

CM13.2. Albury Development Control Plan - Draft Part 5 (Vegetation Protection)

DATE 12 October 2021 **FIL REFERENCE** FIL20/01678

CONFIDENTIAL No

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Purpose of Report

The purpose of this report is to seek Council endorsement of a draft Amendment to Part 5 of the Albury Development Control Plan 2010 (ADCP 2010) for public exhibition purposes.

The draft Part 5 of the ADCP 2010 guides the management and preservation of trees and vegetation in the Albury LGA. The proposed key changes to the planning controls are further detailed below.

Background

The ADCP 2010 provides planning controls that help to guide development in the Albury LGA (along with the Albury Local Environmental Plan 2010 and other planning and environmental legislation). The ADCP 2010 comprises several parts (chapters) and sections which contain objectives and planning controls, maps, and appendices. The subject of this review is Part 5 of the ADCP 2010.

The existing Part 5 (Tree Preservation) of the ADCP 2010, guides the protection of trees in the Albury LGA. This part has been in effect since 2010 and is being reviewed to align with changes in legislation and seeks to improve environmental outcomes.

The current DCP is available via the following link:

<https://www.alburycity.nsw.gov.au/strategies-and-plans/albury-development-control-plan-2010>

Biosis was engaged to assist Council in the preparation of a background paper to help inform the review of Part 5 of the ADCP 2010. This background paper was reported to Council for noting at the Council Meeting on 10 May 2021.

Issues

Preparation of the revised Part 5 has been guided by consultation on the background paper in early 2021.

The background paper was presented to the Sustainability Advisory Committee (SAC) and circulated via electronic direct mail (eDM) to Albury's development community and targeted stakeholders. Eight submissions were received and reported to Council (10 May 2021, attachment 1). An additional two submissions were received after this date and have also been considered in the drafting of the revised Part 5. The submissions were generally supportive of the directions in the background paper;

however, they sought greater clarification on the type and location of vegetation to be prescribed by the DCP and need for alignment with the relevant NSW approval pathways for vegetation clearing. The submission from the Department of Planning, Industry and Environment (DPIE) recommended Bathurst Regional Council's DCP be considered in the review and drafting of our DCP. In response, this DCP has been reviewed and meetings held with Council officers from Bathurst Regional Council.

The draft Amendment to Part 5 of the ADCP 2010 was presented to the SAC at the 5 October 2021 SAC meeting for consideration and feedback. Concern was raised about potential clearing that may occur in relation to control '5.2 iv (e)' that provides an exemption for the removal of a tree within 3 metres of a dwelling and how this control may conflict with our future Urban Forest Strategy. The intent of this control is to protect footings and foundations to limit structural damage to dwellings. Many Councils have a similar control and exemption for trees within 3 or 4 metres of a dwelling or structure. Our future Urban Forest Strategy will take a strategic approach to trees and their location across our city. This will include suitable tree placement to best contribute to overall tree coverage, environmental values as well as appropriate siting and planting opportunities in relation to building, structures and infrastructure.

The Community Engagement section below outlines the anticipated consultation activities proposed as part of public exhibition of the draft DCP.

Natural resource management and vegetation protection is identified in various AlburyCity and state government plans and policies listed below. Of particular relevance is our Local Strategic Planning Statement (endorsed 14 September 2020) that includes an action to review planning provisions relating to trees and vegetation protection (Part 5) of the ADCP 2010.

Riverina Murray Regional Plan 2036

A 'healthy environment with pristine waterways' is one of four goals of the Riverina Murray Regional Plan 2036. Other relevant directions of this plan are listed below:

- *Direction 14 – Manage land uses along key river corridors;*
- *Direction 15 – Protect and manage the region's many environmental assets; and*
- *Direction 16 – Increase resilience to natural hazards and climate change.*

Albury 2030

Albury is in a unique position where urban areas interface with environmental and bushland areas of high biodiversity conservation value. Many of these sites contain trees and native vegetation that provide important environmental services by slowing stormwater flows, regulating microclimate, increasing soil nutrients, preventing erosion, and providing shade and habitat.

This interface highlights that biodiversity supports the economic, social, and aesthetic values that are vital to the long-term health and prosperity of Albury and the region. Through Albury 2030 – our community strategic plan under the key theme of 'An Enhanced Natural Environment' the community has identified outcomes that are relevant:

- *Outcome 2.1 – Albury has improved environmental outcomes, and its strategic action to promote sustainable development that complements and respects the natural environment;*
- *Outcome 2.2 – Albury is prepared for changing environmental conditions, and its strategic action to protect and enhance bushland areas and ensure connection between corridors; and*
- *Outcome 2.3 – An increased awareness in sustainability and environmental issues, and its strategic action to promote and enhance the natural environment.*

Two Cities One Community: Regional Natural Environment Strategy

The 'environment' is one of four priorities in the Two Cities One Community Strategic Plan, which sets out long-term goals and actions to guide the collaboration of Albury City Council and the City of Wodonga. The protection of trees and native vegetation aligns with the 2C1C Action Plan including:

- *Goal 2.1: We have a high level of awareness of sustainability and environmental issues;*
- *Goal 2.2: We preserve and experience the beautiful and unique area we live in;*
- *Goal 2.3: We are a leader in natural resource management; and*
- *Goal 2.4: We are acting to ensure the sustainability of our environment.*

Under Goal 2.3 and 2.4, a joint Regional Natural Environment Strategy was prepared with the City of Wodonga to inform holistic decision making for the further protection and enhancement of the natural environment across Albury and Wodonga. The Regional Strategy recognises the protection of native vegetation as a key community issue, particularly in the growth areas of Thurgoona-Wirlinga.

Albury Local Strategic Planning Statement

Our Local Strategic Planning Statement (LSPS) is aligned with Albury 2030 and reinforces the Riverina Murray Regional Plan and Two Cities One Community Plan. Of particular relevance, the LSPS (endorsed 14 September 2020) includes an action to review planning provisions relating to trees and vegetation protection (Part 5) of the ADCP 2010.

- *Priority 8: Respond to our unique landscape setting;*
- *Priority 9: An enhanced natural environment; and*
- *Priority 10: Adapting to the impacts of urban and natural hazards and climate change.*

Biodiversity Certification

The Biodiversity Conservation Division (BCD) of the DPIE has provided conditional extension for AlburyCity's Biodiversity certification until 24 February 2026. This certification is conditional on Council implementing amendments to Part 5 of the ADCP 2010 by 24 February 2022.

Legislative Pathways

There have been a number of legislation changes since the last review of Part 5 of ADCP 2010. The structure of the proposed draft Amendment to the ADCP 2010 corresponds with the four legislative pathways for clearing vegetation and when biodiversity impacts are to be considered.

- Part 4 Local Development Pathway.
- Part 5 Activity Pathway.
- Local Land Services (LLS) Act Pathway (Non-DA).
- Vegetation State Environmental Planning Policy (SEPP) Pathway (Non-DA).

Part 4 Local Development Pathway and Part 5 Activity Pathways

Council is the relevant consent authority for clearing of vegetation associated with Part 4 and Part 5 Pathways. These pathways require development consent under the *Environmental Planning and Assessment Act 1979* in rural and non-rural areas. Development Applications that include clearing of vegetation associated to the land use are assessed under the Part 4 pathway.

LLS Act Pathway (Non-DA)

Land in non-rural areas is regulated under the *Local Land Services Act 2013* (LLS Act) and regulations. Certain activities to clear vegetation are permitted as an 'allowable activity' or under the Code requirements. Local Land Services is the relevant consent authority for clearing of vegetation where development consent is not required. The Native Vegetation Panel is the relevant consent authority for clearing of vegetation that exceeds the Biodiversity Offset Scheme Threshold (BOST) or where the Biodiversity Offset Scheme (BOS) applies.

Vegetation SEPP Pathway (Non-DA)

In 2017, Clause 5.9 and 5.9A of the Standard Instrument Local Environmental Plan (template LEP) were repealed and replaced by the *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* (known as the Vegetation SEPP). Clause 9, Part 3 of the Vegetation SEPP gives effect to Council's DCP to prescribe the type of vegetation that requires a permit for removal. This provides a permit pathway to regulate the clearing of vegetation where development consent is not required. The provisions prescribed may have effect on land in any zone. In non-rural areas, Council is the relevant consent authority for all permit applications on Biodiversity Certified Land and applications that do not exceed the BOST on land identified on the Biodiversity Certification Exclusion Areas DCP Map. The Native Vegetation Panel is the relevant consent authority for all permit applications that exceed the BOST or where the BOS applies.

Discussion

The draft Amendment to Part 5 of the ADCP 2010 has been informed by the background paper, submissions received, and benchmarking against other Council DCPs. The resulting draft Part 5 (refer attachment 2) is a comprehensive revision that seeks to improve environmental outcomes and align with the four legislative pathways for clearing of vegetation in NSW.

The draft Part 5 includes a series of objectives and controls for each section of the DCP. It is structured to include a series of general controls and specific area controls that are in addition to these general controls. The amendment adopts terminology used by the Vegetation SEPP 2017 including references to 'vegetation' which includes trees and native vegetation (e.g. grasses, shrubs,

and hollows). A glossary has also been provided to clarify the terminology used in this part of the DCP.

New and revised provisions in Draft Part 5

A summary of the new provisions and key changes to the draft amendment to Part 5 the ADCP 2010 include:

- Expands controls to include native vegetation (not just trees as per the existing DCP).
- Establishes new objectives and controls including a permit pathway under the *State Environmental Planning Policy SEPP (Vegetation in Non-Rural Areas) 2017* (Vegetation SEPP 2017).
- Revises height/size controls for tree protection (from 4.5 metres in height and 3 metres in spread, changed to 3 metres or more in height and with a trunk circumference of 300mm or more at 1.3 metres above ground level).
- Includes controls relating to native vegetation in specified areas or identified high or medium significance on the Extant Vegetation DCP Map.
- Retains and adapts controls relating to native vegetation in proximity to the Murray River.
- Improves controls relating to Significant Trees (including Hollow Bearing Trees).
- Identifies exemptions and where a permit is not required to clear the vegetation.
- Identifies specific information required to be submitted when applying to clear vegetation.
- Contains the steps to determine when the BOS applies.
- Provides the rate of ecological compensation (replacement planting) and when this applies.

Trees

The existing Part 5 of the ADCP 2010 prescribes that all trees over 4.5 metres in height and 3 metres in spread require a permit. The draft Part 5 Amendment ADCP 2010 proposes to prescribe the size of 3 metres or more in height and with a trunk circumference of 300mm or more at 1.3 metres above ground level. This change adopts the definition from the *Rural Fires Act 1997* (Division 9, Section 100P) and will also support the revised Albury Bushfire Prone Land Map (expected to be certified in the coming weeks by the NSW Rural Fire Service).

Native Vegetation

The existing Part 5 of the ADCP 2010 does not currently prescribe native vegetation for protection. Due to changes in legislation, the proposed draft Part 5 Amendment to the ADCP 2010 will establish a new permit pathway to regulate the clearing of native vegetation, where development consent is not required on land in:

- *Specified areas*
Vegetation in specified areas is required to maintain the offset ratios for Biodiversity Certification. Clearing of vegetation on such land (land identified on Biodiversity Certification Exclusion Areas DCP Map) that does not exceed that allowed under the BOS will be required to replace removed vegetation in accordance with the rate of compensatory plantings identified in the DCP (Section 5.3.2).

- *Extant Vegetation Map*
Vegetation flagged on the Extant Vegetation DCP Map may be of higher conservation value and this strengthens a determination to preserve the vegetation in these areas. Native vegetation on Biodiversity Certified Land and identified on the Extant Vegetation DCP Map provides valuable links (stepping stones) to land in specified areas and may contain significant ecological communities and habitat. Preservation of vegetation in these areas will reduce the fragmentation of nearby environment land. Clearing of native vegetation of high conservation value on Biodiversity Certified Land and the Extant Vegetation DCP Map may also be required to provide ecological compensation.
- *Murray River*
The existing Part 5 of the ADCP 2010 prescribes vegetation in proximity to the Murray River. The controls in the draft Amendment have been modified to align with the other sections and legislative pathways. The proposed changes require a permit (when development consent is not required) to clear vegetation within 100 metres of the Murray River or within 40 metres of the Murray River on R5 – Large Lot Residential or urban release areas. The vegetation is located on the Biodiversity Certification Exclusion Areas DCP Map and for this reason additional controls are proposed to require ecological compensation for the clearing of vegetation, within the BOST.
- *Significant Trees*
Hollow Bearing Trees (HBTs), particularly in the Thurgoona-Wirlinga area, have been mapped as Significant Trees. Significant Trees will require a permit from Council prior to removal. The Significant Tree mapping will be updated over time to include HBTs across the LGA. Hollow Bearing Trees that are proposed to be cleared from development sites, identified on the Biodiversity Certification Exclusion Areas DCP Map, are to be reinstated in accordance with the rates in Section 5.3.2, Table 2.
- *Ecological Compensation*
The draft Part 5 proposes to introduce a local ecological compensation (replacement planting) requirement when the BOS does not apply. The rates require vegetation and HBTs to be replaced at ratios commensurate with other Council DCPs. There is also additional design guidance provided for the location, shape, and density of the plantings (e.g. clumping to emulate natural bushland and block-shaped links to reduce perimeters).

Risk

- **Business Risk** – The draft Amendment to the ADCP 2010 will protect the biodiversity and amenity of AlburyCity through the preservation of trees and other vegetation. The proposed amendments will provide more certainty to the community of what clearing of vegetation is permissible and provide additional protection for native vegetation including significant trees (HBTs) and extant vegetation.
- **Corporate Risk** – The planning controls are anticipated to generate public interest from our community, interested community groups and developers. As outlined, consultation activities to date have been based on the background paper. The Community Engagement section below

outlines the anticipated consultation activities proposed as part of public exhibition of the draft DCP. The controls seek to improve Council's capacity to regulate the clearing of vegetation. Review of Part 5 is a condition of Biodiversity Certification, and inaction may result in loss of the Biodiversity Certification.

- **WHS and Public Risk** – The excluded development criteria considers the necessary clearing of vegetation of imminent risk to human life or property.
- **Environmental Risk** – The draft Amendment planning objectives and controls address the preservation of large old trees for their values in providing benefits such as shade/cooling effects, minimising soil erosion and stormwater management, carbon sequestration, public amenity, habitat, heritage, and aesthetic character. Inaction will result in loss of vegetation of high ecological value and further fragmentation of environmental land.
- **Delivery Program Risk** – AlburyCity's Biodiversity Certification was extended by a period of up to five years on the provision that Part 5 – Vegetation Protection Controls of the ADCP 2010 is amended to include additional provisions that protect native vegetation by 24 February 2022. The draft Amendment 2010 addresses this conditional approval provided by DPIE and will guide future decision making for the management of vegetation in the Albury LGA.

Community Engagement

The formal public exhibition process will be undertaken consistent with other previously exhibited draft Amendments of the ADCP 2010, outlined as follows:

- Electronic direct mail (eDM) to planning and developer mailing list and previous stakeholders consulted on the background paper.
- Public notice published in the Border Mail.
- Public exhibition period for a minimum of 28 days.
- Exhibition material being made available on the AlburyCity website.
- Staff from planning and environment teams available to assist with any inquiries relating to the proposed amendment.

Options

1. Endorse the recommendation and place the draft Amendment to Part 5 – Vegetation Protection of the ADCP 2010 on public exhibition;
2. Seek further changes to the draft Amendment; or
3. Not endorse the recommendation, which will likely result in the removal of Biodiversity Certification under the *Biodiversity Conservation Act 2016*.

Conclusion

Following consultation on the background paper, a draft Part 5 of the Albury Development Control Plan 2010 has been prepared for public exhibition. It provides improved vegetation and biodiversity protection and aligns with the NSW legislative pathways.

Should Council proceed to public exhibition on the draft Development Control Plan, any submissions received will be considered in finalising the Development Control Plan prior to presenting to Council for adoption.

Recommendation

That Council:

- a. Endorses the draft Amendment to Part 5 – Vegetation Protection of the Albury Development Control Plan 2010 for public exhibition purposes; and
- b. Places the draft Amendment and any supporting material on public exhibition for a minimum of 28 days in accordance with the *Environmental Planning & Assessment Act 1979* and *Environmental Planning & Assessment Regulation 2000*.

Attachments

1. Previous Council report dated 10 May 2021 (excluding attachments) (DOC21/22370).
2. Draft Amendment to the Albury Development Control Plan 2010 – Part 5 – Vegetation Protection (DOC21/227043).