



Ballina Shire Development Control Plan 2012

Chapter 2a- Vegetation Management

2a



Table of Contents

Part 1	Preliminary	3
1.1	Introduction	3
Part 2	Chapter Planning Objectives.....	5
Part 3	Development Controls.....	6
3.1	Development Consent Requirements applying to Urban Zones	6
3.1.1	Application	6
3.1.2	Development Control.....	6
3.2	Development Consent Requirements applying to Zone C2 Environmental Conservation.....	6
3.2.1	Application	6
3.2.2	Development Control.....	6
3.3	Exemptions.....	8
3.4	Weeds and Undesirable Tree Species	9
3.5	Compensatory Habitat and Offsets	10
3.5.1	Application Requirements.....	10
3.5.2	Offset Ratios	11
Part 4	Development Application Requirements	12
4.1	Information to Accompany Development Applications.....	12
4.2	Assessment of Development Applications	13
4.2.1.	Urban Zones	13
4.2.2	Environmental Conservation Zone and Significant Urban Bushland	14
4.3	Guidelines and Requirements for Arborist Reports	14
4.4	Guidelines and Requirements for Biodiversity Assessment Reports	16





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 State Environmental Planning Policy (Biodiversity & Conservation) 2021:

This development control plan is a development control plan for the purposes of the SEPP pursuant to clause 2.9 of the SEPP.

The reference to a permit within the SEPP shall be taken to be a development consent under Part 4 of the *Environmental Planning and Assessment Act 1979* for the purposes of this development control plan.

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;
- E1 Local Centre;
- E2 Commercial Centre;
- MU1 Mixed Use;
- E3 Productivity Support;
- E4 General Industrial;
- SP4 Enterprise
- SP2 Infrastructure;





- RE1 Public Recreation;
- RE2 Private Recreation;
- C2 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 [Local Land Services Act 2013](#) and the [Biodiversity Conservation Act 2016](#).

Development Controls:

The provisions of this chapter are provided in response to the provisions of clause 2.9 of *State Environmental Planning Policy (Biodiversity & Conservation) 2021*, which provide for a DCP to establish development consent requirements in relation to vegetation management in certain circumstances.

This chapter is structured to identify the circumstances where development consent is required for **vegetation management works**, including works relating to **native vegetation** that do not exceed the biodiversity offsets scheme threshold. In particular, this chapter specifies the types of works that are subject to development consent in urban zones and on land zoned C2 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.

**Note:**

The proposed **vegetation management works** exceeds the biodiversity offsets scheme threshold if it is:

- the clearing of **native vegetation** of an area that exceeds the threshold (see Table below), or
- the clearing of **native vegetation** is on land mapped as 'Sensitive Values' on the Biodiversity Values Map prepared by the Office of Environment and Heritage and located on their website.

If the proposed **vegetation management works** exceed the biodiversity offsets scheme threshold, it requires an approval from the Native Vegetation Panel (refer to Part 2.4 of the Biodiversity and Conservation SEPP).

Table: Threshold by minimum lot sizes

Minimum lot size of land	Area of clearing
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Less than 1 hectare	0.25 hectares or more
Less than 40 hectares but not less than 1 hectare	0.5 hectares or more
Less than 1,000 hectares but not less than 40 hectares	1 hectare or more
1,000 hectares or more	2 hectares or more

The minimum lot size applicable to any land being cleared is as follows:

- a) the minimum lot size as shown on the Ballina LEP 2012 [Lot Size Map](#), or
- b) if the [Lot Size Map](#) does not map a minimum lot size for the land, the actual size of the allotment of land on which the proposed development is to be carried out.

Part 2 Chapter Planning Objectives

The overarching objectives of this chapter are to:

- a. Identify, in accordance with clause 2.9 of *State Environmental Planning Policy (Biodiversity & Conservation) 2021*, 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

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, E1, E2, E3, E4, MU1, SP4, 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:

- i. Any tree (either native or non-native) with a height of 6 metres or greater;
- ii. 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;
- iii. Any vegetation located on land identified as Significant Urban Bushland on the Significant Urban Bushland Map; and
- iv. 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 [Local Land Services Act 2013](#) and the [Biodiversity Conservation Act 2016](#).

3.2 Development Consent Requirements applying to Zone C2 Environmental Conservation

3.2.1 Application

Applies to:	
Location/s:	Zones C2
Development Type/s:	Applications for vegetation management works

3.2.2 Development Control

Vegetation management works in Zone C2 Environmental Conservation require development consent where the **vegetation management works** will affect:

- i. Any native vegetation not located within the curtilage of a *dwelling house*; and



- ii. 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 [Local Land Services Act 2013](#) and the [Biodiversity Conservation Act 2016](#).



Note:

Development consent is not required for vegetation management works on land zoned RU1 Primary Production, RU2 Rural Landscape or C3 Environmental Management. Vegetation management activities in these zones should be undertaken in accordance with the provisions of the [Local Land Services Act 2013](#) and the [Biodiversity Conservation Act 2016](#).

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 [Local Land Services Act 2013](#) and the [Biodiversity Conservation Act 2016](#) 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 weed, its removal is exempt from any consent requirements of this chapter.

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

Camphor Laurel can contribute to the establishment of rainforest. Survey should be undertaken to determine whether rainforest species are present before considering broad scale clearing of Camphor Laurel.



3.3 Exemptions

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

- i. are authorised by a previously issued development consent;
- ii. are authorised under the provisions of section 60O of the *Local Land Services Act 2013*;
- iii. are authorised under the provisions of clause 2.8 of State Environmental Planning Policy (Biodiversity & Conservation) 2021;
- iv. are authorised in a property vegetation plan issued under the *Native Vegetation Act 2003*;
- v. are authorised by a development consent under the provisions of the *Biodiversity Conservation Act 2016*;
- vi. involve trees or other vegetation within a State Forest, or land reserved from sale as a timber or forest reserve under the *Forestry Act 2012*;
- vii. 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*;
- viii. involve the removal and control of plants declared to be priority weeds for the purposes of the *Biosecurity Act 2015*;
- ix. involve the removal and control of vegetation identified as an undesirable tree species in section 3.4 of this chapter;
- x. involve the removal and control of non-native vegetation planted for food production (such as citrus trees, stone fruit trees and the like);
- xi. 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
- xii. 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;
- xiii. are undertaken on public land when undertaken by or on behalf of Council or the Crown and in accordance with Council's Urban Vegetation on Public Land Policy or an adopted Plan of Management or Vegetation Management Plan for the land;
- xiv. 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
- xv. 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 Weeds and Undesirable Tree Species

A full list of priority weeds can be found on the NSW WeedWise site, at <https://weeds.dpi.nsw.gov.au/> Weeds relevant to the Ballina Council Area are listed under the “view priority weeds for a region” tab.

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

Table 3.1 – Undesirable Species	
Common Name	Scientific Name
African Olive	<i>Olea africana</i>
Bamboo	<i>Banbusa species</i>
Brazilian Cherry	<i>Eugenia uniflora</i>
Cadaghi	<i>Eucalyptus torelliana</i>
Camphor Laurel	<i>Cinnamomum camphora</i>



Cherry Guava/Purple Guava	<i>Psidium cattleianum</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>
Ice Cream Bean	<i>Inga edulis</i>
Loquat	<i>Eriobotrya japonica</i>
Orange Jessamine	<i>Murraya paniculata</i>
Pine (Radiata)	<i>Pinus radiata</i>
Pine (Slash)	<i>Pinus elliottii</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>
Rhizomatus bamboo	<i>Phyllostachys species</i>
Senna (Winter)	<i>Senna pendulata var. glabrata</i>
Umbrella Tree	<i>Schefflera actinophylla</i>

3.5 Compensatory Habitat and Offsets

3.5.1 Application Requirements

The Ballina Shire [Biodiversity - Compensatory Habitat and Offsets Policy](#) applies to all development applications for vegetation removal where the proposal does not trigger the Biodiversity Offsets Scheme.

In accordance with that Policy, applications for development that propose a compensatory habitat offset must include the following information:

- i. Analysis of the proposed development with respect to the principles of avoid, minimise and mitigate. This must include reasoning as to why an offset is sought over avoidance of the identified impacts.
- ii. Identification and quantification of direct and indirect impacts (including area and/or number of trees impacted).
- iii. Mapping showing the location of impacted biodiversity assets including details of vegetation communities, threatened species (flora and fauna) and important habitat features present.





- iv. Demonstration that there is a net gain in the area of native vegetation and fauna habitat and that the proposal improves or maintains biodiversity values.
- v. Calculation of proposed offsets based on the offset ratios set out in this policy.
- vi. Details of proposed offset vegetation (including planting composition).
- vii. Identification of proposed offset location(s), the suitability of the site(s) for the offset works and tenure arrangements.
- viii. Details of timing for offset planting, ongoing management and maintenance, reporting, cost of works and criteria for assessment of outcomes in the form of an offset management plan. As a minimum plans are to be based on operation for a minimum establishment and maintenance period of five years and achievement of key performance criteria.
- ix. Identification of the timing for offset works relative to the commencement, progression and completion of the proposed development.

3.5.2 Offset Ratios

The offset ratios applicable in Council's Compensatory Habitat and Offsets Policy are in Table 1 below (see [Biodiversity - Compensatory Habitat and Offsets Policy](#) for further detail):

Table 1: Compensatory Habitat Offset Ratios

Table 3.2 Compensatory Habitat Offset Ratios		
Conservation Category	Offset Ratio	Application Notes
Very High Biodiversity Value Vegetation <ul style="list-style-type: none"> ▪ Threatened ecological communities (TECs) including EECs ▪ Wetlands, waterways and riparian areas ▪ Wildlife corridors ▪ Old growth forest ▪ Vegetation on over-cleared Mitchell Landscapes 	10:1	
High Biodiversity Value Vegetation <ul style="list-style-type: none"> ▪ Native Vegetation (other than that listed under the very high biodiversity value vegetation category). 	5:1	This applies for all native vegetation that is not classed as very high conservation value vegetation or koala habitat. Includes individual remnant trees (e.g. paddock trees).
Koala Habitat ¹	15:1	To be applied in accordance with the Ballina Shire Koala Management Strategy.
Threatened Flora	10:1	To be applied on a per plant basis with the threatened species to be offset on a like for like basis.





Table 3.2 Compensatory Habitat Offset Ratios		
Conservation Category	Offset Ratio	Application Notes
		This is applied additional to other offset requirements. For example, if a 2ha area of high conservation value vegetation that includes two threatened plants to be offset, the total offset requirement will be 10ha plus 20 additional threatened plants.
Important Habitat Features ²	3:1	To be applied on a per habitat feature basis. For example, for each individual habitat feature that is to be removed, 3 nesting boxes shall be installed or where 1 raptor nest is to be removed, 3 artificial nest poles shall be installed. This is applied additional to other offset requirements. For example, if a 2ha area of high conservation value vegetation that includes one raptor nest is to be offset, the total offset requirement will be 10ha plus 3 artificial nest poles.

1. *Koala Habitat as identified under the Ballina Shire Koala Management Strategy as Primary, Secondary (Class A – C)*
2. *Including but not limited to: Tree hollows (counted individually), Very large native trees (80cm+ DBH) and Raptor Nests*

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:

- i. payment of the prescribed fee (in accordance with Council's adopted fees and charges);
- ii. description of the property on which the vegetation is located (street address, lot, deposited plan);
- iii. applicant's name and contact details;
- iv. written consent of the landowner;
- v. 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;
- vi. a description of the vegetation detailing the following:
 - species;
 - quantity affected;
 - approximate height;
 - reasons the vegetation works are required;





- vii. 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 3 of this Chapter; and
- viii. 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 a biodiversity 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:

- i. whether the tree or other vegetation contributes to the aesthetic qualities of the locality and comprises an important component of the skyline;
- ii. whether the tree or other vegetation makes a significant contribution to the amenity and character of the locality;
- iii. whether the tree or other vegetation is important from a cultural and/or heritage perspective;
- iv. 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;
- v. 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;
- vi. whether the tree or other vegetation is interfering with, or may interfere with, the efficiency of a solar or communication appliance;



- vii. 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;
- viii. 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
- ix. 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:

- i. the ecological significance of the vegetation in the local or regional context;
- ii. the significance of the vegetation in its provision of habitat for native fauna;
- iii. whether the proposed vegetation management works will result in a significant effect on threatened species, populations or ecological communities or their habitats; and
- iv. 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:

- AS 4373:2007 *Pruning of Amenity Trees*,
- AS 4970:2009 *Protection of Trees on Development Sites*,
- Ballina Shire Council Policy – *Urban vegetation on Public Land*;
- Statewide Mutual *Trees and Roots Best Practice Manual* (ver 7, April 2013).

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 appropriately qualified arborist.

An appropriately qualified consultant would be a consulting arborist, otherwise referred to as an independent arboricultural consultant or an interdependent consulting arborist. Such consultants:

- derive their income primarily from reporting on urban trees, and have no commercial interest in pruning or removing trees;
- hold the Australian Qualifications Framework Diploma in Horticulture (Arboriculture) or other qualification to the satisfaction of Council;
- have specialised training in tree diagnostics; and
- have specialised training in the preparation of written technical reports on trees.



**Note:**

A tree worker (otherwise known as a tree surgeon, lopper, arborist, tree doctor, etc) is someone whose primary income is derived from pruning and removing trees. Tree workers are not considered to be appropriately qualified for the preparation of Arborist's reports, as they have not had the necessary training for tree diagnostics and report preparation.

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:

- i. the name, business address, telephone number of the company/ proprietor;
- ii. evidence of Industry Body Membership, technical qualifications and experience of the arborist, who undertakes the tree inspection, diagnoses and prepares the report;
- iii. the address of the site containing the trees;
- iv. the name of the person or company for whom the report is prepared;
- v. the methods or techniques used in the inspection;
- vi. 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;
- vii. 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;
- viii. 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;
- ix. the tree assessment should be conducted and recorded in accordance with industry best practice;
- x. supporting evidence such as annotated photographs and laboratory results if relevant;





- xi. 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;
- xii. a list of recommendations and the reasons for their adoption;
- xiii. the sources of technical information referred to in the report. References not used in the report should not be included;
- xiv. present information as objectively as possible without attempting to support a specific development or client based outcome; and
- xv. 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 Biodiversity Assessment Reports

Where a biodiversity assessment report 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 a biodiversity assessment report 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 the [Biodiversity Conservation Act 2016](#).

Biodiversity assessment reports are required to be prepared in accordance with the Biodiversity Assessment Method provisions established by the [Biodiversity Conservation Act 2016](#) and any associated guidelines issued by the Office of Environment and Heritage.

