



**CUNNINGTON ROSSE**  
Town Planning & Consulting

# Statement of Effect

**EXCAVATION AND FILL (LEE POINT EROSION GULLY REMEDIATION)**

LOT 4873 TOWN OF NIGHTCLIFF

**25 May 2026**

## Contact

<b>Name</b>	Brad Cunnington
<b>Position</b>	Director
<b>Email</b>	<a href="mailto:brad@crtpc.com.au">brad@crtpc.com.au</a>

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## Document Control

<b>Author</b>	Brad Cunnington
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**Attachment B:** EIS Assessment Report and Recommendations

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**Attachment E:** EPBC Variation Notice 27 July 2025

**Attachment F:** Gully Rehabilitation Fill Plan

**Attachment G:** Revegetation Proposal

**Attachment H:** Erosion and Sediment Control Plan

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## 1.0 Introduction

Cunnington Rosse Town Planning and Consulting have been engaged by Defence Housing Australia to prepare, lodge and manage an application for development permit for excavation and fill, specifically filling and remediating historic erosion damage within the western portion of lot 4873 Town of Nightcliff. This application relates to two areas within the existing parcel – a series of small, relatively minor erosion gullies in the north-western part of the site adjacent the former defence compound; and a series of large, deep erosion gullies in the south-western portion of the site. Both remediation areas are within the portion of lot 4873 currently zoned CN (Conservation), and the proposed works comprise filling and stabilising, placement of topsoil and revegetation with appropriate native species.

The Lee Point subdivision area covers lots 4873 and 9730 Town of Nightcliff, situated at 577 and 544 Lee Point Road on the western and eastern sides of Lee Point Road respectively. Lot 4873 adjacent the western side of Lee Point Road is historically known as the '2CRU' lot, a reference to the site's '2 Controlling and Reporting Unit' designation within the Department of Defence. Lot 9730, a crown land parcel adjacent the eastern side of Lee Point Road, is often referred to as 'Muirhead North.'

Defence Housing Australia identified the extent of pre-existing erosion damage upon obtaining ownership of lot 4873 from the Department of Defence in 2014. As an integrated development of both crown and freehold land, the Lee Point development is subject to a Project Development Agreement (PDA) between Defence Housing Australia and the Northern Territory Government, including transferring the CN portion of lot 4873 to the Northern Territory Government for incorporation into the Casuarina Coastal Reserve. The PDA sets out a number of conditions, including that the erosion gullies be remediated prior to the transfer of this land to the Northern Territory Government.

Various planning decisions relate to the Lee Point Development, including the original rezoning and introduction of the Lee Point Planning Principles and Area Plan into the Northern Territory Planning Scheme in 2015, and subdivision development permits issued over 2CRU and Muirhead North in 2018 and 2019 respectively (together with multiple variations issued since). In addition, the Lee Point development is subject to an approval and conditions from the Australian Department of Climate Change, Energy, the Environment and Water under the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*, and an assessment report and recommendations from the Northern Territory Environment Protection Authority.

The proposed works are consistent with the definition of *excavation and fill* in **Schedule 2.1** of the Northern Territory Planning Scheme. *Excavation and fill* is *impact assessable* in Zone CN, thus a development permit is required pursuant to **Section 44(a)** of the *Northern Territory Planning Act 1999* (the Act). This report details the nature of the subject land and locality, the proposed development, considers the proposal against the relevant provisions of the Planning Scheme (including the Strategic Framework), and the relevant parts of **Section 46(3)** of the Act. This report (and application) is to be read together with the plans, reports and background information contained in **Attachments A** through **K**.

## 1.1 Background and Context

Rehabilitation of the erosion gullies is required to be undertaken by Defence Housing Australia prior to the transfer of the CN (Conservation) area to the northern Territory Parks and Wildlife Commission, in accordance with the Project Development Agreement. The remediation of these areas as part of the Lee Point development was flagged in the 2014 submission to the Northern Territory Planning Minister to amend the NT Planning Scheme to rezone lots 4873 and 9370 and introduce the Lee Point Planning Principles and Area Plan (PA2014/0922). Following the Planning Scheme amendment, an application for development permit was lodged with the Darwin Division of the Development Consent Authority in 2017 (PA2017/0569), confirming the rehabilitation of the erosion gullies to be undertaken as part of the Lee Point development, noting the gullies are a major source of sediment to Sandy Creek. PA2017/0569 was ultimately approved with Development Permit DP18/0409 (**Attachment A**) permitting the development of 513 lots.

In addition to the planning approvals, the Lee Point development was assessed by the Northern Territory Environment Protection Authority (NTEPA) at the level of an Environmental Impact Statement (EIS) in accordance with the Northern Territory *Environmental Assessment Act*. In October 2018 the NTEPA finalised their assessment and provided *Assessment Report 88 – Lee Point Master-Planned Urban Development, Defence Housing Australia* to the Minister for Environment and Natural Resources. Assessment Report 88 (**Attachment B**) contained 15 recommendations to guide decisions and conditions of approvals, authorisations and other matters, and noted the proponents' commitment to "...remediate historic erosion issues that have been attributed to increased mosquito breeding in Casuarina Coastal Reserve." The Assessment Report noted the NT EPA's support for the identified remediation and recommended conditions accordingly (Conditions 9 and 10 relating to stormwater management, discharge and quality).

The Lee Point development is also a controlled action pursuant to the *Environment Protection and Biodiversity Conservation Act 1999* (Cth), and thus requires assessment and approval from the Australian Government. In March 2019 the (then) Australian Department of the Environment and Energy issued an approval (EPBC 2015/7591 – refer **Attachment C**) to Defence Housing Australia to "construct a master-planned urban residential development on Lot 4873 and lot 9370 at Lee Point, approximately 14 km northeast of Darwin, Northern Territory." The approval was varied on 27 July 2025 (**Attachment E**) to include the following condition:

- 2B) *The approval holder may undertake **clearing** in the area identified in Attachment D2 as Casuarina Coastal Reserve and CCR for the purpose of rehabilitating existing erosion gullies and maintenance of existing bike tracks.*

## 1.2 Relevant Development Approvals

For the purpose of this application, the following approval history under the Northern Territory *Planning Act 1999* is noted:

- The subdivision of the 2CRU portion of Lee Point (the portion within lot 4873 to the west of Lee Point Road) via Development Permit DP18/0409 was approved by the Darwin division of the Development Consent Authority (the consent authority) on 30 November 2018 for the purpose of *subdivision to create 513 lots in two stages*. The permit included 10 precedent conditions and 18 general conditions;
- On 17 November 2020 the consent authority issued a variation to DP18/0409, being DP18/0409A, for the purpose of an extension to the base period of DP18/0409;
- On 14 July 2022 the consent authority issued DP18/0409B, a further variation to *vary condition 11 of Development Permit DP18/0409 for the purpose of relocating lot 488, deleting one public open space lot of 450m<sup>2</sup>, boundary realignments to lots 49, 50, 178, 319 and 320, and reconfiguring the staging to allow the subdivision to occur in five stages*;
- On 27 October 2022 the consent authority issued DP18/0409C, being a further 12 month extension to the base period initially established by DP18/0409 and subsequently extended by DP18/0409A, such that the base period would expire on 30 November 2023;
- On 1 December 2023 the consent authority issued DP18/0409D, being a further 2 year extension to the base period initially established by DP18/0409 and subsequently extended by DP18/0409A and DP18/0409C, such that the base period would expire on 30 November 2025 or 30 November 2027 if works are substantially commenced;
- On 22 April 2025 the consent authority issued DP18/0409E, a further variation to *vary condition 11 of Development Permit DP18/0409B to allow "Stage 1" works to be completed in 2 stages*; and
- On 22 October 2025 the consent authority issued DP18/0409F, being a further 3 year extension to the base period initially established by DP18/0409 and extended via DP18/0409A, DP18/0409C and DP18/0409D, such that the base period will now expire on 30 November 2028 or 30 November 2030 if works are substantially commenced.

The aforementioned development permits and, where applicable, endorsed drawings are included in **Attachment A**. Development on lot 9370 to the east of Lee Point Road is covered under a separate development permit, variations and permit conditions (DP19/0050 and associated variations).

## 2.0 Site and Locality

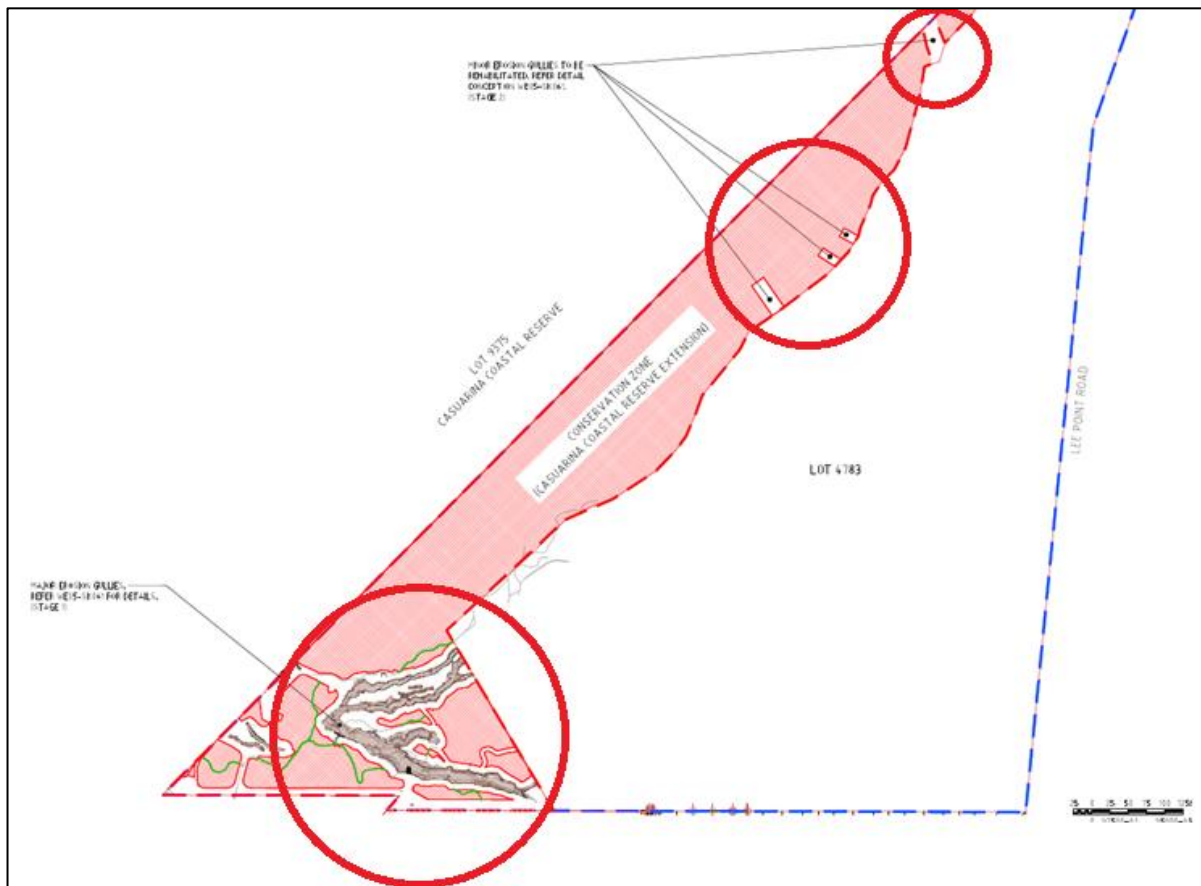
The subject land is identified and described in **Table 1** and **Figure 1** below.

Site Details	
<b>Location</b>	Lot 4873 Town of Nightcliff (577 Lee Point Road, Lee Point)
<b>Title Reference and Land Tenure</b>	CUFT 788 729 Estate in Fee Simple (Freehold)
<b>Area Under Title</b>	81.33 hectares
<b>Easements</b>	None identified on title
<b>Landowner</b>	Defence Housing Australia
Planning Scheme Context	
<b>Planning Scheme</b>	<a href="#">Northern Territory Planning Scheme 2020</a>
<b>Existing Zone/s</b>	<ul style="list-style-type: none"> <li>• Clause 4.23 – CN (Conservation)</li> </ul>
<b>Applicable Land Use Definition/s</b>	Excavation and Fill
<b>Strategic Framework</b>	<ul style="list-style-type: none"> <li>• Darwin Regional Land Use Plan</li> <li>• Lee Point Planning Principles and Area Plan</li> </ul>
<b>Overlays (Applicable to Development)</b>	<ul style="list-style-type: none"> <li>• Clause 3.7 – Land Subject to Storm Surge</li> </ul>
<b>General Development Requirements (per Clause 4.23)</b>	<ul style="list-style-type: none"> <li>• Clause 5.2.1 – General Height Control</li> <li>• Clause 5.2.4 – Car Parking</li> <li>• Clause 5.2.5 – Loading Bays</li> <li>• Clause 5.2.6 – Landscaping</li> </ul>



The site slopes gradually from a central ridge line to both the east and west (generally), with a steep drop in the north-western portion of the site down to the coastal vegetation habitat of the Casuarina Coastal Reserve, and ultimately to Sandy Creek and Casuarina Beach. This drop-off becomes more gradual further south, with the south-western portion sloping more gradually (albeit still noticeably) towards the coastal reserve.

The areas within lot 4873 subject to this application are circled in **figure 2**, specifically the several deep drainage channels and erosion gullies in the south-western portion of the site; and the smaller areas of erosion damage further north along the top of the escarpment adjacent the former compound area.



**Figure 2:** Existing erosion gullies subject of this application

## 2.1 Locality

**Figure 1** demonstrates the zoning layout per the Northern Territory Planning Scheme within immediate proximity of the site. The land is situated in the area of Lee Point, bordered by the existing suburb of Lyons and the Royal Darwin Hospital to the south, the Casuarina Coastal Reserve to the west and north, and Lee Point Road to the east. To the east of Lee Point Road, the land is opposite the Lee Point Village / Club Tropical Resort containing a large caravan park including cabins and camp grounds, along with recently developed motel facilities concentrated in the northern portion of the site (adjacent Buffalo Creek Road), and the Muirhead North portion of the Lee Point development.

Buffalo Creek Road, located opposite and slightly north of lot 4873 provides access to the mouth of Buffalo Creek, including boat ramp and car / trailer parking areas.

To the south of the site, the joint Defence Housing / private residential suburbs of Lyons and Muirhead are located on the western and eastern sides of Lee Point Road respectively. Lyons contains approximately 690 lots with Muirhead some 1,200 lots. The final subdivision construction stages of Muirhead have been completed and housing construction is generally complete with a small number of vacant lots remaining. To the north of Muirhead, the first stage of subdivision within Muirhead North (stage 1A) has been completed, with 96 residential lots and a single commercial / community purpose lot. Housing construction has been completed on a number of the stage 1A lots.

Further south, a small commercial precinct containing a childcare centre and hotel is located within Muirhead adjacent Lee Point Road.

Zoning within the greater locality consists of a mix of residential, accommodation, public, community and conservation zones, partly evident in **figure 1**. The Casuarina Coastal Reserve extends adjacent the western side of lot 4873 to the north and south, and together with part of the subject land, is zoned CN (Conservation). To the south of lot 4873, the hospital site is encompassed within Zone CP (Community Purpose), with the suburb of Lyons within Zones LR and LMR (Low and Low-Medium Density Residential). Muirhead, adjacent the southern boundary of lot 9370 and the stage 1A lots, is zoned SD23 (Specific Use Darwin 23), with land adjacent the eastern boundary zoned PS (Public Open Space). To the north of lot 9370, land is zoned OR (Organised Recreation), with a small strip of PS land extending from Lee Point Road adjacent part of the site's northern boundary. The Lee Point Village Resort is zoned CV (Caravan Park), with land further north comprising a combination of PS, CP and CN zones.

### **3.0 Proposed Development**

The proposed development comprises the remediation of existing erosion damage in the south-western and north-western areas of lot 4873. The existing gullies and proposed remediation is identified in the Gully Rehabilitation Plans, Erosion and Sediment Control Plan and Landscaping Revegetation Plans in **Attachments F, G and H**. As outlined in the Earthworks and Drainage Memo in **Attachment I**, works will be undertaken as follows:

- Due to their shape, existing gullies will be benched in (maximum) 1 metre steps prior to filling to ensure the gullies can be filled in a safe manner and to achieve appropriate compaction and integration;
- Gullies will be filled with clean fill material sourced from the stage 2 detention basin, with construction of stage 2 to occur concurrently with the proposed works to ensure an appropriate supply of clean fill and minimise transportation and storage impacts. Gullies will generally be filled to existing surface levels in accordance with the NT Subdivision Development Guidelines, with the

finished surface level designed to tie in with the surrounding topography, including maintaining natural depressions and drainage lines where appropriate;

- Once filling and surface finishing is complete, the areas will be revegetated in accordance with the designs in **Attachment G**.

In order to enable sufficient access for earthmoving equipment to prepare and adequately rehabilitate the existing larger gullies in the south-western area, select vegetation clearing will be required both within and in the areas immediately surrounding the gullies. Clearing will be undertaken in the areas identified in **Attachment F** only to the extent required to enable access and works, and will be minimised so far as reasonably practicable with an emphasis on the retention and protection of identified significant trees. Clearing for the smaller north-western gullies is generally limited to removal of weeds and small regrowth. Clearing associated with the gully rehabilitation works will not extend beyond the boundaries of the areas identified as “No Go Zones” and all disturbed areas will be revegetated in accordance with **Attachment G**.

The south-western erosion gullies currently convey stormwater from a large upstream portion of lot 4873. Once completed, the rehabilitated areas will convey overland stormwater flows from within the south-west catchment area only. Flows from the subdivision (the approximate area of subdivision stages 2 and 3) will discharge to the detention basin in stage 2 of the subdivision, then via a stormwater outfall pipe extending along the southern boundary of lot 4873 (subject to detail design approval under the DP18/0409 conditions precedent). The intended drainage regime will substantially reduce the catchment that contributes stormwater to the erosion gullies and mitigate the risk of recurring erosion.

Construction vehicles will access via the existing driveway from Lee Point Road, and a site compound / construction laydown area will be established within an existing cleared area (within the former compound area). Existing informal access tracks will be utilised for vehicle access between the laydown area and the remediation areas to minimise site disturbance.

Proposed works will be undertaken during the dry season (May – September) to minimise erosion risk, and erosion and sediment control measures will be implemented in accordance with the ESCP in **Attachment H**.

**3.1 Images (South-West Erosion Gullies)**



*Image 1*



*Image 2*



**Image 3**



**Image 4**

### 3.2 Images (North-West Erosion Gullies)



*Image 5*



*Image 6*



*Image 7*

## **4.0 Northern Territory Planning Scheme**

### **4.1 Nature of Development**

**Schedule 2.1** of the Northern Territory Planning Scheme defines *excavation and fill* as follows:

*excavation and fill means the removal or importation of material to, from or within a site that will change the level of the land, but does not include that normally required in association with the construction of a building, swimming pool, ornamental pond or the like;*

The proposed works comprise the importation of fill material from within the site to fill and thus remediate the existing erosion gullies in the western portion of lot 4873. The proposed works will alter the existing ground level, with the existing gullies being filled and stabilised to tie-in with the adjacent surface level. Accordingly, the proposed works are consistent with the definition of *excavation and fill*, identified as *impact assessable* in the assessment table to Zone CN in **Clause 4.23**. Pursuant to **Section 44(a)**, a development permit is required for *excavation and fill* in Zone CN.

## 4.2 Assessment Category

*Excavation and fill* is an *impact assessable* form of development pursuant to **Clause 1.8(1)(c)** of the Planning Scheme. In accordance with **Clause 1.10(4)**, when considering an application for a use or development identified as Impact Assessable the consent authority must consider all of the following:

- a) *any relevant requirements, including the purpose of the requirements, as set out in Parts 5 or 6;*
- b) *any Overlays and associated requirements in Part 3 that apply to the land;*
- c) *the guidance provided by the relevant zone purpose and outcomes in Part 4; and*
- d) *any component of the Strategic Framework relevant to the land as set out in Part 2.*

In accordance with **Clause 1.10(5)**, the consent authority may consent to a proposed use or development that is not in accordance with a requirement set out in Parts 3, 5 or 6 only if it is satisfied that the variation is appropriate having regard to:

- a) *the purpose and administration clauses of the requirement; and*
- b) *the considerations listed under Clause 1.10(3) or 1.10(4).*

Any variations proposed in this application are addressed in response to the applicable scheme sections.

## 4.3 Strategic Framework

**Part 2** of the Scheme contains the Strategic Framework, consisting of strategic planning policies and strategic land use plans. Consideration of the Strategic Framework is required in an application for development identified as *Impact Assessable*. There are two layers of Strategic Framework policy applicable to the subject land and proposed development:

- ⇒ Darwin Regional Land Use Plan
  - ⇒ Lee Point Planning Principles and Area Plan

### 4.3.1 Darwin Regional Land Use Plan

The Darwin Regional Land Use Plan (DRLUP) was prepared by the Northern Territory Planning Commission and incorporated into the Planning Scheme as a policy document in 2015. The plan provides a vision, goals and intended outcomes for development of the Darwin Region, identifies regional opportunities and the intention for development into the medium and long terms. The Land Use Structure on Page 13 of the Plan identifies the subject land as *Urban / Peri-Urban*.

Page 16 of the Plan identifies Urban / Peri-Urban land to include:

- A variety of housing types;
- Retail and commercial;
- Community facilities and services;
- Sport, recreation and urban open space; and
- Natural and conservation areas.

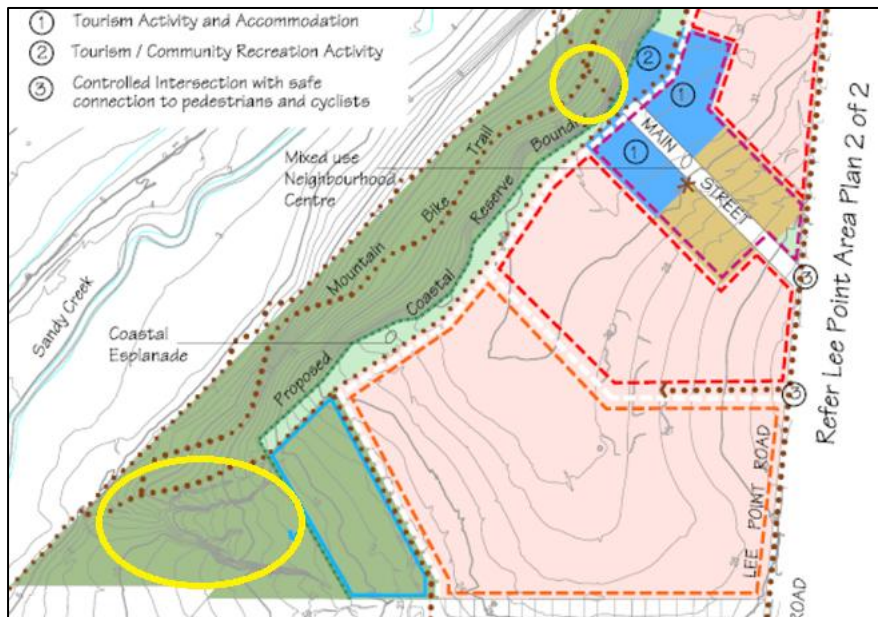
Page 27 of the DRLUP includes the *Key Open Space Objectives* and broader commentary regarding *Open Space and Natural Areas*. The plan recognises the role of open space and conservation areas in protecting land and water resources, conservation of significant vegetation communities and wildlife habitats, and enhancing green infrastructure within the urban environment. The Key Objectives seek to (in summary):

- *Retain the region's natural landscapes, vegetation and habitats where compatibility with appropriate urban and rural development can be maintained.*
- *Minimise the impact of development on the natural environment during the construction phase and ongoing use.*
- *Recognise and promote Darwin Harbour as the region's most valuable natural asset, minimising detrimental impacts from development in the harbour catchment and on its foreshore.*
- *Provide appropriate open space reserves for the conservation of natural environment and heritage features, and for resident and visitor recreation in active and passive activities.*
- *Recognise the role of remnant vegetation corridors in providing interconnectivity of open space and protecting amenity.*
- *Recognise the role of urban green space in reducing urban heat impacts and providing community amenity.*

The proposed works, despite the clearing required, are consistent with the retention and enhancement of natural landscapes, and will improve the pre-existing condition and quality of conservation areas for future open space reserves and for resident and visitor recreation.

#### 4.3.2 Lee Point Planning Principles and Area Plan

The Lee Point Planning Principles and Area Plan (LPPAP) were introduced into the Northern Territory Planning Scheme in 2015, and updated in 2020 to reflect the new 2020 Planning Scheme. The LPPAP contains six statements of policy and two Area Plans – one each for the 2CRU and Muirhead North sites. **Figure 3** shows the location of the remediation works within Lee Point Area Plan 1.



**Figure 3:** Location of erosion gullies within the Lee Point Area Plan 1

The underlying land area is identified as *Development Restricted by Constraints*, reflecting the underlying topography, vegetation communities and other constraints (e.g. proximity to biting insect breeding areas) affecting land use and development within these areas, and is within the *Proposed Coastal Reserve Boundary*. Of the six statements of policy within the Area Plan, the following are not directly applicable to the proposed works:

2. Requires the provision of compacted interconnected neighbourhoods as an extension to the existing northern suburbs. Requirements relate to street layout and built form, public realm design and layout, access to / from existing and future areas, maintained public access, open space and promotion of walking and cycling through design. Though no built form is proposed, rehabilitating conservation areas will improve the quality of land intended to become part of the public realm;
3. Applies to the mixed use village centre comprising the mixed use and tourist commercial areas;
4. Relates to the provision of residential development including lot sizes, residential densities and larger residential lot buffers;
5. Provides guidance on building design, form and height; and

6. Refers to the provision of land for education and community facilities.

**Clause 1** provides overall objectives relating to the preservation and integration of areas of environmental significance, and for compact interconnected neighbourhoods, requiring future development:

1. *Preserve and integrate areas and items of environmental and heritage significance by:*

*(a) limiting development below the escarpment to community uses, tourism activity and pedestrian / cycle tracks that protect the environmental values of the coastal reserve and adjoining vegetation types;*

The proposed development works are intended to rehabilitate and restore environmental values by restoring pre-existing landforms and vegetation. No land use outcomes for these areas are proposed as part of this application, and the proposed works will preserve existing pedestrian and cycle tracks (with the broader works within the CN area also rehabilitating these trails for public use when the land is incorporated into the Coastal Reserve).

*(b) implementing appropriate environmental and engineering measures including but not limited to the application of principles of water sensitive urban design; and*

The memo in **Attachment I** and revegetation approach in **Attachment G** outline the environmental and engineering measures to adequately fill and stabilise the existing gullies, revegetate the area and, ultimately, divert overland flows from the upstream subdivision areas around the remediated gullies to avoid recurrence of erosion.

*(c) adopting measures that acknowledge the role of Lot 4873 Town of Nightcliff in the Indonesia – Malaysia Confrontation including, where practicable, the retention of existing defence items or replacement with artistic/ cultural interpretive works that reflect the historical significance of the land.*

Development response to historic events and heritage items is covered in DP18/0409 and DP19/0050.

#### **4.4 Overlays**

The overlays in **sections 4.4.1 – 4.4.3** below are identified on title documents (**Attachment K**) and/or the Northern Territory's Integrated Land Information System (ILIS) as applying to the subject land. Other overlays identified in the Assessment Table to **Clause 4.23** do not apply to the proposed development due to:

- **Clause 3.3 – Restricted Clearing of Native Vegetation:** Not applicable to subject land. ILIS does not apply overlay to lot 4873, and overlay is not referred to on title documents.
- **Clause 3.4 – Coastal Reclamation:** Proposed fill does not apply to areas below the level of the highest astronomical tide.

- **Clause 3.5 – Land in Proximity to Airports:** Land is not subject to the Australian Noise Exposure Forecast 20-unit value contour line or greater.
- **Clause 3.6 – Land Subject to Flooding:** Land is not within a defined flood area and the proposed fill will not impact riverine flooding levels (refer **Attachment I**).
- **Clause 3.8 – Land Adjacent to a Designated Road:** No access from a designated road is proposed or required.
- **Clause 3.9 – Darwin Harbour Dredging:** Application does not apply to the Darwin Harbour seabed.

#### 4.4.1 Clause 3.2 – Clearing of Native Vegetation

Overlay **Clause 3.2** applies to ensure that the clearing of native vegetation does not unreasonably contribute to environmental degradation of the locality. Subclause 3(a) confirms that all clearing of native vegetation in Zone CN requires consent (requires a development permit) unless included in the exemptions in subclause 5 of **Clause 3.2**. Subclause 5 provides the following:

5. *This Overlay does not apply to the clearing of native vegetation that:*

*(a) is required or controlled under any Act in force in the Territory, including but not limited to:*

- Environment Protection Act 2019;*
- Environment Protection and Biodiversity Conservation Act 1999 (Cth);*
- Pastoral Land Act 1992;*
- Petroleum (Environment) Regulations 2016;*
- Territory Parks and Wildlife Conservation Act 1976; or*

Evident in the original approval notice to EPBC 2015/7591 in **Attachment C**, together with the subsequent variations in **Attachments D** and **E**, the clearing of native vegetation is controlled under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth). Condition 1 of the original approval states:

1. *For the protection of the **EPBC Act listed species** and **the Environment**, the approval holder must not clear more than 110 ha within the **project area**.*

The variation to the conditions of the original (and varied) approval issued in July 2025 includes condition 2B:

*2B). The approval holder may undertake **clearing** in the area identified in Attachment D2 as Casuarina Coastal Reserve and CCR for the purpose of rehabilitating existing erosion gullies and maintenance of existing bike tracks.*

The proposed clearing is within the area identified as CCR in Attachment D2 to the variation, and the clearing of native vegetation identified in the application is for rehabilitating the existing erosion gullies. Clearing on the subject land is controlled by an Act in force in the Territory, thus Overlay **Clause 3.2** does not apply pursuant to subclause 5(a)(ii).

Minor clearing works may be required for the removal of silt and sediment over and immediately adjacent the existing shared path within the Casuarina Coastal Reserve immediately west of the lot 4873 boundary, hence the land immediately adjacent this area has been excluded from the “no go zone” on the rehabilitation plans.

#### 4.4.2 Clause 3.7 – Land Subject to Storm Surge

**Figure 4** below shows the minor extent of Primary and Secondary Storm Surge inundation into lot 4873.



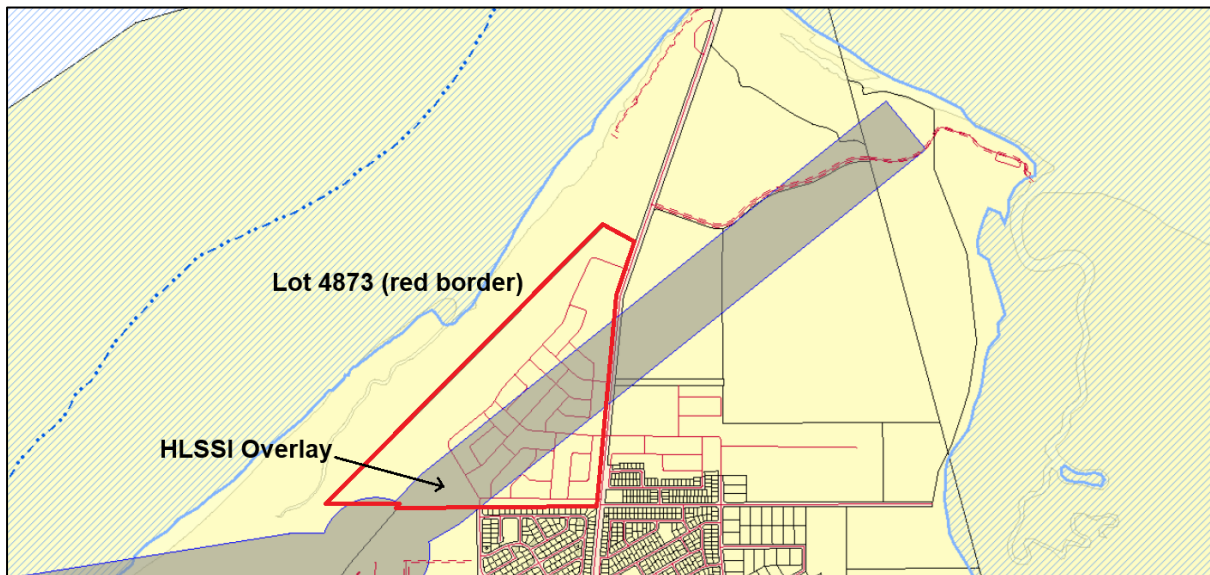
**Figure 4:** Extent of Primary (dark blue) and Secondary (light blue) Storm Surge inundation into lot 4873 (red border)

There is a minor encroachment of the Secondary Storm Surge zone into the western-most erosion gullies and proposed remediation zone. Subclauses 8, 9 and 10 of **Clause 3.7** limits land uses in the Primary (open space, recreation, non-essential public facilities and short-stay tourist caravan / camping) and Secondary (aforementioned uses as well as industrial and commercial uses) Surge Areas. Subclause 10 stipulates that residential uses, strategic and community services should be avoided in both the Primary and Secondary Surge Areas.

No land use outcome is proposed as part of this application, and the proposed rehabilitation works, specifically the proposed *excavation and fill*, do not conflict with the requirements of **Clause 3.7**. The engineering memo in **Attachment I** confirms that a small amount of filling is required below Secondary Storm Surge levels (approximately RL 6.5 m AHD at Lee Point), however that this will not adversely impact storm surge behaviour.

#### 4.4.3 Clause 3.14 – Land in Proximity to Helicopter Land Sites of Strategic Importance

The subject land is overlain the HLSSI overlay to the extent shown in **figure 5**. **Subclause 1 of Clause 3.14** applies the overlay to any development over 8.5 metres in height (including any construction equipment required to carry out the works), contains lighting that projects upwards, coloured or flashing lighting external to the development, or will produce an exhaust plume which has an upward vertical velocity of 4.3 metres per second (or more).



**Figure 5:** HLSSI overlay within lot 4873

The maximum depth of the existing gullies in the south-western area is approximately 4 metres, and the gullies will be filled to tie-in with the adjacent ground level. Works are expected to be undertaken with a small – medium sized excavator, with a maximum height well below 8.5 metres. No lighting or upward exhaust discharge is expected to occur as a result of the proposed development. Precise equipment and machinery details will be resolved upon receipt of a preferred contractor methodology, and confirmation of expected outcomes above can be confirmed via condition precedent on any resultant development permit. On this basis the requirements of Overlay **Clause 3.14** will not be applicable to the proposed works.

#### 4.5 Zone CN

##### Zone Purpose

*Conserve and protect the flora, fauna and character of natural areas.*

##### Zone Outcomes

1. *Conservation space responds to and conserves the recognised environmental values of the land.*

The vegetation assessment in **Attachment J** was prepared by Four Elements Consulting (4E) for Defence Housing Australia to address the assessment requirements of **Clause 3.2** of the Planning Scheme (noting Overlay **Clause 3.2** does not apply to the proposed works per **section 4.4.1** of this report). The area of investigation extends beyond the proposed works covered by this investigation, and will inform separate works relating to the installation of drainage infrastructure, removal of downstream silt and sediment, and the rehabilitation of existing walking trails. The assessment notes that “no significant or sensitive vegetation was observed within the clearance footprint” and identified “the Darwin cycad (*Cycas armstrongii*), which is listed as Vulnerable under the TWPC Act.”

Clearing will be undertaken in the areas identified in **Attachment F** only to the extent required to enable access and works to be undertaken, and will be minimised so far as reasonably practicable, including the retention where practicable of existing Paperbark, Milkwood and Cycad plants identified in **Attachment G**. Aboriginal Areas Protection Authority Certificate 201802223 notes the request by custodians for the opportunity to identify these particular tree species prior to development within the area of cultural significance identified on the Certificate. Where removal is appropriate, Cycads within the clearing area will be managed in accordance with DHA’s existing *Cycas Armstrongii Management Plan* approved in accordance with Condition Precedent 5 of DP18/0409, including:

1. *Identify area to be cleared, as surveyed, and undertake assessment of total numbers of Cycads available for salvage.*
2. *Confirm open space areas immediately available for re-use of Cycads.*
2. *Prepare landscape design plans that identify location and numbers of salvaged Cycads to be utilised in each open space area.*
3. *Prepare Cycad balance sheet to identify excess or shortfall in numbers for this stage of works.*
4. *Where there is a Cycad surplus available for immediate use, plants are to be potted up and stored for future use.*

Clearing for the smaller north-western gullies is generally limited to removal of weeds and small regrowth, and clearing associated with the remediation works will not extend beyond the boundaries of the areas identified as “No Go Zones.”

Identified significant trees will be protected and retained, either where identified as such in **Attachments G and F**, or otherwise where the ultimate earthworks methodology allows. All cleared / disturbed areas will be rehabilitated in accordance with **Attachment G**.

2. *Development, including **access** for informal recreation, is sensitive to the natural features and habitats of the land, and located and operated to have minimal impact on the environment.*

Clearing works will be limited to that required for access and excavation / fill works to be undertaken, and will not extend beyond the identified boundaries. Landscaping and replanting following the completion of gully remediation works responds to the various vegetation types within the cleared areas, and the rehabilitation will repair existing damage and mitigate recurrence in the future.

3. *Development that is complementary to and supports the conservation values of natural areas, including **exhibition centre, shop, bar-small and food premises-restaurant and cafe/takeaway**, may be established if of a scale and intensity that does not adversely impact on the **amenity** or environment.*

The proposed works do not include the establishment of any temporary or permanent land use or occupation (other than for construction purposes) of the site.

4. *Temporary or periodic use for a **market** is limited to where it can be reasonably accommodated by the existing facilities with minimal impact on the **amenity** and conservation value of the surrounding area.*

Not applicable. No market use is proposed.

5. *Residential use is limited to a **dwelling-caretakers** where it is required for the protection of the conservation values of the area or facilities.*

Not applicable. No residential use is proposed as part of this application.

6. *Development is located, designed and managed to:*
  - (a) *conserve ecologically important areas and other natural features of the land and the setting;*
  - (b) *maintain the scenic value and visual quality of the area,*
  - (c) *be sympathetic and respectful to places of cultural significance;*
  - (d) *minimise **excavation and filling** and other changes to landform;*
  - (e) *minimise soil erosion and adverse impacts on water quality; and*

- (f) *wherever possible, use existing cleared and degraded areas for the placement of buildings and related works.*

The proposed works will repair existing soil erosion and mitigate recurrence of erosion and downstream impacts from silt / sediment being carried away from the site. Excavation and fill is limited to that required to rehabilitate the area and tie-in with existing natural surface levels, and vegetation clearing will be limited to that required for excavation / fill works to be undertaken. Remediation after fill works have been completed will restore visual amenity.

7. *Development provides for a limited range of infrastructure and services that are commensurate with the protection of the conservation values of the land and incorporates a high quality of built form and landscape design.*

This application is limited to the *excavation and fill* works required for rehabilitation of the erosion gullies. Infrastructure associated with the Lee Point development is addressed via DP18/0409 and DP19/0050.

8. *Development that is not defined in Schedule 2 (Definitions) may occur only when assessment has determined that the development is appropriate in the zone, having regard to the purpose and outcomes of this zone and such matters as the location, nature, scale and intensity of the development.*

Not applicable. The development is defined as *excavation and fill* in **Schedule 2** of the Planning Scheme.

#### 4.6 General Development Requirements

The Assessment Table to Zone CN in **Clause 4.23** identifies a number of general development requirements in **Part 5** of the Planning Scheme as applicable to development in Zone CN. All general development requirements apply to built form and land use outcomes, and are not directly applicable to the proposed erosion gully remediation works (comprising *excavation and fill*). Specifically:

- **Clause 5.2.1** applies maximum height requirements to buildings and structures. This application will not result in any new or alter any existing buildings or structures;
- **Clause 5.2.4** applies car parking requirements and design for various land uses. No land use is proposed and the remediation includes revegetation works to (ultimately) transfer the land to the Northern Territory Government for incorporation into the Casuarina Coastal Reserve;
- **Clause 5.2.5** stipulates minimum loading bay requirements for certain land uses. No land use outcomes are proposed and no loading bay requirements under **Clause 5.2.5** apply; and
- **Clause 5.2.7** applies specific setback and landscaping requirements for development adjacent land in residential zones (LR, LMR, MR and HR). The remediation area is adjacent land in Zone CN (the adjacent Casuarina Coastal Reserve in lot 9375), Zone CP (Royal Darwin Hospital in lot 9731) and FD (Lee Point

2CRU subdivision area within 4873). No development works are proposed as part of this application adjacent land in a residential zone.

#### 4.6.1 Clause 5.2.6.1 – Landscaping in Zones other than CB

##### Purpose

Encourage **landscaping** that enhances local **amenity** by:

- (a) contributing to safe and attractive public spaces and places;
- (b) responding to the local climate and soil characteristics;
- (c) supporting cooler internal and outdoor areas; and
- (d) recognising the value of retaining existing plants and trees.

##### Administration

1. **Landscaping** may include, where subordinate to areas for the planting and growing of plants, impervious and unplanted areas for;
  - a. pedestrian access,
  - b. outdoor recreation, or
  - c. natural or ornamental features and the like.
2. The consent authority may **consent to landscaping** that is not in accordance with sub-clauses 5, 6 and 7 only if it is satisfied it is consistent with the purpose of this clause and the zone purpose and outcomes, and is appropriate to the **site** having regard to the **amenity** of the streetscape, and the potential impact on the **amenity** of the locality and adjoining property.

##### Requirements

3. Where **landscaping** is required by this Scheme it should be designed so that:
  - a. planting is focused on the area within the street frontage setbacks side setbacks, communal open space areas and uncovered **car parking areas**;
  - b. it maximises efficient use of water and is appropriate to the local climate;
  - c. it takes into account the existing streetscape, or any landscape strategy in relation to the area;

- d. *significant trees and vegetation that contribute to the character and **amenity** of the **site** and the streetscape are retained;*
- e. *energy conservation of a building is assisted having regard to the need for shade and sunlight at varying times of the year;*
- f. *the layout and choice of plants permits surveillance of public and communal areas; and*
- g. *it facilitates on-site infiltration of stormwater run-off.*

The Planning Scheme does not specifically require landscaping for the proposed development, however the revegetation plan in **Attachment G** demonstrates the proposed revegetation incorporating specific species suited to the existing areas and to contribute to wildlife habitat. Clearing will be undertaken in the areas identified in **Attachment F** only to the extent required to enable access and works, and will be minimised so far as reasonably practicable, including the retention where identified / practicable of existing Paperbark, Milkwood and Cycad plants.

- 4. *The quality and extent of the **landscaping** consented to must be maintained for the life of the development.*

No ongoing development or land use is proposed, and the land is intended to be transferred to the Northern Territory Government for incorporation into the Casuarina Coastal Reserve.

- 5. *Other than in Zones CB, C and TC, not less than 30% (which may include communal open space) of a **site** that is used for **rooming accommodation, dwellings-group, dwellings-multiple** and **residential care facility** is to be landscaped.*

Not applicable. No residential land uses are proposed as part of this application.

- 6. *In Zones LI, GI and DV all street frontages, except **access** driveways or footpaths, are to be landscaped to a minimum depth of 3m.*

Not applicable. The subject land is not in an industrial zone.

- 7. *In Zones MR and HR, side and rear setbacks are to include planting to the length of the setback of no less than 2m deep, except for areas that are used for private open space.*

Not applicable. The subject land is not in Zone MR or HR.

## 4.7 Specific Development Requirements

### 4.7.1 Clause 5.8.9 – Excavation and Fill

#### Purpose

*Ensure that the excavation or filling of land does not adversely affect adjacent land or waters, or the quality of adjacent waterways, and associated riparian areas and is suited to the intended future use of the **site**.*

#### Administration

1. *The consent authority may **consent** to a use or development that is not in accordance with sub-clauses 2-5, only if it is satisfied it is consistent with the purpose of this clause and the zone purpose and outcomes, and it is appropriate to the **site**.*

#### Requirements

2. *Demonstrate the suitability of the **site** for the proposed future use.*

No future use is proposed as part of this application, and the works area is proposed for conservation via incorporation into the Casuarina Coastal Reserve.

3. *Provide a hydrological assessment of potential upstream and downstream impacts of the excavation or filling.*

The hydrological assessment in **Attachment I** confirms the proposed works will have no adverse impacts on upstream catchments, with existing flow paths maintained until such time that upstream flow paths are diverted around the site during the adjacent subdivision works. The proposed remediation works will be undertaken concurrently with the stage 2 subdivision to coordinate excavation / fill between the subdivision detention basin and the erosion gullies, and divert upstream flows around the rehabilitated area. The works will positively impact downstream environments by stabilising the site and mitigating the ongoing risk of erosion. The proposed works will not alter stormwater flows into the Casuarina Coastal Reserve and Sandy Creek.

4. *Provide a plan of management to control erosion and sedimentation, particularly of creeks and riparian areas.*

A detailed Erosion and Sediment Control Plan is included at **Attachment H**.

5. *Identify measures to prevent the creation of mosquito breeding areas.*

The earthworks design ensures the site will be free draining to prevent water ponding and mitigate opportunities for biting insect breeding. Together with the upstream subdivision works, the rehabilitation will minimise the amount of stormwater discharging to the existing interdunal depressions and known breeding sites within the Coastal Reserve.

## **5.0 Section 46(3)(b) – Interim Development Control Order**

Title details in **Attachment K** confirm there are no Interim Development Control Orders currently applicable to the subject land.

## **6.0 Section 46(3)(c) – Referral to the NT EPA**

**Section 48** of the Environmental Protection Act 2019 (EPA Act) requires a project be referred to the NT Environmental Protection Authority (NT EPA) for assessment if it has the potential to have a significant impact on the environment or meets a referral trigger. The Lee Point Master-planned Urban Development was referred to the Northern Territory Environment protection Authority under the (previous) *Environmental Assessment Act* and assessed at the level of an Environmental Impact Statement (EIS). The NT EPA's assessment identified a number of potential issues in relation to the development, and recommended that the development could proceed if all of the NT EPA's 15 recommendations are implemented to deliver acceptable environmental outcomes. The NT EPA's assessment report and recommendations are included at **Attachment B**.

## **7.0 Section 46(3)(d) – Merits of Proposed Development**

The proposed excavation and fill works will remediate historic erosion damage and mitigate further downstream silt / sedimentation and the risk of recurrence or erosion impacts. Works will be undertaken in a manner that minimises clearing of existing vegetation, and revegetation will respond to adjacent vegetation communities and provide additional opportunity for habitat creation.

## **8.0 Section 46(3)(e) – Subject Land, Suitability of Development and Effect on Other Land**

The nature of the subject land and surrounding locality, and the suitability of the subject land to accommodate the proposed development have been addressed in this report. In summary, the subject land will be rehabilitated to repair existing damage, and revegetated to ensure adequate remediation. The works will reduce impact on other land, particularly siltation / sedimentation impacts on downstream areas.

## **9.0 Section 46(3)(f) – Public Facilities and Open Space**

The proposed works do not relate to land currently identified as public space, however are required as part of the agreement with the Northern Territory Government to incorporate the land into the Casuarina Coastal Reserve. Availability and proximity of public facilities and open space to the subject land itself is not relevant to the consideration of an application for *excavation and fill* for the purpose identified in this application.

### **10.0 Section 46(3)(g) – Public Utilities and Infrastructure**

No public power, water, sewerage or telecommunications infrastructure is required for the proposed works. Construction vehicle road access will be via Lee Point Road and the existing lot 4873 driveway entrance. Internal access will be via existing access tracks where possible to reduce disturbance. Works will be undertaken during the dry season.

### **11.0 Section 46(3)(h) – Impact on Amenity**

Rehabilitation, including revegetation, of existing erosion damage will improve amenity, particularly the mitigation of existing sediment / siltation impacts on the downstream public walkways within the Casuarina Coastal Reserve. The removal of existing vegetation to facilitate access and earthworks may adversely affect amenity. Vegetation removal will be minimised where practicable and limited to that required for access and works, with no clearing occurring in the “no go zones” identified on the design plans. The revegetation works will minimise adverse amenity impacts, and the amenity improvements as a result of the rehabilitation of existing damage is expected to result in a net improvement to amenity.

### **12.0 Section 46(3)(j) – Benefit/Detriment to Public Interest**

**Section 51** of the Act requires the consent authority to consider whether the proposal is in the public interest with specific consideration given to (where relevant) how the application addresses community safety through crime prevention principles in design, water safety, and access for persons with disabilities.

In response to these matters:

- No direct CPTED impacts or improvements are expected;
- Filling of the larger gullies will result in a net public safety improvement for any future public access to the space; and
- Accessibility considerations are not applicable due to the lack of land use proposed.

In addition to the above, the proposed works being undertaken by Defence Housing Australia prior to the land being transferred to the Northern Territory Government will minimise general costs to the community by avoiding the burden for remediation being placed on the Northern Territory Government.

### **13.0 Section 46(3)(ja) – Restricted Water Extraction Area**

The subject land is not within a restricted water extraction area, and the application does not propose subdivision or consolidation. Accordingly **Section 46(3)(ja)** is not applicable.

#### **14.0 Section 46(3)(k) – Compliance with the Building Act**

This application does not seek approval for subdivision, thus **Section 46(3)(k)** is not applicable.

#### **15.0 Section 46(3)(l) – Development of Scheme Land**

The application does not comprise the subdivision of land under a unit titles scheme. Accordingly, **Section 46(3)(l)** is not applicable.

#### **16.0 Conclusion**

The proposed excavation and fill works at Lot 4873 Town of Nightcliff represent a necessary and appropriate response to the remediation of historic erosion damage. The works have been carefully designed to stabilise existing gullies, restore natural landforms, and improve environmental conditions through revegetation with suitable native species.

The proposal is consistent with the intent of the Northern Territory Planning Scheme, including the Strategic Framework and the Zone CN (Conservation) purpose and outcomes. The development will deliver positive environmental outcomes by reducing sediment transport, improving downstream water quality, and mitigating the risk of ongoing erosion, while maintaining sensitivity to the environmental values of the land.

Vegetation clearing required to facilitate the works will be minimised and will be offset through comprehensive rehabilitation and revegetation measures, resulting in an overall net improvement to site condition and amenity. The proposed works align with the requirements of the Project Development Agreement and relevant environmental approvals, ensuring the land can be suitably rehabilitated prior to its transfer to the Northern Territory Government for incorporation into the Casuarina Coastal Reserve.

This application has been prepared in accordance with and addresses the relevant requirements of **Section 46(3)** of the Northern Territory Planning Act and concludes that, on balance, the proposed development will provide an environmental and public benefit and warrants approval.



**Brad Cunnington**

Cunnington Rosse Town Planning and Consulting

25 May 2026

