

5 VEGETATION PROTECTION

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5 VEGETATION PROTECTION

5.1 INTRODUCTION

Trees and vegetation are a vital part of the biodiversity, amenity, and local character of Albury Local Government Area (LGA). They provide a network of critical green infrastructure to improve our resilience to the impacts of climate change. Mature trees sequester carbon, improve soil nutrients, slow stormwater flows and provide shade to cool our streets, parks, and buildings. Trees are also a strong character and place element of our city, particularly in Heritage Conservation Areas. Native vegetation communities of diverse trees, shrubs, grasses, and wetland species, together with tree hollows and rocky outcrops are essential habitat features that support the regions wildlife.

This Part of the DCP guides the management and preservation of trees, vegetation, and native vegetation across the Albury LGA. A glossary of terms used in this Part of the DCP is provided in Section 5.6.

It is important that development comply with all relevant Parts of this DCP. Applicants should ensure that all Parts of the DCP have been checked for relevance, not just the Part that refers to the relevant zone, the predominant development category, or the most obviously relevant list of controls.

5.2 GENERAL VEGETATION PROTECTION

This section applies to clearing of vegetation in the Albury LGA.

Section 5.3 of this DCP also applies to land identified wholly or partially on the **Biodiversity Certification Exclusion Areas Map**.

Objectives

1. Prescribe the vegetation to which Section 9, Chapter 2 Vegetation in non-rural areas of the *State Environmental Planning Policy (Biodiversity and Conservation) 2021* applies.
2. Maintain and improve Albury's total vegetation and urban canopy cover.
3. Protect vegetation within and adjacent to development sites.
4. Minimise soil erosion or sedimentation into the Murray River and other waterways.
5. Recognise the values of large old trees in the landscape.

Controls

- i. Development consent is required to clear vegetation:

- a) to enable a use of land or other development for which development consent is required; or
 - b) is a heritage item or in a heritage conservation area, or Aboriginal object or in an Aboriginal place of heritage significance.
- ii. Control i. (b) does not apply if the criteria in Clause 5.10 (3) of the Albury LEP 2010 are satisfied.
- iii. A permit is required to clear vegetation that is:
 - a) a tree 3 metres or more in height and with a trunk circumference of 300mm or more at 1.3 metres above ground level;
 - b) native vegetation in **specified areas** or identified on the **Extant Vegetation DCP Map**;
 - c) located within 100 metres of the Murray River or within 40 metres of the Murray River on R5 – Large Lot Residential zone or urban release areas; or
 - d) listed on the Significant Tree Register.
- iv. A permit is not required for the following exemptions:
 - a) clearing vegetation, where Council is satisfied, that it is,
 - an imminent risk to human life or property; or
 - dying or dead and is not required as the habitat of native animals; or
 - for traditional Aboriginal cultural activity, other than a commercial activity;
 - b) tree pruning that does not exceed 10% of the canopy every three years and in accordance with the *Australian Standard – Pruning of Amenity Trees (AS 4373-2007)*;
 - c) clearing of environmental weeds on the Exempt Species List in Section 5.4 of this DCP, except for Section 5.2 Control i. b) or Section 5.2 Control iii. c) or d);
 - d) clearing of non-native fruit or nut producing trees, except for Control i. b);
 - e) mowing or slashing native grass for maintenance only, provided that the grass is:
 - located within a landscaped area associated with a dwelling; and
 - maintained at a height of at least 10 centimetres above ground level;
 - f) clearing of vegetation authorised under other legislation, for example:;
 - allowable activities for agricultural uses permitted with consent on land in zones R5, C2, C3, and C4 under Schedule 5A or in rural areas Part 5A of the *Local Land Services Act 2013*;
 - *Land Management Native Vegetation Code 2018*;
 - *10/50 clearing Rural Fires Act 1997*;
 - *Electricity Supply Act 1995*;

- *Exempt and Complying Development Code 2008.*

- v. Clearing of vegetation must not result in increased erosion or sedimentation by leaving exposed soil within 40 metres of a watercourse.
- vi. Development applications are to include a Landscape Concept Plan for the following proposals:
 - a) three or more dwellings;
 - b) four or more allotments in residential zones;
 - c) commercial or industrial zoned development sites proposing landscaped areas; or
 - d) where required by another Part of this DCP.
- vii. A development application or permit application to clear vegetation (10 trees or greater) is to include a Vegetation Management Plan.

Notation

Prior to clearing under Control iv. a) confirmation from Council is required to verify that proposed clearing meets the above exemption. Contact customer service on 02 6023 8111 and email photographs of the tree to info@alburycity.nsw.gov.au attention Environment Team.

Owner's consent or an order under the *Trees (Disputes Between Neighbours) Act 2006* must be obtained to clear vegetation on an adjoining property.

A modification application (Section 4.55 EP&A Act) may be required for clearing of vegetation that is identified to be retained by a condition of consent.

Encroachments outside of the Structural Root Zone (SRZ) that are less than 10% of the Tree Protection Zone (TPZ) are generally considered minor. Encroachments into the TPZ require approval and decisions will be made in accordance with Australian Standard 4970 – *Protection of trees on development sites*.

5.2.1 SPECIFIED AREAS

This section applies to clearing of native vegetation on land in **specified areas** or on land identified on the **Extant Vegetation DCP Map**.

Objectives

1. Protect significant threatened species habitat and ecological communities.

Controls

- i. Development is to be designed to avoid clearing native vegetation. Where this is not possible, the development must demonstrate that it has been designed to minimise the clearing of native vegetation.
- ii. Clearing native vegetation of high ecological value, may require compensatory planting in accordance with Section 5.3.2 of this DCP.

Notation

Clauses 6.3, 7.2, 7.3 and 7.5 of the Albury LEP 2010 outline the preservation requirements for native vegetation.

5.3 BIODIVERSITY CERTIFICATION EXCLUSION AREAS

This section applies to clearing of native vegetation on land identified wholly or partially on the **Biodiversity Certification Exclusion Areas DCP Map**.

This is in addition to the objectives and controls of Section 5.2 above.

Objectives

- 1. Maintain and improve Albury's biodiversity.
- 2. Protect existing habitat features within and adjacent to development sites.
- 3. Enhance the recovery of threatened species and ecological communities.
- 4. Prevent the fragmentation of environmental land.

Controls

- i. Development is to be designed to avoid clearing native vegetation. Where this is not possible, the development must demonstrate that it has been designed to minimise the clearing of native vegetation.
- ii. Clearing of native vegetation must not result in increased erosion or sedimentation by leaving exposed soil within 40 metres of a watercourse.
- iii. Clearing native vegetation of ecological value, where the Biodiversity Offset Scheme does not apply, requires compensatory planting in accordance with Section 5.3.2.

Notation

Clauses 6.3, 7.2, 7.3 and 7.5 of the Albury LEP 2010 outline the preservation requirements for native vegetation.

5.3.1 BIODIVERSITY OFFSET SCHEME

This section applies to clearing of native vegetation land identified wholly or partially on the **Biodiversity Certification Exclusion Areas DCP Map**.

Objective

1. Establish whether the Biodiversity Offset Scheme applies.

Controls

- i. If one or more of the following Controls apply a Biodiversity Development Assessment Report (BDAR) is to be prepared by an accredited assessor, in accordance with the Biodiversity Assessment Method (BAM):
 - a) The land is identified wholly or partially on the **Biodiversity Values Map**
<http://www.lmbc.nsw.gov.au/Maps?index.html?viewer=BOSETMap>
 - b) The clearing exceeds the Biodiversity Offset Scheme Threshold identified in Table 1 below:

Table 1 – Native vegetation clearing under Biodiversity Offset Scheme Threshold, Section 7.2 of the *Biodiversity Conservation Regulation 2017*

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

*If there is no minimum lot size in the LEP, the actual size of the lot will apply

- c) The clearing is likely to significantly impact threatened species and threatened ecological communities. Prepare a Test of Significance under Section 7.3 of the *Biodiversity Conservation Act 2016* and in accordance with the *Biodiversity Conservation Regulation 2017*.

Notation

For more information on the application of the Biodiversity Offset Scheme visit, www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity-offsets-scheme/landholders-and-developers

5.3.2 ECOLOGICAL COMPENSATION

This section applies to clearing of native vegetation on land wholly or partially identified on the **Biodiversity Certification Exclusion Areas DCP Map** where the Biodiversity Offset Scheme does not apply.

Objectives

1. Ensure effective assisted bushland restoration and revegetation.
2. Replace lost habitat features.

Controls

- i. Provide compensatory planting in accordance with the Vegetation Planting Rate in Table 2.
- ii. Prioritise the retention of native old growth or hollow-bearing trees. If loss of trees is unavoidable, the following mitigation measures are to be applied:
 - a. hollow resources are to be retained and repurposed as habitat; or
 - b. artificial hollow replacement in accordance with Table 3.
- iii. Planting is to reflect the vegetation community being removed or modified in accordance with the General Native Profiles for the Albury District or the Bowna-Jindera District in the *South West Slopes Revegetation Guide**.
- iv. Ecological compensatory plantings are to:
 - a. be outside any known Asset Protection Zones (APZ) in accordance with *NSW RFS Standards for Asset Protection Zones*;
 - b. provide vegetation buffer zones around existing native vegetation, waterways and wetlands;
 - c. be located on the subject site and connect to existing patches of native vegetation or strengthen corridors that link environmental land on two or more nearby sites;
 - d. provide block shaped links, to reduce edge effects created by linear perimeters; and
 - e. trees are to be planted in proximity, in accordance with Table 4.

Table 2 – Vegetation Planting Rate

Ecological Value	Ratio**
Trees Medium/Low	1:5
Trees High	1:10
Understorey/shrubs	1:7
Groundcover (grasses, native herbs, wetland species)	1:10

Table 3 – Artificial Hollow Replacement Rate

Hollow Size	Hollow Diameter	Replacement ratio
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Medium	51-100mm	1:1
Large	101-200mm	1:2
Very large	>200mm	1:4

Table 4 – Vegetation Planting Density

Vegetation Type	Density
Tree	1 per 5m ² with a maximum of 20 metre spacing
Shrubs	3 per 5m ² planted in clumps
Grasses and ground covers	4 per 1m ² planted in clumps

- v. Where land is not conducive to compensatory planting, regeneration, or restoration techniques in accordance with the National Standards for the Practice of Ecological Restoration, may be supported.

Notation

*General Native Profiles for the Albury District and the Bowna-Jindera District of the *South West Slopes Revegetation Guide, Murray CMA 1998* (p.122-123).

**A maintenance period is generally for a minimum of two years after the completion of works. A minimum of 80% survival rate for each species planted is to be achieved and as such, it is suggested that the planting rate is increased by 10-20%.

5.3.3 LAND ADJACENT TO THE MURRAY RIVER

This section applies to clearing of vegetation within 400 metres of the Murray River.

This section is to be read in conjunction with *Chapter 5 River Murray lands of the State Environmental Planning Policy (Biodiversity and Conservation) 2021* and Clause 7.5 of the Albury LEP 2010.

Objective

1. To conserve and protect Riverine corridors, including native vegetation.
2. Improve riparian habitat along the creek lines which provide important linkages to the Murray River.
3. Minimise soil erosion or sedimentation into the Murray River.

Controls

- i. Development is to be designed to avoid clearing native vegetation. Where this is not possible, the development must demonstrate that it has been designed to minimise the clearing of native vegetation.

- ii. Clearing of vegetation must not result in increased erosion or sedimentation by leaving exposed soil within 40 metres of a watercourse.
- iii. Clearing native vegetation of ecological value, within the Biodiversity Offset Scheme Threshold, may require compensatory planting in accordance with Section 5.3.2 of this DCP.

5.4 EXEMPT SPECIES LIST

This section applies to clearing of vegetation in the Albury LGA except for vegetation that is:

- a heritage item or in a heritage conservation area, Aboriginal object or in an Aboriginal place of heritage significance;
- listed on the Significant Tree Register; or
- located within 100 metres of the Murray River or within 40 metres of the Murray River on R5 – Large Lot Residential zone or urban release areas.

Table 5 –Priority Environmental Weed Species

Common name	Botanical name
Prickly Pears	<i>Austrocylindropuntia</i> sp. <i>Cylindropuntia</i> sp. <i>Opuntia</i> sp.
Flax-leaf Broom	<i>Genista linifolia</i>
Cape Broom	<i>Genista monspessulana</i>
Scotch Broom	<i>Cytisus scoparius</i> subsp. <i>scoparius</i>
Lantana	<i>Lantana camara</i>
Willow species	<i>Salix</i> sp.
Mesquite	<i>Prosopis</i> sp.

Table 6 – Environment Weed Species

Common name	Botanical name
All Ash species	<i>Fraxinus</i> sp.
Bamboo species	<i>Bambusa</i> sp.
Box Elder Variegated Box Elder	<i>Acer negundo</i> sp.
Broom sp.	<i>Genista</i> sp. <i>Cytisus</i> sp.
Camphor Laurel	<i>Cinnamomum camphora</i>
Canary Island Date Palm	<i>Phoenix canariensis</i>
Cassia	<i>Cassia</i> sp.
Castor Oil Plant	<i>Ricinus communis</i>
Chinese Tallow	<i>Triadica sebifera</i>
Cocos Palm	<i>Sygarus romanzoffiana</i>
Cootamundra Wattle	<i>Acacia baileyana</i>

Common name	Botanical name
Cotoneaster	<i>Cotoneaster</i> sp.
Crab-apple	<i>Malus</i> sp.
Early Black Wattle	<i>Acacia decurrens</i>
Evergreen Alder	<i>Alnus jorullensis</i>
False Acacia	<i>Robinia pseudoacacia</i>
Firethorn	<i>Pyracantha</i> sp.
Flinders Range Wattle	<i>Acacia iteaphylla</i>
Fruit trees	<i>Prunus and citrus species</i>
Golden Ash	<i>Excelsior aurea</i>
Golden Wreath Wattle	<i>Acacia saligna</i>
Gossamer Wattle	<i>Acacia floribunda</i>
Hackberry species	<i>Celtis</i> sp.
Hawthorn	<i>Crataegus</i> sp.
Liquidambar	<i>Liquidambar styraciflua</i>
Loquat	<i>Eriobotrya japonica</i>
Mirror Bush	<i>Coprosma repens</i>
New Zealand Cabbage Palm	<i>Cordyline australis</i>
Oleander	<i>Nerium oleaner</i>
Olive*	<i>Olea europaea</i> *Fruiting varieties only
Ovens Wattle	<i>Acacia pravissima</i>
Pittosporum	<i>Pittosporum</i> sp.
Plum	<i>Prunus</i> sp.
Poplar	<i>Populus</i> sp.
Privet	<i>Ligustrum</i> sp.
Queensland Silver Wattle	<i>Acacia podalyrifolia</i>
Rhus Tree	<i>Toxicodendron succedaneum</i>
Senna	<i>Senna</i> sp.
Silky Oak	<i>Grevillea robusta</i>
Snowy River Wattle	<i>Acacia boormanii</i>
Strawberry Tree	<i>Arbutus unedo</i>
Sydney Golden Wattle	<i>Acacia longifolia</i>
Tree Lucerne (Tagasaste)	<i>Chamaecytisus proliferus</i>
Tree-of-heaven	<i>Ailanthus altissima</i>
Wild Tobacco	<i>Solanum mauritaianum</i>
Yucca	<i>Yucca</i> sp.

5.5 SPECIFIC APPLICATION INFORMATION

- i. A permit application or development application to clear trees is to be accompanied by the written consent of the property owner(s) and may be required to include an arboricultural report prepared by a suitably qualified person with the following information:
 - a) A table indicating the location, size (height, canopy spread and trunk circumference 1.3m above ground level), hollows, species, health, condition and estimated Useful Life Expectancy (ULE) of the trees on the site and nearby adjoining properties.
 - b) The methodology or techniques used to conduct the assessment.
 - c) Reasons for the clearing of vegetation.
 - d) Any practical alternatives that have been explored prior to proposing the clearing of vegetation.
 - e) A plan to scale that clearly illustrates the following information:
 - 1. the location of existing and proposed development, buildings, driveways, car parking, drainage and paved areas.
 - 2. vegetation to be removed, retained or replaced on the site and nearby adjoining properties and the location of any hollows.
 - 3. where proposed development is within the Tree Protection Zone (TPZ) and/or Structural Root Zone (SRZ) of a retained tree, a section diagram is required to demonstrate the construction methodology of any proposed footings or excavation
 - 4. the proposed location of replacement plantings, suitable species selection, minimum container size and soil volume.
 - f) Outline tree protection measures for trees and vegetation on the site and adjoining properties during the construction phase in accordance with Australian Standard – Protection of trees on development sites (AS 4970-2009).
 - g) Any other supporting evidence such as photographs, a structural certificate or soil test results.
- ii. A permit application to clear vegetation in specified areas or identified on the **Extant Vegetation DCP Map** is required to address the Objectives and Controls of Section 5.2.1 in the [Vegetation Removal Permit](#).
- iii. A permit application or development application (including modification application, Section 4.55 EP&A Act) is required to clear native vegetation on land identified on the **Biodiversity Certification Exclusion Areas DCP Map** where the Biodiversity Offset Scheme does not apply. If ecological compensation is required, a Vegetation Management Plan is to be provided that clearly illustrates the following information, where applicable:
 - a) Asset Protection Zones (APZ);

- b) buffer zones around existing native vegetation, waterways and wetlands;
 - c) rate of compensatory plantings in accordance with Section 5.3.2 of this DCP; and
 - d) the proposed location of compensatory plantings, suitable species selection, separation distance between plantings, minimum container size and soil volume or required soil remediation and 2 year maintenance period.
- iv. A development application (including modification application, Section 4.55 EP&A Act) to clear native vegetation where the Biodiversity Offset Scheme applies requires a Biodiversity Development Assessment Report (BDAR) prepared by an accredited assessor, in accordance with the Biodiversity Assessment Method (BAM) for more information visit www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity-offsets-scheme/landholders-and-developers

Notation

Information requirements submitted are to contain the minimum information required under the *Planning and Assessment Regulation 2000* and Appendix A of this DCP.

The Albury Profile of the *South West Slopes Revegetation Guide, Murray CMA 1998* contains a list of recommended vegetation for the Albury region. For information on planting and species selection in gardens, the *Albury-Wodonga Garden Guide*, can be found at www.alburycity.nsw.gov.au

5.6 GLOSSARY

Biodiversity Certification Exclusion Area means land that is not biodiversity certified (land identified on the Biodiversity Certification Exclusion Areas DCP Map)

Biodiversity Offsets Scheme Threshold (BOS) defined in Section 7.1 of the *Biodiversity Conservation Regulation 2017*.

Clear vegetation includes –

- a) cut down, fell, uproot, kill, poison, ringbark, bury or otherwise destroy the vegetation, or
- b) lop or otherwise remove a substantial part of the vegetation.

As defined by Section 4, Chapter 2 Vegetation in non-rural areas of the *State Environmental Planning Policy (Biodiversity and Conservation) 2021*

Development is any of the following –

- a) use of land,
- b) subdivision of land,
- c) the erection of a building,
- d) the carrying out of work,
- e) the demolition of a building or work,
- f) any other act, matter or thing that may be controlled by an environmental planning instrument

However, development does not include any act, matter or thing excluded by the regulations.

As defined in Section 1.5 of the *Environmental Planning and Assessment Act 1979*

Imminent risk means a tree with imminent (clear and immediate) potential to harm human health, life or that can damage property, if there is a sudden change to the stability of the tree through structural failure, either above or below ground.

Native vegetation means any of the following types of plants native to New South Wales –

- a) trees (including any sapling or shrub or any scrub),
- b) understorey plants,
- c) groundcover (being any type of herbaceous vegetation),
- d) plants occurring in a wetland.

As defined by Section 60B of the *Local Land Services Act 2013*

Non-rural areas as defined by Section 5, Chapter 2 Vegetation in non-rural areas of the *State Environmental Planning Policy (Biodiversity and Conservation) 2021*

Regulated rural area an area of the State under Part 5A of the *Local Land Services Act 2013*, that is category 2 – regulated land on the native vegetation regulatory map as defined by Schedule 5A of the *Local Land Services Act 2013*.

River bank means the limit of the bed of the Murray River. The bed of a river, means the whole of the soil of the channel in which the river flows, including the portion –

- a) that is alternatively covered or left bare with a rise or fall in the supply of water, and
- b) that is adequate to contain the river and its average or mean stage without reference to extraordinary freshnets in the time of flood or to extreme droughts.

As defined in Section 7.5 of the *Albury Local Environmental Plan 2010*

Specified areas means the land within the following zones: C2 Environmental Conservation, C3 Environmental Management, C4 Environmental Living, SP1 Special Activities, SP2 Infrastructure, RE1 Public Recreation, RE2 Private Recreation, R5 Large Lot Residential, RU5 Village or W2 Recreational Waterways.

Vegetation means a tree or other vegetation, whether or not it is native vegetation.

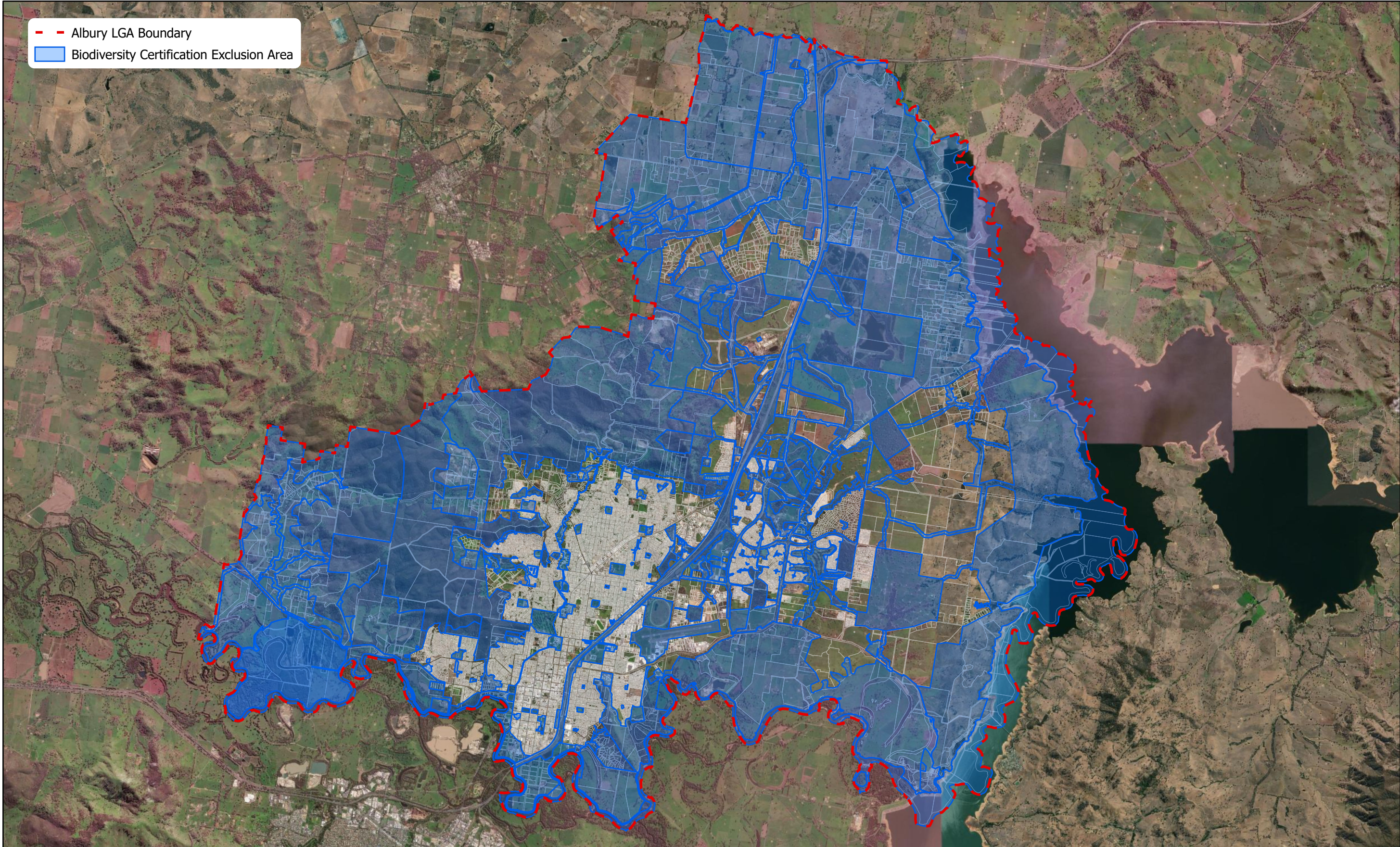
As defined by Section 4, Chapter 2 Vegetation in non-rural areas of the *State Environmental Planning Policy (Biodiversity and Conservation) 2021*

Vegetation Management Plan means a plan prepared in accordance with Section 5.5 Control iii. of this DCP

5.7 MAPS

Figure 5.1 BIODIVERSITY CERTIFICATION EXCLUSION AREAS MAP

Figure 5.2 EXTANT VEGETATION MAP



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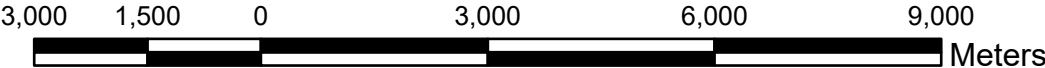


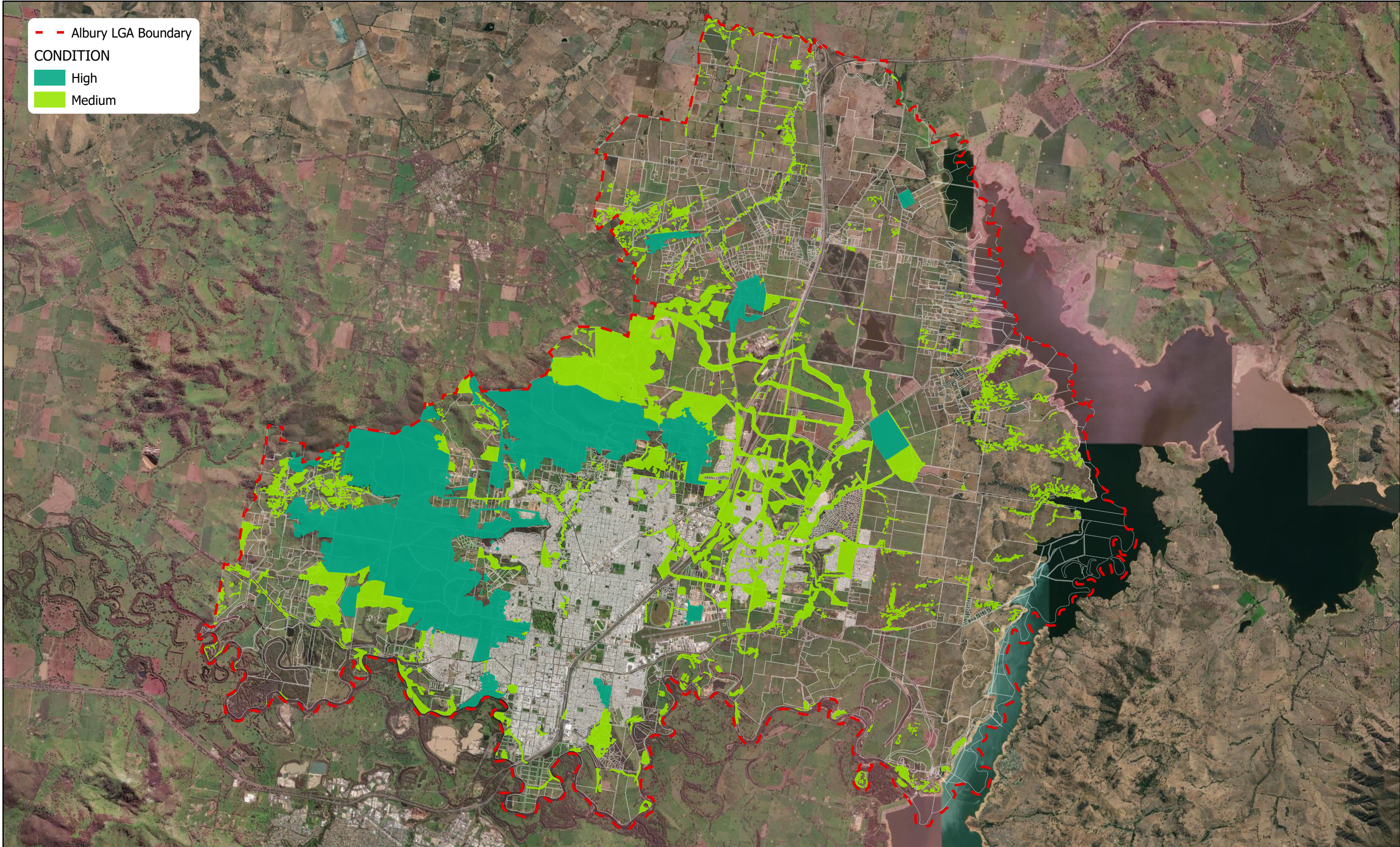
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Biodiversity Certification Exclusion Areas DCP Map

MAP GRID AUSTRALIA, ZONE 55
TRANSVERSE MERCATOR PROJECTION
HORIZONTAL DATUM: GEODETIC DATUM AUSTRALIA 1994
VERTICAL DATUM: AUSTRALIAN HEIGHT DATUM 1972
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MAP GRID AUSTRALIA, ZONE 55
TRANSVERSE MERCATOR PROJECTION
HORIZONTAL DATUM: GEODETIC DATUM AUSTRALIA 1994
VERTICAL DATUM: AUSTRALIAN HEIGHT DATUM 1972
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Extant Vegetation DCP Map

