016 and 2017) advises that the proposed action is likely to cause erosion and sediment movement which is likely to impact the Reef.*
>
> *The advice from the GBRMPA 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 Reef. Increases 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.*
>
> *The Department notes that the proposed action is to clear a large area of approximately 2,100 ha (~21 km2), with the result that even low rates of increased erosion create a potential for large amounts of sediment and nutrient movement into waterways over time."* [42]

There is insufficient evidence in the recommendation report to support the Departments assessment that by reducing the overall clearing footprint by 12% (from 2,100 ha to 1,846) that risks to the GBRWHA will be sufficiently reduced. The Departments reasoning at paragraph 7.115 reinforces this point.

The Department has somehow arrived at a position that clearing on any area lesser than 2% gradient is fine, irrespective of scale, quantum or values on said land. There is no standalone policy or peer reviewed evidence to support this position as a key regulatory decision making framework. Further the Department states that there is sufficient research, citing the Scientific Consensus Statement and consultants for the report.

This is a flawed assessment. Firstly, the Scientific Consensus Statement is silent on the appropriate gradient for reduction of sediment, nor does it suggest limiting the loss of native vegetation to areas greater than 2% in gradient is the appropriate trigger point. If this approach were to be applied across reef catchments it would be an unmitigated disaster for water quality impacts. Secondly, irrespective of gradient, erosion across substantially large areas, such as 1,846 ha (which is larger than six times the size of Sydney CBD) will still have sediment impacts on the value of the reef. They will simply be lesser than those that are steeper.

The Department based its entire decision on one consultant report for one project, that will have far reaching ramification for regulating land use change within the catchments of the GBR.

The reality is this is a convenient and selective assessment by the Department to navigate a politically contentious issue, rather than an evidence-based approach to environmental impact assessment, or an appropriate application of the precautionary principle. The political interests in this project are made clear by representations to the Department by a cabinet minister and a former cabinet minister that respectively note

---

[41] Draft Recommendation Report (EPBC 2016/7751)

[42] Ibid, section 7.113 – 7.115

the project should not even trigger the EPBC Act or that it will not impact the reef (paragraphs 5.8 and 5.9). Both are inaccurate assessments.

In section 11.22 of the Draft Recommendation Report, the Department claim that approving the clearing of 1846 hectares is consistent with Australia's obligations under the World Heritage Convention. This is in contrast to the demonstrable impacts identified by the consultants, the need for a more detailed assessment, the Strategic Assessment for the GBRWHA and the 2013 and 2017 Scientific Consensus Statements.

In relation to threatened species, The Department's Recommendation Report notes the loss of habitat and potential for significant impact on six threatened species. In a previous brief to the Minister, the department listed nine threated species and provides no explanation for the reduced number.

Also, in contrast to the previously mentioned Referral Decision Brief is the absence of language that each of the discussed species faces a high and real risk of extinction in the near future. And while identifying that the proponent has not proposed any avoidance or mitigation measures to protect these species, The Department suggests that each one can be adequately protected by 100 meter buffers along water courses.

The Department has failed to identify the total loss of habitat or adequate response mechanisms, beyond existing proposals for buffer zones on riparian vegetation. Instead the Department recommends to the decision maker that the significant loss of habitat is acceptable, despite clear tests for the improvement and maintenance of MNES set out in both legislation and policy. If approved, the Department will be wilfully facilitating the decline of threatened species.

Making an approval decision with the absence of this information fails to meet the basic requirements of the Act, specifically the application of the precautionary principle.

There is no evidence the buffers proposed in the previous Draft Recommendation Report will provide any meaningful measures to ensure the threated species most impacted by the clearing will benefit.

Offsets

Whilst offsets are contentious and ACF challenges their efficacy and the flawed application of the EPBC Offsets policy and calculator, they warrant specific mention here. The lack of application of compensatory mechanisms in the form of offsets or the mitigation hierarchy for 1,846 of habitat clearance for multiple threatened species is a significant regulatory failure. If approved as it currently stands, the decision would set an incredibly dangerous precedent and would effectively represent an abrogation of the national offsets policy.

AUSTRALIAN CONSERVATION FOUNDATION

Conclusion

ACF is deeply concerned national environmental approvals are being unduly politicised after the Federal Government conceded it had not justified its decision to apply the least rigorous environmental assessment on a proposal to destroy 2100 hectares of native forest in a critical Great Barrier Reef catchment.

Documents released under Freedom of Information show several Federal Government MPs and Senators, who met several times with Environment Department officials and the then Federal Environment Minister to push their view that no further studies were necessary.

While the Department advised that the proposed clearing would likely have a significant impact on nine threatened species and reduce water quality running off onto the Great Barrier Reef, the Federal Government ultimately applied the least rigorous form of assessment, then issued a draft approval for the land clearing.

But after legal proceedings were launched by the Environmental Defenders Office NSW on behalf of the Environmental Council of Central Queensland, the Federal Government has conceded its decision to apply a weak assessment choice was unlawful.

The woodland habitat at Kingvale is a crucial catchment for the Great Barrier Reef and home to rare and threatened parrots, quolls, birds and bats.

Advice from the Department to the previous minister, obtained by the ACF under a Freedom of Information request, shows bureaucrats warned the minister clearing at Kingvale Station would cause significant damage to habitat of several threatened species at very high risk of extinction.

The department said as the Golden-shouldered parrot was "*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*."

The Department raised similar concerns about clearing habitat for the Bare-rumped sheathtail bat, the Northern quoll and five other nationally threatened species.

Despite the demonstrable risk to threatened species, the Federal Government provided draft approval for land clearing at Kingvale in December 2018.

ACF urges the current Environment Minister Melissa Price and the Department to either reject this proposal outright or subject it to a rigorous environmental impact assessment process, which would put more scrutiny on the damage the clearing will cause and give the public more of a say about a proposal that would harm our Great Barrier Reef.

ACF strongly urges Minister Price to stand up for threatened species and the Great Barrier Reef by preventing the proposed environmental destruction at Kingvale on Cape York.

Recommendation

Land clearing and associated agricultural activity as described in Referral 2016/7751 is not approved under the EPBC Act 1999 due to the demonstrable impact on nationally threatened species and water quality flowing into Princess Charlotte Bay, part of the Great Barrier Reef World Heritage Area.

Andrew Picone

Nature Campaigner

Australian Conservation Foundation

Telephone. **0457 798 359** | Email. **Andrew.picone@acf.org.au** | **@AusConservation**

www.acf.org.au | Level 1, 60 Leicester Street Carlton VIC 3053