

I draw to your attention the fact that when the following determination was made in 2002

It pre-dates the introduction of the Rural Numbering System for property addresses. Therefore the

Referral to "33 Cabbage Tree Road" is now known as "554 Cabbage Tree Road" Williamtown.

Mr Rodney Noel Skaife
33 Cabbage Tree Road
Williamtown NSW 2318



7 June, 2002

Our Ref: 7758, NE0204
Your Ref:

Dear Mr Skaife

**Re: Application for Clearing Vegetation under the
Native Vegetation Conservation Act 1997**

RN Skaife 33 Cabbage Tree Road, Williamtown

Your application for development consent to clear native vegetation, Registered Number NE0204, lodged under the *Native Vegetation Conservation Act 1997* has been **refused**. The reasons for the Department's decision are stated in the attached report.

If you are dissatisfied with this decision, section 97 of the *Environmental Planning and Assessment Act 1979* gives you the right to appeal to the Land and Environment Court within twelve months after the date on which you receive this notice.

If you have any questions about this determination and the associated assessment please contact Stephen Gowlland at Newcastle on telephone (02) 4929 9852.

Yours sincerely

A handwritten signature in dark ink, appearing to read "SJ Gowlland", with a long, sweeping flourish extending to the right.

SJ Gowlland
Senior Natural Resource Officer, Resource Access
Newcastle

Notice of determination of a development application

issued under the Environmental Planning and Assessment Act 1979 section 81(1)(a)
for clearing native vegetation or any protected land under the *Native Vegetation
Conservation Act 1997*

**development application
registered number:**

NE0204

development application

applicant name Skaife, Rodney Noel

postal address 33 Cabbage Tree Road
Williamstown NSW 2318applicant address 33 Cabbage Tree Road
Williamstown NSW 2318land and area under application 9/822184
10/822184
Parish of Stockton
County of Gloucester

proposed development Clearing of 11 hectares of native vegetation for the purpose of agriculture (and rate relief)

determination

made on (date) The date of the signature below.

determination

☐
☐
☒consent granted unconditionally
consent granted subject to conditions described below
application refused

consent to operate from (date) Not applicable (See Note 1)

consent to lapse in Not applicable

details of conditions Not applicable

reasons for conditions/refusal See Attachment No 1

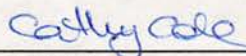
right of appeal

If you are dissatisfied with this decision, section 97 of the *Environmental Planning and
Assessment Act 1979* gives you the right to appeal to the Land and Environment Court
within 12 months after the date on which you receive this notice.

signed

on behalf of the consent authority

signature



name

Cathy Cole
Regional Director, Hunter
by delegation from the Hon. John Aquilina
Minister for Land and Water Conservation

date

5/6/2002

Note 1. where the consent is subject to a condition that the consent is not to operate until the applicant satisfies a particular condition
the date should not be endorsed until that condition has been satisfied.

Attachment 1: Reasons for refusal

Introduction

Your development application was assessed using current procedures developed by the Department of Land and Water Conservation (DLWC) and other resource information. This includes:

- the requirements of Section 79C(1) of the *Environmental Planning and Assessment Act 1979* in accordance with Part 2 of the *Native Vegetation Conservation (NVC) Act 1997*:

Section 79C (1) Matters for consideration - general

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) *the provisions of:*
 - (i) *any environmental planning instrument, and*
 - (ii) *any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority, and*
 - (iii) *any development control plan, and*
 - (iv) *any matters prescribed by the regulations that apply to the land to which the development application relates*
 - (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments and social and economic impacts in the locality,*
 - (c) *the suitability of the site for the development,*
 - (d) *any submissions made in accordance with this Act or the regulations,*
 - (e) *the public interest.*
- field inspection and liaison between officers of the DLWC, NPWS and NSW Agriculture.

This determination has been made having regard to the objects of the NVC Act 1997 in accordance with the principles of ecologically sustainable development.

The refusal has been imposed consistent with the following assessment of the development application.

Assessment officers were:

Victoria Lees
Natural Resource Project Officer (Resource Access)
Newcastle

David Russell
Natural Resource Project Officer (Resource Access)
Newcastle

Assessment for the Clearing of Native Vegetation

Description of proposal

The applicant proposes to entirely clear an 11 hectare site in the Port Stephens area, in order to establish a cattle grazing enterprise. The applicant states that the proposed change in land-use is in order to gain a reduction in rates.

In summary the applicant suggests that a total establishment cost of approximately \$22 200 would enable him to clear the land, establish pasture, adequately fence the site and purchase 12 cows and one bull. The applicant states that he would recover these costs within 2 years, through the sale of weaners.

During the pre-application inspection, the applicant mentioned that he had considered taking out a voluntary conservation agreement with National Parks and Wildlife Service, in order to gain rate relief, but had chosen not to adopt this option.

Description of site

The site, located on Cabbage Tree Road, Williamstown, is 11.22 hectares in size. With the exception of a house, access road and boundary fence, it is uncleared (Figure 1). The property features coastal eucalypt woodland complex, as well as coastal swamp forest species. The vegetation is largely undisturbed with the exception of a 25m strip at the rear (north) of the site where water supply was obtained for the purpose of sand mining of the adjoining Tomago Sandbeds during the 1970s. The property has been subject to a number of hazard reduction burns over the past decade. The applicant has provided details of the mosaic pattern which has been applied to the hazard reduction burns.



Figure 1: Locality map and aerial photograph of the property under application.

Ancient aeolian dune systems have created the landforms of the area, consequently the soils of the site are extremely porous and sandy. The site is located over the Tomago Sandbeds aquifer system, which supplies drinking water to Newcastle and surrounding areas. The applicant states that there are some areas of high organic matter (which he describes as

peat), on the predominantly sandy site. The applicant states that the site is underlaid with "coffee rock", which is common in the area, at a depth between one and five metres.

The applicant has provided consultants' reports describing the vegetation for the site and adjoining properties that were prepared for other activities. The reports are:

- HTWT Environmental Consultants (August 1997) *Statement of Effect on Threatened Flora and Fauna Species for the Proposed Hazard Reduction of 4 Hectares of Land Within Lots 7, 8, 9, & 10 Cabbage Tree Road, Williamtown*
- Barker and Harle (May 2001) *Flora and Fauna Assessment at Lot 7, 29 Cabbage Tree Road, Williamtown for Mr S. Thompson.*

The LHCCREMS mapping project, maps the site as Map Unit 33 – Coastal Sand Apple – Blackbutt Forest and Map Unit 40 – Swamp Oak – Rushland Forest.

In general, the site is very well vegetated, with minimal disturbance. The vegetation community resembles a coastal eucalypt woodland complex. Dominant species noted during the site inspection include Smooth-barked Apple (*Angophora costata*), Red Bloodwood (*Corymbia gummifera*). Swamp Mahoganies (*Eucalyptus robusta*), a preferred koala feed tree, were noted, particularly towards Cabbage Tree Road.

Of interest, Camfield's Stringybark (*Eucalyptus camfieldii*) was recorded on the adjacent property. This species was confirmed by the National Herbarium, as were several hybrids of this species and White Stringybark (*E. globoidea*). *E. camfieldii* is listed as Vulnerable on Schedule 2 on the Threatened Species Conservation Act. This species is also of interest as it is at the limit of its known distribution and is growing on sandy soils. It is quite likely that this species would occur on the site proposed for clearing. Also recorded on the adjoining site was the threatened species, *Eucalyptus parramattensis* spp *decadens*. It is quite likely that both these threatened species would occur on the site, although further investigations would be required to confirm their presence.

The relatively dense understorey community exhibits species typical of the coastal forests of the area. Detailed species lists are provided with the consultant's reports accompanying the application.

Decision summary

The application to clear native vegetation at 33 Cabbage Tree Road, Williamtown, is refused. The proposal to clear for the purpose of a cattle enterprise is not economically or environmentally sustainable.

Potential environmental impacts as a consequence of the proposed clearing include the destruction of threatened species habitat, including the koala, the potential contamination of the groundwater aquifer and the disturbance of potential acid sulphate soils (PASS).

An eight-part test for assessing the likelihood of a significant effect on threatened species, populations or ecological communities, or their habitats, was conducted. It is considered that the development proposal is likely to have a significant effect on threatened species and their habitat in terms of the Threatened Species Conservation Act, 1995. It is not considered that the impacts of the proposal to clear the entire 11 hectare property for cattle grazing can be mitigated against. Although this triggers the requirement for the preparation of a Species Impact Statement (SIS), there are a number of other adverse impacts of the proposal leading to the refusal of this application. Under this circumstance it was not considered necessary to call for a SIS.

The proposal for grazing cattle is not considered economically viable, and the budgets provided by NSW Agriculture indicate that the applicant is unlikely to break even within a 10 year period, and would require a very high level of input in order to gain suitable rates of cattle fattening.

During the pre-application site inspection, the option of taking up a Voluntary Conservation Agreement (NPWS) was discussed with the applicant. These agreements allow the applicant to receive rate exemption. The applicant said that he had looked into taking up a VCA but had chosen not to follow this option.

Relevant environmental planning instruments

The property is zoned Rural 1a under the Port Stephens Local Environment Plan and is also identified predominantly as "preferred koala habitat" and "supplementary koala habitat", as well as some areas of "habitat buffers" and "habitat linking areas" in the *Port Stephens Council Comprehensive Koala Plan of Management (PSC CKPoM) June 2001*. Under the CKPoM, any clearing for an agricultural activity requires consent, either from the Council (less than 2 hectares) or DLWC (greater than 2 hectares) and must comply with the provisions of Appendix 5 of PSC CKPoM in order to comply with SEPP 44 – Koala Habitat Protection. A number of "performance criteria" set out in Appendix 5 of the PSC CKPoM must be addressed as part of any Development Application Proposing Agricultural Activities. The proposal does not address, nor does it meet the performance criteria, and is not likely to be able to be modified in such a way as to meet the criteria.

In summary, the performance criteria to be addressed are as follows:

Proposed agricultural activities must:

- a) Minimise the removal or degradation of native vegetation within preferred koala habitat or habitat buffers.
- b) Maximise retention and minimise degradation of native vegetation within Supplementary Koala Habitat and Habitat Linking Areas.
- c) Minimise the removal of any individuals of preferred koala food trees, where ever they occur on the site.
- d) Make provision, where appropriate, for restoration, or rehabilitation of areas identified as Koala Habitat, including Habitat Buffers and Habitat Linking Areas over Mainly Cleared Land.
- e) Make provision for long term management and protection of koala habitat including both existing and restored habitat.
- f) Not compromise the potential for safe movement of koalas across the site. This should include maximising tree retention generally and minimising the likelihood that the proposal would result in the creation of barriers to koala movement such as would be imposed by certain types of fencing.

The Council will only waive the criteria above if the proponent can demonstrate particular criteria listed in Appendix 5.

Under the Native Vegetation Conservation Act, the Minister for Land and Water Conservation, is the consent authority for clearing that is not excluded from the Act or exempt from requiring clearing consent. This is contrary to information provided in Appendix 5 of the PS CKPoM, that indicates that under the Port Stephens LEP 2000, where greater than 2 hectares of clearing is required to undertake an agricultural activity on land zoned Rural 1(a), development consent is required from **both** the Council and DLWC. However, duality of consent is not required, and Council does not have a consent role when the Minister is the consent authority. The Port Stephens LEP 2000, allows for the Council to act as the consent authority for clearing less than 2 hectares.

According to correspondence from M. Jeffery from Port Stephens Council, the property is currently categorised as residential for rating purposed under Sections 514-531 of the Local Government Act, 1993. Under Section 515 of the Local Government Act, the property must be predominantly used for farming purposes to be rated at the farming category.

Under the Local Government Act, 1993, section 555(1b1), there is provision that land subject to a Voluntary Conservation Agreement is exempt from all Council rates. During the pre-application inspection, this option was discussed with the applicant, however, he explained that he had considered this option and decided against it.

Biodiversity significance

The vegetation on the property forms a relatively intact remnant of vegetation in an area where private land is becoming increasingly cleared. It is adjacent to a larger block of vegetation protected as part of the water catchment. Connected to a larger area of public lands which form part of the Water Supply Catchment zoned 7(c), Environmental Protection (Water Catchment), and also form a significant regional corridor, the site supplements the habitat and the size of the area of vegetated habitat. It is also located on the edge of the Tomago Sandbeds groundwater aquifer system, which forms part of the water supply for Newcastle and surrounding areas. The property is identified as significant koala habitat in the Port Stephens Koala Management Plan. There are a number of threatened species located on the site and in nearby lands, which also contributes to its conservation significance.

The property may provide food resources and roosting habitat for migratory or nomadic species. The Kooragang Island Nature Reserve, which includes Fullerton Cove, approximately half a kilometre to the south of the property is significant habitat for migratory bird species. The property is in close proximity to this site, potentially providing habitat for species utilising the migratory route.

The vegetation of the property is in relatively good condition, demonstrating good structural diversity and biodiversity. A small area near the northern boundary has been disturbed to supply water to a sand mining operation on the adjoining land and there has been some disturbance for the construction of a house and shed. The property has been control burned over the past decade, however the applicant has applied the principles of mosaic burning across the site.

Threatened species

It is considered that the development proposal is likely to have a significant effect on threatened species and their habitat in terms of the Threatened Species Conservation Act, 1995. It is not considered likely that the impacts of the proposal to clear the entire 11 hectare property for cattle grazing can be mitigated against.

Land and water degradation potential

The site is very low lying, with a high water table. Much of the locality has the potential to flood in extreme weather conditions. With less vegetation on site, the chance of waterlogging is likely to increase.

The property is located over the Tomago Sandbeds groundwater aquifer, which supplies drinking water to Newcastle and surrounding areas. The potential contamination of the groundwater system may arise from the leaching of nutrients from fertiliser and cattle waste.

The site is mapped as having Potential Acid Sulphate Soils (PASS) of low probability, approximately 3 metres below the surface. However, the property is relatively close (approximately 200m) to an area of high probability of PASS occurring within 1-3 metres below the ground surface, and there is an environmental risk if the soils are disturbed. It should be noted that highly localised occurrences of PASS may be found near boundaries with environments with a high probability of occurrence. Disturbance of these soil materials will result in an environmental risk that will vary with elevation and depth of disturbance.

The property is mapped as Class VI Land Capability. On this land system, cultivation should not take place, and grazing should be at a lower intensity due to climatic or physical limitations.

Heritage and landscape values

• Indigenous cultural heritage values

The NPWS Aboriginal Heritage Database indicates that there are numerous open campsites and middens recorded in the region. Discussions would have to be held with the Worimi Local

Aboriginal Land Council to determine issues of cultural significance pertaining to the site, for the traditional people of the area.

- **Other cultural heritage values**

There are no known sites of European cultural heritage value in the vicinity of the property.

- **Landscape values**

Although much of the site is not visible from the road, and it is not overlooked by any elevated areas, it does have visual amenity from the road and to the neighbouring properties. Clearing the site would alter the landscape of the area.

Socio-economic values

The proposal has very little social benefit. There are no direct employment, and very minimal indirect employment opportunities arising as a consequence of the proposal to graze a minimal number of cattle on a small block of marginal agricultural land. It is in fact possible that the neighbouring residents may be adversely impacted by increased noise and odours.

In summary the applicant suggests that a total establishment cost of approximately \$22 200 would enable him to clear the land, establish pasture, adequately fence the site and purchase 12 cows and one bull. He feels that he would recover these costs within 2 years, through the sale of weaners.

Assessment of the economic validity of the proposal has been conducted by NSW Agriculture.

NSW Agriculture has advised that the property is not suited to the development of an economically sustainable grazing enterprise (class 5 agricultural suitability). It is also unlikely to be eligible for primary producer taxation provisions, further reducing its profitability.

The application underestimates the likely costs of the enterprise and over-estimates the returns, and the applicant has inadequately assessed the economics of possible grazing regimes.

Based on the proposal by the applicant, an optimistic gross margin of \$1500/year for the whole property is estimated. However, this figure does not take into account the cost of drenching, and of purchase / retaining heifers as replacement breeders and is based on the current relatively high cattle prices.

NSW Agriculture suggests that small properties tend to be operated on the basis of buying weaner calves and growing them out for sale as 20 month old store cattle / yearlings. On this basis a gross margin is estimated as \$4100/ year for the 11 hectare property. Such a return is dependent on cattle prices remaining high and the on improved pastures to fatten the stock to realise target weight gains.

It should be noted, however, that the gross margin budgets do not take into account all fixed overhead costs such as taxes, rates, depreciation and infrastructure eg fencing, and that no allowances have been made to veterinary or animal health costs such as drenching and worming.

Both scenarios are well below the applicants estimated return of \$9600 / yr based on sustaining 12 cows/ 1 bull and turning off 12 weaners per year (100% weaning rate). Realising this would require substantial and ongoing pasture improvement program and supplementary feeding. In addition to not considering fixed overhead costs and animal health expenses, the applicant has not costed these factors, nor the expense of internal fencing to contain a bull and to allow stock rotation to allow spelling of pastures and reduce parasites.

The concluding remarks from NSW Agriculture state that:

"Allowing for ongoing maintenance costs for regrowth, weed and fire control and fences and realistic pasture development costs, it is highly unlikely that a beef cattle

enterprise would break even within a 10 year period. The Department also cautions that on this marginal property a high level of management would be required to fatten cattle, maintain reasonable pasture cover and control regrowth/ weeds, whilst avoiding the movement of nutrients into ground water reserves."

Relevant submissions

Submissions have been received from Port Stephens Council, National Parks and Wildlife Service and NSW Agriculture.

Port Stephens Council provided comment about:

- The Port Stephens Comprehensive Koala Plan of Management (CKPoM), which identified the property as predominantly "Preferred and supplementary koala habitat" and also containing "habitat buffers" and "habitat linking areas".
- The lack of supporting information addressing the performance criteria for Development Applications proposing agricultural activities.
- The comment by the applicant that the "current rate structure does not allow any rate reductions for conservation", has been refuted. The Local Government Act, 1993 provides for land that is subject to a Voluntary Conservation Agreement to be exempt from all Council rates. A Voluntary Conservation Agreement with the National Parks and Wildlife Service, may be an avenue the proponent could investigate.

National Parks and Wildlife Service commented on the following issues:

- The inadequacy of the information provided in the application document and the accompanying supplementary information, in order to properly assess the impacts of the clearing.
- The need to more greatly assess the cultural heritage issues, which would require a search of the Aboriginal Heritage Information Management System and discussions with Worimi Local Aboriginal Land Council.
- The conservation value of the site which is located adjacent to the Tomago Sandbeds, which has very high conservation value and that the locality and the relatively undisturbed nature of the site increases its conservation value.
- Division 7 of the National Parks and Wildlife Act, 1974 enables NPWS to enter a Voluntary Conservation Agreement (VCA) with private landowners, subject to the agreement of the landowner. NPWS suggest that given the likely presence of threatened fauna and flora, and the location of the property, it is likely that NPWS would be interested in negotiating a VCA subject to a site inspection and consideration of current site management. The landowner was advised to contact Mr Rob Gibbs, Area Manager Hunter Coast Area Office, on 02 4984 8200.

NSW Agriculture have provided detailed comments on the economic viability of the proposal, which are outlined in the economic section above. Other issues identified by NSW Agriculture are that the applicant's motivation for the clearing proposal are prompted by concerns as to:

- the costs of owning (namely rates) and maintaining a property (predominantly fire protection)
- the lack of incentive to protect existing vegetation and perceptions of its diminishing ecological value (clearing of surrounding lands)

NSW Agriculture indicated that the property has a class 5 agricultural suitability, which is unlikely to be agriculturally and environmentally suitable. Environmental concerns include impacts on the high water tables, which form part of the Tomago Sandbeds drinking water catchment, and also the potential to disturb underlying PASS.

NSW Agriculture stated that the property is unsuitable for beef cattle grazing and suggests that the applicant consider other alternatives.