

**CM13.4. Albury Development Control Plan - Draft Part 5 (Vegetation Protection) –
Consideration of submissions**

DATE	7 February 2022	FIL REFERENCE	FIL20/01678
CONFIDENTIAL	No		
FURTHER ENQUIRIES	David Christy City Development	PHONE	6023 8111
AUTHOR	Natalie Wells		

Purpose of Report

The purpose of this report is to present the submissions received during public exhibition of the draft Amendment to Part 5 – Vegetation Protection, of the Albury Development Control Plan 2010 (ADCP 2010) and seek endorsement of the revised Part 5.

Part 5 of the ADCP 2010 guides the management and preservation of trees and vegetation in the Albury LGA.

Background

Preparation of the draft Amendment to Part 5 has been guided by input from Council’s Sustainability Advisory Committee as well as consultation on the Background Paper which was prepared by Biosis in early 2021 and reported to Council for noting on 10 May 2021.

The draft Amendment to Part 5 was prepared and presented to the Sustainability Advisory Committee (SAC) on 5 October 2021. At this meeting, concern was raised about potential clearing that may occur in relation to the exemption control 5.2 (iv)(e) (refer below) and how this might conflict with a future Urban Forest Strategy.

5.2 (iv)(e) ...clear vegetation located less than 3 metres from an existing dwelling measured from the wall to edge of the trunk at ground level, except for control (i) b);

Council officers provided a response to the concerns raised and control 5.2 (iv)(e) was retained in the draft that was reported to Council.

The draft Amendment to Part 5 of the ADCP 2010 was reported to Council for consideration on 25 October 2021 (refer to attachment 1) and Council resolved the following:

That Council:

- a. *Endorses the draft Amendment to Part 5 – Vegetation Protection of the Albury Development Control Plan 2010 for public exhibition purposes, with the removal of Control 5.2 (iv)(e) 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.*

The revised draft Amendment to Part 5 [removing control 5.2(iv)(e)] was exhibited from 30 October 2021 to 29 November 2021. The closing date for submissions was extended to 10 December 2021 to provide additional time for submissions to be received. A total of 17 submissions were received and these are discussed below.

The key changes to the draft Part 5 of the Albury DCP are highlighted below:

- 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 preservation (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);
- expands controls to preserve vegetation (including native vegetation and trees);
- includes controls relating to native vegetation in specified areas or identified on the Extant Vegetation DCP Map and Biodiversity Certification Exclusion Areas DCP Map;
- retains and adapts controls relating to vegetation in proximity to the Murray River;
- improves controls relating to Significant Trees (including Hollow Bearing Trees);
- identifies new and revised exemptions, 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 Biodiversity Offset Scheme (BOS) applies; and
- provides the rate of ecological compensation (replacement planting) and when this applies.

Issues

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 and Action Plan

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.

Action 35 of the Regional Natural Environment Strategy Action Plan states:

- Further encourage the retention of native vegetation including large old trees in the public and private realms, including by:
 - Revising ACC DCP Part 5 to apply to all native vegetation and all trees over three metres tall.

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

Acting under delegation from the Minister for Energy and Environment, the Coordinator-General Environment, Energy and Science within Department of Planning, Industry and Environment (DPIE), granted an extension of Biodiversity Certification of the ALEP 2010 for a period of up to five years, expiring on 24 February 2026. As part of the extension, Albury City Council agreed to carry out the following measures:

1. The Albury Development Control Plan be amended by 24 February 2022 to include provisions to protect native vegetation that:
 - a. Limit the clearing of native vegetation ancillary to proposals permitted without consent on land regulated by the State Environmental Planning Policy (Vegetation in non-Rural Areas) 2017.
 - b. Refer to current legislation, including:
 - i. The State Environmental Planning Policy (Vegetation in non-Rural Areas) 2017 and the provisions established by Division 6 of the Local Land Services Act 2013.
 - ii. The Biodiversity Conservation Act 2016, in particular the Biodiversity Offset Scheme entry thresholds and the Biodiversity Assessment Method as the basis for quantifying biodiversity values.
 - iii. Part 5A of the Local Land Services Act 2013.
 - c. Identify land zoned E2-E4 and RU5 that is not predominately used for agriculture on which clearing is not authorised under clause 27 of the State Environmental Planning Policy (Vegetation in non-Rural Areas) 2017.
 - d. Reinforce the penalties for causing harm to biodiversity under the Biodiversity Conservation Act 2016 and other legislation including the Commonwealth Environment Protection and Biodiversity Conservation Act 1999.

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 (detailed in the previous Council report in attachment 1).

- 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).

Discussion

The draft Part 5 of the Albury DCP 2010 was exhibited from 30 October 2021 to 10 December 2021. A total of 17 submissions were received. This comprised 13 submissions made via online webform and four submissions via email. On request, two meetings were held with two submitters.

Overall feedback was positive with most submitters supportive of the draft Amendment to Part 5 of the ADCP 2010. The online webform included a question asking submitters if they supported the draft Amendment to Part 5. Twelve out of the 13 online webform submitters supported the draft amendment while one of the 13 did not support it. The online webform submitter who objected clarified in a phone call that the planning controls needed to provide greater protection for trees to gain their support.

Attachment 2 provides a summary of the key issues raised (or verbatim copy of the comment) and response to each submission, including any recommended changes to draft Part 5. Attachment 3 includes a full verbatim copy of all submissions received.

Themes and issues raised from the 17 submissions varied. The majority were supportive of the directions of Part 5. Some of the key issues raised and a brief response is provided below. Attachment 2 provides a table responding to each of the 17 submissions and identifies any recommended changes to draft Part 5. These changes, and other minor edits where required, have been incorporated in a revised Part 5 to the DCP included in attachment 4.

- *Issue:* Overall, general support for draft Amendment Part 5 – Vegetation Protection ADCP 2010.
 - *Response:* Several of the comments highlight the importance of protecting trees and native vegetation. Some submissions also raise support for greater tree planting on public land and reserves. This is not relevant to the Draft Amendment to Part 5 of the ADCP 2010 but has been noted for the future Urban Forest Strategy.
- *Issue:* A submission proposed to increase the minimum height of prescribed trees from 3 metres or more in height (in the draft DCP Part 5) to 5 metres or more in height.
 - *Response:* The existing Part 5 of the ADCP 2010 prescribes that clearing trees over 4.5 metres in height and 3 metres in spread require a permit. The draft Part 5 Amendment to the ADCP 2010 revised this control prescribing the size of a tree that is 3 metres or more in height with a trunk circumference of 300mm or more at 1.3 metres above ground level. This change provides greater tree protection and aligns with numerous other NSW Council DCPs, as well as the tree definitions from the Rural Fires Act 1997 (Section 100P), the Draft Urban Design Guidelines (DP SEPP) and Australian Standard AS4970 – Protection of trees on development sites.

- *Issue:* A submission raised that the expanded controls would require a permit to clear native vegetation (e.g., trees, understorey plants, groundcovers and wetland species) in specified areas (C2, C3, C4, SP1, SP2, RE1, RE2, R5, RU5, or W2 zone) or land identified on the Extant Vegetation DCP Map. The submission recommends exemptions for mowing vegetation.
 - *Response:* On non-rural land not identified on a DCP map or in specified zones the prescribed tree height control applies. For specific areas or land identified on the Extant Vegetation DCP Map, it is recommended that an exemption (that no permit would be required) is included in relation to mowing or slashing native grass to a height not less than 10 centimetres, in proximity to a dwelling. Further to this, the exhibited Part 5 contains the relevant exemptions (in the above areas) that will not restrict government departments or agencies undertaking vegetation clearing for certain activities authorised by other legislation.
- *Issue:* A submission raised that the objectives should emphasise the preservation of mature trees.
 - *Response:* The Two Cities One Community Regional Natural Environment Action Plan, Action 35 states, “to further encourage the retention of native vegetation including large old trees in the public and private realms. It is recommended that the DCP is enhanced by an additional objective in Section 5.2 that acknowledges the significant contribution of large old trees (e.g., the benefits they provide of increased amenity, shade, oxygen). The proposed objective states, “Recognise the values of large old trees in the landscape”.
- *Issue:* There were several clarifying questions regarding NSW legislative pathways for clearing of vegetation.
 - *Response:* It is proposed the revised Part 5 includes expanded definitions in the glossary, minor edits to improve readability (e.g., including the entire Section 8 provisions of the Vegetation SEPP 2017) and addresses minor changes in legislation introduced while the document was on public exhibition (e.g., ‘allowable activities and zone reform’). This has been addressed in further detail in the summary response table in attachment 2.

Risk

- **Business Risk** – Implementation of the revised DCP Part 5 will require resourcing to consider the anticipated increase in permit applications resulting from the expanded controls (e.g., reduction in size for a prescribed tree) of this Amendment to Part 5 of the ADCP 2010. This additional resourcing is not considered significant and has been considered through Council's resource planning and budgeting processes.
- **Corporate Risk** – The project has reasonable public interest and the draft DCP Part 5 has been guided by input and feedback from Community Consultation. The Community Engagement section of this report below outlines the consultation activities that have occurred as part of the public exhibition. The activities completed are in accordance with the AlburyCity Community Participation Plan and the proposed community engagement activities reported to Council on 25 October 2021.
- **WHS and Public Risk** – The community engagement activities completed were compliant with relevant state and federal health orders.

- **Environmental Risk** – The planning objectives and controls of the draft Amendment 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. Implementation of Part 5 will provide enhanced guidance for the assessment of existing vegetation of ecological value. Inaction may result in loss of vegetation of high ecological value.
- **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 are amended to include additional provisions to protect native vegetation by 24 February 2022. Advice from DPIE, has confirmed that generally the requirement has been met by preparing and exhibiting the draft Amendment and noting it is close to finalising and implementation.

Community Engagement

The public exhibition of the draft Amendment to Part 5 of the ADCP 2010 has included the following consultation activities:

- Public exhibition for a minimum of 28 days (extended to 10 December 2021 providing 41 days).
- Public notice in the Border Mail newspaper.
- Exhibition material placed on the AlburyCity website and available at the LibraryMuseum, Lavington Library and Council offices.
- Promotion via News from AlburyCity.
- Electronic Direct Mail (eDM) to planning and developer mailing list.
- Notification email sent to previous submitters to the Background Paper.
- On request, meeting held with Thurgoona Community Action Group (TCAG), Thursday 25 November 2021.
- On request, meeting held with Mr J Laycock, Blueprint Planning, Friday 3 December 2021.

The outcomes of the public exhibition are discussed above.

Options

1. Endorse the revised Part 5 – Vegetation Protection of the ADCP 2010 (as per attachment 4), with all the recommended changes post-exhibition, or;
2. Endorse Part 5 – Vegetation Protection of the ADCP 2010, as previously exhibited without any changes post-exhibition, or;
3. Endorse Part 5 – Vegetation Protection of the ADCP 2010, with some of the recommended changes post-exhibition (as per attachment 2), or;
4. Proceed without amendment to existing Part 5 of the ADCP 2010.

With consideration to the information outlined in this report, it is recommended that Council proceed with option one.

Conclusion

Following formal public exhibition and consideration of the 17 submissions received, endorsement is being sought on the revised Part 5 of the ADCP 2010. Overall feedback from the submissions received was generally supportive of the changes to Part 5.

The revised Part 5 of the DCP provides improved vegetation and biodiversity protection and aligns with the current NSW legislative pathways.

Recommendation

That Council:

- a. Receives and notes this report; and
- b. Endorses the revised Part 5 – Vegetation Protection of the ADCP 2010 (as per attachment 4), with all the recommended changes post-exhibition.

Attachments

1. Previous Council Report (excluding attachments) from 25 October 2021 (DOC22/28962).
2. Submissions Issues and Response Table (DOC22/27851).
3. Copy of verbatim submissions (DOC22/29248).
4. Revised Part 5 – Vegetation Protection Albury Development Control Plan 2010 (DOC22/27860).