

Do I need the consent of Council to remove trees and vegetation on my land?

All land in the Ballina Shire local government area is subject to either the Ballina Local Environmental Plan (BLEP) 2012 and/or Ballina Local Environmental Plan (BLEP) 1987. The rules that apply for the removal of trees and vegetation depend on which BLEP is applicable to the subject land (It should be noted that both may be applicable to a site in some circumstances).

NOTE: Where the provisions of the BLEP (except 'forestry' including 'private native forestry') 2012 apply, Council does not regulate vegetation management in rural areas (Zones RU1 Primary Production and RU2 Rural Landscape) when an approval process under the Native Vegetation Act 2003 is applicable. Contact the Department of Primary Industries, Catchment Management Authority (CMA) in Alstonville on Ph: 6627 0170, if your land is located in one of these zones.

The first step in determining whether consent is required to remove trees or vegetation from your land is to establish which BLEP applies to the land containing the subject trees or vegetation (i.e. What zone(s) apply to the land(s).) The NSW Legislation website legislation.nsw.gov.au provides information, or alternatively contact Council's Duty Planner on telephone 6686 1254 with your address details.

The next step will be to identify the vegetation, and in the case of the BLEP 1987, whether it is native or non-native. The following sections set out the provisions for each LEP.

Ballina Local Environmental Plan 2012 (BLEP 2012)

Clause 5.9 of the BLEP 2012 requires consent for the removal of vegetation referenced in Chapter 2a (Vegetation Management) of the Ballina Development Control Plan (DCP) 2012.

NOTE: While VMWs in rural zones are not subject to the BLEP 2012, 'forestry' including 'private native forestry' is subject to the provisions of the BLEP 2012.

Chapter 2a refers to vegetation management works (VMW) in the following zones:

- Residential Zones R2 (Low Density) and R3 (Medium Density)
- Business Zones B1, B2, B3, B4, B6
- Industrial Zone IN1
- Special Purpose Zone SP2
- Recreation Zones RE1 and RE2.

Chapter 2a states that in the abovementioned zones, development consent is required for VMW involving:

- Any tree (either native or non-native) in excess of 6m in height except for species identified as undesirable; (undesirable species are listed on page 8 of Chapter 2a).
- Any tree of the species *Pandanus tectorius* (screw pine) with a height of 3m or greater and located in the localities of East Ballina, Lennox Head or Skennars Head.
- Areas identified as significant urban bushland

on the significant urban bush land map – visit Council's website ballina.nsw.gov.au ([home >> planning & development >>> plans & policies >> development control plans](#)).

- Land containing heritage items.

If the VMW fall into the abovementioned categories, consent will be required unless a specific exemption applies.

The following works, outlined in Clause 3.3 of Chapter 2a of the BDCP 2012, are exempt from requiring consent from Council:

- VMW in conjunction with a previously issued Development Consent which remains valid and has not lapsed.
- Removal and control of trees or vegetation declared to be undesirable, noxious weeds or non-native vegetation planted for food production (i.e. citrus trees). (Noxious weed declarations can be found on the NSW Department of Primary Industries website).
- The removal of dead branches, subject to certain restrictions.
- Where the trunk of the tree or base of the vegetation at ground level is within 3m of the nearest edge of an existing permanent approved structure, within the same property and the property is not identified as containing an item of environmental heritage.
- 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 (this needs to be confirmed with Council prior to any removal being undertaken).
- It can be demonstrated to Council that a tree or other vegetation represents an immediate risk to human life or property.

Page 7 of Chapter 2a provides information regarding exemptions. Visit Council's website ballina.nsw.gov.au ([home >> planning & development >>> plans & policies >> development control plans](#)). If you require assistance, please telephone Council's Development and Environmental Health Group on 6686 1254.

Ballina Local Environmental Plan 1987 (BLEP 1987)

If your land is within one of the following zones, then the consent of Council is required for the clearing, destruction or removal in any manner of **native plants** including trees, shrubs, ferns, vines, herbs and grasses indigenous to NSW:

- 2(a) - Living Area,
- 2(b) - Village Area,
- 2(t) - Tourist Area
- 3 - Business
- 4 - Industrial
- 6(a) - Open Space
- 1(a1) - Rural (Plateau Lands Agriculture)
- 1(a2) - Rural (Coastal Lands Agriculture)
- 1(b) - Rural (Secondary Agricultural Land)
- 1(e) - Rural (Extractive and Mineral Resources)
- 8(a) - National Parks and Nature Reserves
- 9(a) - Roads (Main Road Proposed)
- 9(b) - Roads (Local Roads Proposed).

Vegetation management work (VMW)

is defined as an "activity or work that affects vegetation and includes the undertaking of any of the following actions with regard to vegetation: burning, clearing, cutting down, destroying, felling, injuring, killing, logging, lopping, poisoning, pruning, removing, ringbarking, slashing, thinning, topping or uprooting".

Exemptions: Consent is not required to remove native plants grown for commercial purposes (such as planted windbreaks, commercial nurseries or commercial crops). Landscaping associated with an approved land use may be exempt from requiring consent. Check with Council's Development & Environmental Health Group if you think these exemptions apply to you (prior to any removal works).

If your land is within one of the following zones, then consent is required to cut down, top, lop or otherwise destroy or remove **any tree (native or otherwise)** or any shrub, fern, vine, herb or grass indigenous to NSW:

- 1(d) - Rural (Urban Investigation)
- 7(a) - Environmental Protection (Wetlands)
- 7(c) - Environmental Protection (Water Catchment)
- 7(d) - Environmental Protection (Scenic/Escarpment)
- 7(d1) - Environmental Protection (Newrybar Scenic/Escarpment)
- 7(f) - Environmental Protection (Coastal Lands)
- 7(i) - Environmental Protection (Urban Buffer)
- 7(l) - Environmental Protection (Habitat).

Exemptions: Consent is not required to remove trees planted for landscaping purposes or native plants grown for commercial purposes (such as planted windbreaks, commercial nurseries or commercial crops). In zones 1(d), 7(c), 7(d), 7(d1), 7(i), 7(f) and 7(l), gardening or landscaping associated with an approved land use may be exempt from requiring consent. Please contact Council's Development & Environmental Health Group regarding these exemptions.

NOTE: The provisions in the BLEP 1987 apply to trees of any height and further approvals may be required under the Native Vegetation Act 2003.

How do I obtain consent for tree or vegetation removal?

If you have determined that Council's consent is required for the removal of vegetation, the following steps are necessary:

1. Depending upon the BLEP that applies to your land, you will need to obtain a 1(T) Development Application form (Ballina LEP 2012), or a 1(A) Development Application form (Ballina LEP 1987) from Council or visit Council's website ballina.nsw.gov.au ([home](#) >> [your council](#) >> [council forms](#)).
2. Fill out the applicable form as required, which will include:
 - A description of the property on which the vegetation is located;
 - The applicant's name and contact details;
 - Written consent of all landowners; and
 - A plan indicating the location of the vegetation and its location in relation to any boundaries and/or structures.
3. Provide a description of the vegetation requested to be removed which is to include the species, quantity affected, approximate height and reasons as to why the VMWs are required (refer Clause 4.1 of Chapter 2a of the Ballina Development Control Plan 2012).
4. Applicants are advised that a fee of \$110 will be required in conjunction with a 1(T) Application. Fees for a 1(A) Application will depend upon the cost of the works proposed and may be higher than \$110. Council's Development & Environmental Health Group can advise of the applicable fee.
5. VMWs can be approved in conjunction with an application for development. Separate consent for development and VMWs is not necessary.

Do I need an arborist assessment or assessment by an ecological consultant to accompany my development application?

Where the application is for VMWs 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 Chapter 2a of BDCP 2012.

Where the application is for VMWs 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.

There may be other instances whereby an application will be required to be supported by an arborist assessment or assessment by an ecological consultant. Council will advise you of such requirements in these instances.

If you have determined that Council's consent is not required, you are advised to contact the Department of Primary Industries, CMA in Alstonville on Ph: 6627 0170 in regards to the provisions of the Native Vegetation Act 2003. The provisions of the Threatened Species Conservation Act 1995 may also apply to the VMWs. The Department of Environment and Heritage should be contacted on Ph: 6651 5946 regarding the provisions of this Act.

FAQs

- **Do I need consent if I planted the tree?**
Yes, consent is required regardless of who planted the tree, subject to the provisions above.
- **How do I prove that the tree is dead/dangerous/diseased?**
Clause 3.3 Chapter 2a of the Ballina DCP 2012 provides information to address this question.
- **Can Council inspect the tree to identify the species and see if a DA is required?**
The identification process is the responsibility of the landowner. Council may, however, seek to verify the identification of vegetation.
- **What can I do if I want a neighbour to remove/prune a tree? My neighbour wants to prune/cut down my tree, what are my rights?**
Permission must be sought from the landowner to remove any trees on their property. Anyone may lodge a Development Application to remove a tree, however, all landowners must provide written consent. Council encourages neighbours to resolve matters independently, if possible, and will not get involved in neighbourly disputes. In relation to your rights regarding tree disputes between neighbours, please search **Trees (Disputes between Neighbours) Act 2006** on the legislation.nsw.gov.au website. An explanation of this Act can be found at lec.lawlink.nsw.gov.au/lec/treedisputes_what.html

Further Information:

Development & Environmental Health Group
Ph 02 6686 1254.