



Ballina Shire Development Control Plan 2012

Chapter 2a- Vegetation Management





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Part 1 Preliminary

1.1 Introduction

Name:

Ballina Shire Development Control Plan 2012, Chapter 2a - Vegetation Management.

Purpose:

To establish the circumstances where development consent is required for **vegetation management works**.

Relationship to other Chapters of this DCP:

The provisions in this chapter prevail over those in **Chapter 1** where there is an inconsistency.

Where there is an inconsistency between provisions in chapters 2, 2a and 2b, Council will determine which provision(s) will apply based on consideration of the strategic planning framework for the land the subject of the application, statutory considerations, relevant planning objectives and the nature of the proposed development.

The provisions of chapters 3, 4, 5, 6, 6a, 6b, 6c, 6d, 7 and 8 prevail over the provisions of this chapter unless otherwise specified.

Application:

This chapter applies to land within the following zones as specified in the *Ballina Local Environmental Plan 2012* (BLEP 2012):

- R2 Low Density Residential;
- R3 Medium Density Residential;
- B1 Neighbourhood Centre;
- B2 Local Centre;
- B3 Commercial Core;
- B4 Mixed Use;
- B6 Enterprise Corridor;
- IN1 General Industrial;
- SP2 Infrastructure;
- RE1 Public Recreation;
- RE2 Private Recreation;
- E2 Environmental Conservation;



**Note:**

The provisions of this chapter do not apply to land in zones not specified above. Landholders are advised, however, that other approval requirements may be applicable to development under legislation such as the *Native Vegetation Act 2003* and the *Threatened Species Conservation Act 1995*.

Development Controls:

The provisions of this chapter are provided in response to the provisions of clause 5.9 of the BLEP 2012 which provide for a DCP to establish development consent requirements in relation to vegetation management in certain circumstances. Given the above, this chapter is structured to identify the circumstances where development consent is required for **vegetation management works**. In particular, this chapter specifies the types of works that are subject to development consent in urban zones and on land zoned E2 Environmental Conservation. The chapter also identifies circumstances where exemptions to the requirement for development consent apply. As a result of the provisions of this chapter being effectively an extension of the BLEP 2012, development proposals must comply with its requirements in the same way that proposals are required to conform to the provisions of the LEP.

Part 2 Chapter Planning Objectives

The overarching objectives of this chapter are to:

- a. Identify, in accordance with Clause 5.9(2) of BLEP 2012, when development consent is required from Council for **vegetation management works** in relation to certain trees and vegetation;
- b. Protect the amenity of urban areas through the preservation of significant trees and vegetation;
- c. Enable most routine gardening and landscaping on private land to occur without the need for Council regulation;
- d. Provide assessment criteria that will be applied when Council approval is required to remove or otherwise impact on vegetation; and
- e. Conserve trees of ecological, heritage, aesthetic and cultural significance to Ballina Shire.

**Note:**

How do I know if vegetation management work on my land requires consent?

It is the responsibility of the landowner/proponent to identify the species of a tree(s) or other vegetation on the site prior to making an enquiry or submitting a development application with Council. It may be necessary to engage the services of a qualified professional to undertake this identification and assist in determining the need for development consent.





Part 3 Development Controls

3.1 Development Consent Requirements applying to Urban Zones

3.1.1 Application

Applies to:	
Location/s:	Zones R2, R3, B1, B2, B3, B4, B5, B6, IN1, SP2, RE1 & RE2.
Development Type/s:	Applications for vegetation management works

3.1.2 Development Control

Development consent is required for **vegetation management works** on land located within an **urban zone** when the vegetation management works will affect:

- Any tree (either native or non-native) with a height of 6 metres or greater;
- Any tree of the species *Pandanus tectorius* (Screw Pine) with a height of 3 metres or greater and located in the localities of East Ballina, Lennox Head or Skennars Head;
- Any vegetation located on land identified as Significant Urban Bushland on the Significant Urban Bushland Map; and
- Any tree with a height of 3 metres or greater located on land containing an Item of Environmental Heritage as specified in Schedule 5 of the *Ballina Local Environmental Plan 2012*.



Note:

Development consent is not required under this section if an exemption is applicable under Section 3.3 of this chapter or the BLEP 2012. Landowners are advised, however, that other approval requirements may be applicable under separate legislation such as the *Native Vegetation Act 2003* and the *Threatened Species Conservation Act 1997*.

3.2 Development Consent Requirements applying to Zone E2 Environmental Conservation

3.2.1 Application

Applies to:	
Location/s:	Zones E2
Development Type/s:	Applications for vegetation management works

3.2.2 Development Control

Vegetation management works in Zone E2 Environmental Conservation that are exempt under the provisions of the *Native Vegetation Act 2003* require development consent where the vegetation management works will affect:

- Any native vegetation not located within the curtilage of a **dwelling house**; and
- Any non-native tree not located within the curtilage of a **dwelling house** with a height of 6 metres or greater.





Note:

Development consent is not required under this section if an exemption is applicable under Section 3.3 of this chapter or the BLEP 2012. Landowners are advised, however, that other approval requirements may be applicable under separate legislation such as the *Native Vegetation Act 2003* and the *Threatened Species Conservation Act 1997*.



Note:

Development consent is not required for vegetation management works on land zoned RU1 Primary Production, RU2 Rural Landscape or E3 Environmental Management. Vegetation management activities in these zones should be undertaken in accordance with the provisions of the *Native Vegetation Act 2003*. While Council consent is not required for vegetation management works in the above zones, other approval requirements may be applicable.

Works on rural land involving the harvest of timber or forest products may require consent as *forestry* under the provisions of the BLEP 2012. There is also separate legislation such as the *Native Vegetation Act 2003* and the *Threatened Species Conservation Act 1997* that provide for the protection of certain vegetation. When considering vegetation management works on rural land, landowners should contact Council or the Northern Rivers Catchment Management Authority for further advice.



Note:

Camphor Laurel Trees

There are a number of mature Camphor Laurel trees that may be considered significant within the urban environment of the shire. Because this species is a declared noxious weed, its removal is exempt from any consent requirements of this chapter under Clause 5.9(8)(e) of the BLEP 2012.

Broad scale clearing of Camphor Laurel trees may be defined as forestry and as such may be subject to a requirement for development consent.

3.3 Exemptions

The consent requirements described in Section 3 of this chapter do not apply to **vegetation management works** that:

- are authorised by a previously issued development consent;
- are authorised in a property vegetation plan issued under the *Native Vegetation Act 2003*;
- take place on State protected land (within the meaning of clause 4 of Schedule 3 to the *Native Vegetation Act 2003*) and are authorised by a development consent under the provisions of the *Threatened Species Conservation Act 1997* as continued in force by that clause;



- d) involve trees or other vegetation within a State Forest, or land reserved from sale as a timber or forest reserve under the *Forestry Act 1916*;
- e) are required or authorised to be done by or under the *Electricity Supply Act 1995*, the *Roads Act 1993* or the *Surveying and Spatial Information Act 2002*;
- f) involve the removal and control of plants declared to be noxious weeds under the *Noxious Weeds Act 1993*;
- g) involve the removal and control of vegetation identified as an undesirable tree species in section 3.4 of this chapter;
- h) involve the removal and control of non-native vegetation planted for food production (such as citrus trees, stone fruit trees and the like);
- i) involves the removal of dead branches (including palm fronds) and the selective removal of those branches up to and including a circumference of 150 millimetres where it:
 - does not result in the removal of more than 10% of the canopy;
 - does not destroy the aesthetic appearance of the canopy;
 - does not alter the growth structure of the vegetation; and
- j) involve vegetation where the trunk of the tree or base of the vegetation at ground level is within three (3) metres of the nearest external edge of an existing permanent **approved structure** located within the same property and is not on land identified as containing an item of environmental heritage.
- k) are undertaken on public land when undertaken by or on behalf of Council or the Crown and in accordance with Council's *Urban Vegetation & Tree Management on Public Land Policy* or an adopted Plan of Management or Vegetation Management Plan for the land,
- l) it can be demonstrated to Council's satisfaction that a tree or other vegetation is dying or dead and is not required for the habitat of native fauna, or
- m) it can be demonstrated to Council's satisfaction that a tree or other vegetation represents an immediate risk to human life or property.



Note:

In most cases, the removal of trees or other vegetation that is dying, dead and/or presents an immediate risk can be justified with photographic evidence and consultation with Council officers. Where there is uncertainty an assessment by a suitably qualified arborist may be required and/or a development application in accordance with the requirements of this Chapter. Persons acting upon the above exemptions without prior consultation with Council and without adequate proof as to the condition of the vegetation removed may face subsequent legal action should it be determined that prior consent was required.



Note:

Vegetation clearing works situated within the 10/50 vegetation clearing entitlement area

From 1 August 2014 an entitlement to remove vegetation from land located near designated bushfire areas may exist under provisions contained within the *Rural Fires Act 1997*. *Removal of vegetation in these areas must be undertaken in accordance with the 10/50 Vegetation Clearing Code of Practice for New South Wales*.

Full details of the vegetation clearing exemptions applicable under the *Rural Fires Act 1997* and the *10/50 Vegetation Clearing Code of Practice for New South Wales* may be obtained from the Rural Fire Service web site - <http://www.rfs.nsw.gov.au/plan-and-prepare/1050-vegetation-clearing> .

Residents are encouraged to use the NSW Rural Fire Service's [online tool](#) to determine whether land is located within a 10/50 clearing entitlement area. A copy of the search results should be retained as proof of the lands inclusion within the 10/50 clearing entitlement area.

3.4 Undesirable Tree Species

The following table identifies tree species classified as undesirable in Ballina Shire.

Table 2.1 – Undesirable Species	
Common Name	Scientific Name
African Olive	<i>Olea africana</i>
Black Locust	<i>Robinia pseudoacacia</i>
Brazilian Cherry	<i>Eugenia uniflora</i>
Broad-leaved Pepper Tree	<i>Schinus terebinthifolius</i>
Cadaghi	<i>Eucalyptus torelliana</i>
Camphor Laurel	<i>Cinnamomum camphora</i>
Cherry Guava/Purple Guava	<i>Psidium cattleianum</i>
Chinese Celtis	<i>Celtis sinensis</i>
Chinese Tallow	<i>Triadica sebifera</i>
Cocos Palm	<i>Syagrus romanzoffianum</i>
Coffee	<i>Coffea arabica</i>
Golden Rain Tree	<i>Koelreuteria paniculata</i>
Golden Willow Wattle	<i>Acacia saligna</i>
Guava	<i>Psidium guajava</i>
Honey Locust	<i>Gleditsia triacanthos</i>
Ice Cream Bean	<i>Inga edulis</i>
Leucanea	<i>Leucanea leucocephala</i>
Loquat	<i>Eriobotrya japonica</i>
Orange Jessamine	<i>Murraya paniculata</i>
Pine (Radiata)	<i>Pinus radiata</i>
Pine (Slash)	<i>Pinus elliotii</i>
Powton	<i>Paulownia fortunei</i>
Princess Tree	<i>Paulownia tomentosa</i>
Privet (Large Leaf)	<i>Ligustrum lucidum</i>
Privet (Small Leaf)	<i>Ligustrum sinense</i>



Senna (Winter)	<i>Senna pendulata var. glabrata</i>
Umbrella Tree	<i>Schefflera actinophylla</i>

Part 4 Development Application Requirements

4.1 Information to Accompany Development Applications

Applications for vegetation management works are to be made on the appropriate form (available from Council) and must be supported by the following:

- a) payment of the prescribed fee (in accordance with Council's adopted fees and charges);
- b) description of the property on which the vegetation is located (street address, lot, deposited plan);
- c) applicant's name and contact details;
- d) written consent of the landowner;
- e) a plan illustrating the location(s) of the vegetation and its location in relation to the boundaries of the site and any existing buildings located in close proximity.
- f) a description of the vegetation detailing the following:
 - species;
 - quantity affected;
 - approximate height;
 - reasons the vegetation works are required.
- g) where the application is for vegetation management works on a tree or other vegetation in an urban zone that is thought to be dying, unsound or presents a risk to life or property and there is uncertainty as to the health of the tree or other vegetation, the application must be supported by an Arboricultural Assessment Report. The Arboricultural Report is to be prepared at the applicant's expense and in accordance with the requirements of Part 4 of this Chapter, and
- h) where the application is for vegetation management works in an environmental protection zone or on land identified as containing Significant Urban Bushland, in most cases the application must be supported by an assessment report prepared by a suitably qualified ecological consultant.



Note:

Justification for vegetation management works:

While this chapter seeks to preserve and protect identified significant vegetation in the shire, it is understood that there will be situations where vegetation management works will be required. Approval will likely be granted where sufficient environmental evidence and justification for the works is provided. It should be noted that certain reasons, such as for the preservation or maintenance of views, will not be considered sufficient justification for vegetation management works.





4.2 Assessment of Development Applications

4.2.1. Urban Zones

In determining an application under this Chapter for **vegetation management works** on land within urban zones, an assessment will be undertaken having regard for at least the following:

- a) whether the tree or other vegetation contributes to the aesthetic qualities of the locality and comprises an important component of the skyline;
- b) whether the tree or other vegetation makes a significant contribution to the amenity and character of the locality;
- c) whether the tree or other vegetation is important from a cultural and/or heritage perspective;
- d) whether the growth habit (crown or root) or mature size of the tree or other vegetation is undesirable in a given situation (e.g. under power lines, on top of or under retaining walls or banks, over sewer lines, close to roads or driveways etc.) such that it unreasonably interferes with infrastructure or sight distances;
- e) whether the tree or other vegetation is causing damage to public or private utilities and services including kerb and guttering and the aesthetic value of the tree or other vegetation is not greater than the effect of damage caused by the tree;
- f) whether the tree or other vegetation is interfering with, or may interfere with, the efficiency of a solar or communication appliance;
- g) whether the tree or other vegetation is in an overcrowded situation where the overcrowding is detrimental to tree growth and the judicious removal of tree(s) will result in improved growth of other trees;
- h) whether the species and/or growth form of the tree or other vegetation is ecologically significant in the local or regional context and its ability in providing habitat for native fauna; and
- i) whether, based on supporting documentation submitted with the application, the tree or other vegetation is dying or diseased and its safe useful life expectancy is diminished.

4.2.2 Environmental Conservation Zone and Significant Urban Bushland

In determining an application under this Chapter for vegetation management works on land within environmental protection zones or on land identified as containing Significant Urban Bushland, assessment will be undertaken by Council officers having regard for the following:

- a) the ecological significance of the vegetation in the local or regional context;
- b) the significance of the vegetation in its provision of habitat for native fauna;
- c) whether the proposed vegetation management works will result in a significant effect on threatened species, populations or ecological communities or their habitats; and
- d) the contribution the vegetation makes towards the environmental amenity of the locality.

4.3 Guidelines and Requirements for Arborist Reports

Where an arborist report is required in support of an application for vegetation management works under this Chapter, it shall be prepared in accordance with the requirements of Australian Standard





4373:2007 *Pruning of Amenity Trees*, AS 4970:2009 *Protection of Trees on Development Sites* and competencies outlined in the Australian Qualifications Framework (AQF).

Applicants are advised that Council will only accept arborist reports from qualified professionals with a minimum AQF Level III qualification. All reports associated with Development Applications such as Preliminary Tree Assessments, Preliminary Arboricultural Reports, Arboricultural Impact Assessment Reports and all matters concerning arboricultural issues on development sites, as well as general tree removal and pruning reports and plans must be prepared by an arborist with AQF Level III qualification.

Council will at times require an arborist report in relation to tree and vegetation matters not required by AS 4970:2009 *Protection of Trees on Development Sites*. Reports such as Visual Tree Assessments, Tree Hazard Reports, Tree Removal Plans and Tree Pruning Plans may be required as part of the supporting documentation for applications made under the requirements of this Chapter.

An arborist report submitted in support of an application made under this Chapter must contain the following information:

- a) the name, business address, telephone number of the company/ proprietor;
- b) evidence of Industry Body Membership, technical qualifications and experience of the arborist, who undertakes the tree inspection, diagnoses and prepares the report;
- c) the address of the site containing the trees;
- d) the name of the person or company for whom the report is prepared;
- e) the methods or techniques used in the inspection;
- f) a suitably scaled plan of the site showing:
 - the location of all trees on the site and any trees on adjoining land with overhang or undergrowth, including street/park trees;
 - the subject land;
 - the location of above and below ground services/utilities in proximity to the trees shown;
- g) a table showing each tree surveyed showing:
 - its common and full scientific name;
 - its age class;
 - its estimated height;
 - its trunk Diameter at Breast Height (DBH) measured from approximately 1.4m from natural ground level;
 - its canopy spread to the four cardinal points;
 - a summary of the tree's health and structural condition;
 - an estimation of the tree's useful life expectancy using appropriate industry methods i.e. Safe Useful Life Expectancy (S.U.L.E.) or Tree AZ;
- h) a summary and/or discussion of other relevant tree and site information such as soil and drainage characteristics, pests and diseases and tree hazard assessment details;





- i) the tree assessment should be conducted and recorded in accordance with industry best practice,
- j) supporting evidence such as annotated photographs and laboratory results if relevant;
- k) a discussion of all options available, including why they are recommended or not recommended, e.g. can a built structure be relocated, repaired and tree(s) retained;
- l) a list of recommendations and the reasons for their adoption;
- m) the sources of technical information referred to in the report. References not used in the report should not be included;
- n) present information as objectively as possible without attempting to support a specific development or client based outcome; and
- o) provide the scientific and common names of all tree species proposed for planting, including recommendations on the size and quality characteristics of trees to be planted.



Note:

Council will not accept substandard arborist reports with inadequate information or reports that have been prepared by persons who do not hold the qualifications detailed in this policy.

4.4 Guidelines and Requirements for Ecological Assessments

Where an ecological assessment is required in support of an application for **vegetation management works** under this chapter, the report shall be prepared by a suitably qualified ecological consultant.

Where an ecological assessment is required for **vegetation management works** that affect threatened species, populations or ecological communities or their habitats, the assessment is required to adequately address the requirements of section 5A of the *Environmental Planning and Assessment Act 1979*.

Ecological assessments should have regard for the Office of Environment and Heritage publications *Threatened Biodiversity Survey and Assessment Guidelines for Development and Activities* and draft *Threatened Species Assessment Guidelines – Assessment of Significance*.

