

Development Consent Authority

Northern Territory



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Dear Mr Cunningham

NOTICE OF CONSENT (SECTION 53B OF THE PLANNING ACT 1999) LOT 4873 (577) LEE POINT ROAD, LEE POINT, TOWN OF DARWIN

The Development Consent Authority has determined, to and, pursuant to section 53(a) of the *Planning Act 1999*, grant consent to the proposal to use and develop the abovementioned land for the purpose of excavation and fill (erosion gully remediation), subject to the conditions specified on the attached Development Permit DP2026/0187.

Reasons for the Determination

1. The application is for excavation and fill (erosion gully remediation) at Lot 4873 (577) Lee Point Road, Lee Point, Town of Nightcliff. The 81.33 ha lot (the site) is in Zones FD (Future Development) and CN (Conservation) of the Northern Territory Planning Scheme 2020 (NTPS2020). Notwithstanding, Ms Suzanne Philip, Chair of the Authority, clarified that the areas subject to this application (the development sites) are located towards the western side of the property and are all located within Zone CN, on the western side of a small escarpment which extends across the majority of the site.

The application seeks approval for excavation and fill works to remediate historic erosion gullies within the Zone CN portion of the site. The erosion areas consist of several large gullies in the south-western part of the site (stage 1) and smaller erosion features in the north-west (stage 2) near former Defence infrastructure. The application states that the proposed rehabilitation works are required under the Project Development Agreement between Defence Housing Australia (DHA) and the Northern Territory Government, which requires rehabilitation of the conservation land before it is transferred into public ownership and incorporated into the Casuarina Coastal Reserve.

The proposed works involve reshaping and stabilising the gullies, importing clean fill material sourced from the adjacent Lee Point residential development works (specifically identified as from the development of a stormwater detention basin), restoring ground levels to match the surrounding landscape, and revegetating disturbed areas with native species. Limited vegetation clearing will be necessary to provide safe access for machinery and to undertake the earthworks, however clearing is proposed to be minimised, significant trees retained where practicable, and all disturbed areas rehabilitated following construction. The works are planned to occur during the dry season and will be supported by erosion and sediment control measures to prevent further environmental impacts.

A key objective of the application is to address long-standing erosion issues that have contributed excessive sediment into the receiving environment, namely Sandy Creek and the Casuarina Coastal Reserve. The rehabilitation works are intended to restore natural landforms, reduce sediment movement, improve downstream water quality, and result in a stable landform. In conjunction with the broader Lee Point residential development, future stormwater management infrastructure will divert upstream runoff away from the rehabilitated gullies, significantly reducing the likelihood of erosion reoccurring once the works are complete.

The meeting was attended by Mr Brad Cunnington (Cunnington Rosse Town Planning and Consulting, the applicant), who provided an overview of the application, and the history of the Lee Point residential development (also known as '2CRU'). Mr Cunnington advised that the proposed works would enable the landowner, DHA, to remediate the gullies, and further advised that the gully works consist of benching the gullies, compacting and stabilising of imported fill, then rehabilitating the worksites. Mr Cunnington further advised that these works are part of the project development agreement relating to the Lee Point residential development and will aide in the integration to the Zone CN area of the site into the Casuarina Coastal Reserve.

Ms Marion Guppy, a member of the Authority, identified that the gullies had formed over a number of years. Ms Guppy queried Mr Cunnington as to whether the proponent was sure that measures would be implemented to ensure that the identified gullies would not be subject to future erosion.

Mr Cunnington advised that the proposed works at the site and in the vicinity, such as the nearby stormwater detention basin, would adequately reduce the amount of overland flow being directed into these gullies. Mr Cunnington advised that the proposed works will allow for site-borne soil to be used on-site. Mr Cunnington advised that the site has a history of development and use by Defence, and that these uses and disturbance would have contributed to excessive run-off being generated. Mr Cunnington further clarified that the detention basin will capture the urban flows and divert them around the site of the existing gullies, noting that the site currently funnels all water from 2CRU into this area. Mr Cunnington advised that in relation to concerns around the sequencing of works, that even in isolation, the construction and implementation of erosion and sediment control measures will still provide a greater protection than the existing situation. Mr Cunnington further highlighted that site photos provided with the application demonstrate the significant issues associated with the gullies.

2. At the commencement of the meeting, the Authority dealt with a concern raised by Mr Graham Kirby as to who Community Members of the Authority, Mr Peter Panquee and Mr Mick Parlmer, represent at this meeting.

The Chair advised that the Authority is composed of her, Specialist Members and Community Members. Such members do not represent any body or group but are appointed to act as members by the Minister pursuant to the terms of the *Planning Act 1999*. In the case of Community Members nominations are received from the relevant local government council and the Minister makes appointments from those nominations. The Chair confirmed that Mr Pangquee and Mr Palmer act as members of the Authority and not in their capacity as Councillors at the City of Darwin. The Authority notes that the *Planning Act 1999* section 98A requires that community members must make decisions on a development application independently of any direction or decision from the local government council.

3. Pursuant to section 51(1)(a) of the *Planning Act 1999*, the consent authority must take into consideration the planning scheme that applies to the land to which the application relates.

The NTPS2020 applies to the land and excavation and fill (erosion gully remediation) requires consent under clause 1.8 (When development consent is required). It is identified as Impact Assessable under clause 1.8(1)(c)(i); therefore, the Lee Point Planning Principles and Area Plan (being the most detailed strategic framework document), the zone purpose and outcomes of Zone CN (Conservation), and clauses 5.2.1 (General Height Control), 5.2.4 (Car Parking), 5.2.5 (Loading Bays), 5.2.6 (Landscaping), 5.2.7 (Setbacks for Development Adjacent to Land in Zones LR, LMR, MR or HR) and 5.8.9 (Excavation and Fill), need to be considered.

The Authority notes the assessment completed by DAS which found that the proposal complies with the relevant requirements of the NTPS2020.

A summary of the relevant parts of the NTPS2020 is as follows:

Part 2 – Strategic framework

Lee Point Planning Principles and Area Plan

The purpose of the Lee Point Planning Principles and Area Plan (LPPAP) is to *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;*
- b. *implementing appropriate environmental and engineering measures including but not limited to the application of principles of water sensitive urban design;*

The Authority considers that the application supports this outcome as the proposed infilling and stabilisation works will arrest the existing erosion which is taking place. The works are reasonably expected to reduce sediment loss, improve the capacity for native vegetation establishment, and promote the gradual re-establishment of habitat characteristics over time. As a result, the proposal is expected to deliver a net environmental benefit, with the long-term ecological outcomes supporting the outcomes envisaged by the LPPAP.

Part 3 – Overlays

Clause 3.2 (CNV – Clearing of Native Vegetation)

The Authority notes that the purpose of this overlay is to *Ensure that clearing of native vegetation does not unreasonably contribute to environmental degradation of the locality.*

While this application on balance proposes the rehabilitation of gullies, the application states that vegetation may be removed where necessary as part of the rehabilitation, and for site access.

Administratively, subclause 5 states *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: ... (ii) Environment Protection and Biodiversity Conservation Act 1999 (Cth)*

The application has provided evidence that EPBC 2015/7591 was varied on 27 July 2025 to include condition 2B, which states *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 Authority considers that sufficient evidence has been provided which demonstrates that the clearing of native vegetation as part of this application is a controlled action under the *Environment Protection and Biodiversity Conservation Act 1999*, and therefore not subject to the requirements of this overlay.

Clause 3.7 (LSSS – Land Subject to Storm Surge)

The Authority notes that purpose of this overlay is to *Identify areas with a known risk of inundation from primary or secondary storm surges and ensure that development in these areas demonstrates adequate measures to minimise the associated the risk to people, damage to property and costs to the general community caused by storm surge.*

Of relevance, clause 3.7(8) requires that *Development in the PSSA should be limited to uses such as open space, recreation, non-essential public facilities (wastewater treatment works excepted) and short-stay tourist camping/caravan areas*, where the western boundary of the site, and possibly a small extent of identified gullies are located within the primary and secondary storm surge area.

The Authority notes that the application does not propose the construction of any permanent structures or establishment of ongoing land uses within land identified as being subject to storm surges. While the application may infill gullies within the secondary storm surge zone, this infilling is not considered likely to be of a scale that would alter storm surge extents in the locality. As such, the application is considered acceptable against the requirements of this overlay.

Part 4 – Zoning

Clause 4.23 (Zone CN – Conservation)

The Authority notes that the purpose of this zone is to *Conserve and protect the flora, fauna and character of natural areas.*

The proposed rehabilitation and subsequent stabilisation of erosion gullies directly support the purpose of Zone CN by conserving and protecting the environmental values of the site. The active erosion taking place at the development sites represents an ongoing threat to the downstream environment, resulting in the loss of soils, degradation of vegetation communities and the transport of sediment to adjacent habitats and watercourses. By infilling and stabilising the gullies with local material, the proposal will arrest these degradation processes, reduce the potential for further environmental decline and assist in maintaining the ecological integrity of the broader natural area. The works are therefore directed towards protecting existing flora, fauna habitat and landscape values that may otherwise be adversely affected by continued erosion.

Of particular note is zone outcome 6(d), which states *Development is located, designed and managed to: ... (d) minimise excavation and filling and other changes to landform.*

The application is considered likely to facilitate the restoration of the site to its former natural character over time. Following stabilisation of the infilled gullies, the rehabilitated landform will provide improved conditions for the establishment and regeneration of native vegetation, contributing to the restoration of habitat values and ecological function. The works are intended to return the site to a more stable and self-sustaining condition that is consistent with its environmental values.

The Authority considers that, on balance, the rehabilitation of the gullies will further the intention of Zone CN by promoting the long-term conservation and protection of the flora, fauna and character of the natural area.

Part 5 – Development requirements

While the application is determined to be compliant with the other identified relevant development requirements, the Authority further considered clause 5.8.9 (Excavation and Fill).

Clause 5.8.9 (Excavation and Fill)

The Authority notes that the purpose of this clause is to *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.*

Of relevance are subclauses 3 and 4. Subclause 3 requires that *Provide a hydrological assessment of potential upstream and downstream impacts of the excavation or filling.*

In response to subclause 3, the application provided a technical memorandum completed by Byrne consulting. This technical memorandum detailed the proposed methodology which would minimise the loss of existing vegetation while remediating the gullies, and erosion and sediment controls which can be implemented to prevent adverse outcomes during remediation works. The technical memorandum states –

The finished surface will be designed to tie in with the surrounding topography, including maintaining natural depressions and drainage lines where appropriate. In relation to the upstream and downstream impacts of the proposed works.

The Works will have no adverse impacts on upstream catchments. Existing hydrological flow paths will be maintained, until such time that upstream flow paths are diverted around the Site during the future 2CRU Subdivision works.

The Works will have a positive impact on downstream environments, by effectively stabilising the Site and mitigating the risk of ongoing erosion. Existing hydrological flow paths will be maintained, until such time that upstream flow paths are diverted around the Site during the future 2CRU Subdivision works. Existing storm water flow volumes will be maintained into CCR and Sandy Creek.

The above is considered an acceptable assessment of the upstream and downstream impacts of the proposed works.

Subclause 4 then requires that an application *Provide a plan of management to control erosion and sedimentation, particularly of creeks and riparian areas.*

In response to subclause 4, while the application included an erosion and sediment control plan prepared by a certified professional in erosion and sediment control, its implementation and ongoing compliance can be addressed through standard permit conditions.

4. Pursuant to section 51(1)(e) of the *Planning Act 1999*, the consent authority must take into consideration any submissions made under section 49, and any evidence or information received under section 50, in relation to the development application.

The application was placed on public exhibition for a period of two weeks, between 5 June and 19 June 2026. Ten (10) public submissions were received under section 49(1) of the *Planning Act 1999*, with respect to this application.

Of the total submissions received, 8 submitters expressed an objection to the application, and 2 expressed conditional support for the proposal subject to comments and recommendations.

The main thematic comments and concerns identified include:

- 1 Lack of information about the future detention basin and drainage system.
- 2 Concern that remediation depends on infrastructure not yet constructed.
- 3 Risks to Sandy Creek, mangroves and Casuarina Coastal Reserve and concerns about erosion, sedimentation and hydrology.
- 4 Questions regarding environmental assessment and EPBC compliance.
- 5 Requests for independent expert review.
- 6 Concerns about habitat loss and conservation outcomes.
- 7 Desire for greater consultation, including with Larrakia traditional owners.
- 8 Need for clearer rehabilitation, monitoring and long-term management measures.

The Authority's consideration of the themes raised in the written public submissions is provided below.

1 Lack of information about the future detention basin and drainage system.

The Authority highlights that there are no requirements relevant to this application within the *Planning Act 1999* or NTPS2020 which mandate consideration of the proposed stormwater arrangements of the Lee Point residential development, noting that the development site is confined to the Zone CN portion of the site and the application relates to the filling of the erosion gullies.

In addition, it is noted that clause 3(c)(ii) of Schedule 3 (Exceptions) of the NTPS2020 states *This Planning Scheme does not prevent any of the following: ... (c) the construction, alteration, repair or maintenance of: ... ii. public infrastructure for stormwater drainage and flood mitigation.*

2 Concern that remediation depends on infrastructure not yet constructed.

The application states that the fill material will be sourced from spoil produced as part of the construction of a nearby detention basin. The Authority notes that there are no specific requirements within the *Planning Act 1999* or NTPS2020 that need to be considered in relation to such development outside of the current application. Notwithstanding, the Authority considers that this approval simply provides the developer with an option for managing this spoil material.

3 Risks to Sandy Creek, mangroves and Casuarina Coastal Reserve and concerns about erosion, sedimentation and hydrology.

The Authority notes that the proposed works are specifically intended to address existing land degradation associated with active erosion gullies, with sediment currently being deposited in downstream environments. In the absence of intervention, continued erosion is likely to result in further soil instability and adverse impacts on downstream environmental quality. Any short-term disturbance associated with construction activities will be localised and temporary in nature and will be managed through the implementation of appropriate environmental controls and rehabilitation measures.

4 Questions regarding environmental assessment and EPBC compliance.

The application provided evidence that the permit which currently controls environmental impacts at the site under the *Environment Protection and Biodiversity Conservation Act 1999* was varied to specifically reference the gully rehabilitation works. In relation to other environmental assessment concerns, The Authority highlights that no adverse comments were received from the environmental divisions of the Department of Lands, Planning and Environment.

5 *Requests for independent expert review.*

The Authority notes that there are no specific requirements within the *Planning Act 1999* or NTPS2020 that mandating subject matter experts to review applications, or elements thereof.

6 *Concerns about habitat loss and conservation outcomes.*

The application seeks to re-utilise site-borne spoil produced from the excavation of a stormwater detention basin for the rehabilitation of gullies formed from uncontrolled erosion. The Authority considers proposed infilling and stabilisation works are necessary to arrest the degradation process and protect the long-term ecological function of the site. Any short-term disturbance associated with construction activities will be localised and temporary in nature and will be managed through the implementation of appropriate environmental controls and rehabilitation measures.

7 *Desire for greater consultation, including with Larrakia traditional owners.*

The Authority highlights that there are no requirements within the *Planning Act 1999* or NTPS2020 mandating consultation to be undertaken by an applicant prior to lodging an application. Further, it is noted that, with the exception of the local government council and any service authorities the consent authority considers relevant, there are no requirements within the *Planning Act 1999* or NTPS2020 in relation to whom an application must be circulated to. The *Planning Act* requirements are limited to Public Notification as detailed in section 47. Those requirements were met by the applicant.

8 *Need for clearer rehabilitation, monitoring and long-term management measures.*

The Authority has determined that it is not necessary or proportionate to impose permit conditions requiring such measures in this instance. The proposal is limited in scale and nature, comprising rehabilitation works intended to stabilise existing erosion features and facilitate natural regeneration of the site. The anticipated impacts are localised and relatively low risk, and there is no evidence to suggest that ongoing management, monitoring or reporting requirements are warranted to achieve the objectives of the development permit. Imposing extensive post-construction obligations would place an unreasonable burden on the proponent that is disproportionate to the scale, complexity and potential environmental effects of the works. As such, the Authority considers that permit conditions requiring the implementation of any monitoring or long-term management as part of any development permit issued under the *Planning Act 1999* are unnecessary.

In addition to the written submissions, the Authority heard from submitters and members of the public present at the meeting and through online teleconference.

Mr Nick Kirlew (on behalf of PPlan: The Planning Action Network Inc) highlighted concerns around how development such as this impacts on the community. Mr Kirlew advised that DHA has only met with the local community twice. Mr Kirlew emphasised that was little information in the public domain about what Stage 2 of the Lee Point residential development comprises, and that the community do not understand the engineering, noting that PPlan would need to employ engineers to confirm engineering elements. Mr Kirlew opined that DHA have a poor record of land management at the site, as demonstrated through land clearing, sedimentation of the Sandy Creek and through bushfires taking place at the site. Mr Kirlew advised that any positive determination would be premature. Mr Kirlew queried what the federal government think about this development and emphasised that PPlan is not convinced that the federal government is aware of the proposal. Mr Kirlew also raised concerns that the variation to the EPBC approval was made for a specific matter and may not have been dealt with correctly. Mr Kirlew queried whether this application should have been referred to a separate approval body and emphasised that PPlan wants to be convinced that this process is correct. Mr Kirlew advised that the Authority is being asked to

approve the proposed works despite insufficient information provided with the application. Mr Kirlew emphasised that PAn is seeking accountability, such as confirmation that Sandy Creek will not be damaged, and that DHA would rectify any damages.

Mr Graham Kirby queried the expected timing of any works and further queried, if works were approved and not completed by the commencement of the 2026-27 wet season, would interim erosion and sediment control measures be installed. Mr Cunningham responded that the site has a current erosion and sediment control plan but otherwise had no comment in relation to this matter. Mr Kirby noted the existing nature of the gullies and emphasised their risk to children and other members of the community. Mr Kirby stated that there is no warning signage, and that such signage should be installed at the area. Mr Kirby subsequently queried the volumetric size of the gullies, and whether sufficient material is expected to be excavated for the gully remediation. Mr Cunningham responded that the proposed stormwater detention basin is larger than the volume of the gullies, however, noting that additional fill would be sought if insufficient spoil was excavated. It was not a matter of making the detention basin of a size to fit the required fill.

Mr Ian Redmond identified that a common theme in the public submissions related to inadequate information about stormwater management. Mr Redmond states that no information about the preliminary design of the stormwater drainage, dimensions thereof, or the location of the detention pipe will outfall into the Casuarina Coastal Reserve was provided with the application. Mr Redmond stated that while the purpose of the application is to restore the area, the works will instead remove as much quality habitat as it will restore. In relation to this matter, Mr Redmond raised concerns regarding runoff and discharge into Sandy Creek. The Chair subsequently clarified that stormwater management arrangements including the design and construction of any stormwater detention basins or piping are exempt under the NTPS2020, noting Schedule 3 Exceptions of the NTPS2020. Mr Cunningham further clarified that the site of the stormwater detention basin has been identified and that a stormwater plan has been approved by the City of Darwin. Mr Cunningham noted that there are no impediments for DHA to progress the stormwater arrangements under the *Planning Act 1999*. Notwithstanding, Mr Cunningham noted that detailed construction approval is an ongoing process, and that while there are engineering elements being confirmed, these will be dealt with by the relevant service authorities and will not require consent from the Authority.

The Chair clarified that the Authority is a creature of statute, with their power and responsibilities identified within the *Planning Act 1999* and principles of administrative law. The Chair emphasises that the application being considered relates to the excavation and fill at the identified development sites, specifically in relation to the infilling of gullies as identified in the application. Mr Redmond then queried the interaction of the application with Zone CN outcome 6(d), and how the excavation element of the relevant development requirement was being considered. The Chair clarified that the Authority is considering an application for the infilling of gullies, and that other matters relating to the Lee Point residential development including associated stormwater management do not form part of this application. The Chair further explained that while the relevant development requirement is titled 'excavation and fill', that this is only a clause title, and not reflective of any requirement for both the excavated source material and destination fill site to be considered as part of one application. Mr Redmond queried the Authority on what opportunity there is for the public to have comment on the stormwater management matters in the area. Mr Redmond then identified that alternative stormwater management options could be considered which improve environmental outcomes. The Chair explained that, for the reasons as detailed at this meeting, stormwater is matter for other service authorities. The Chair further clarified that the Authority does not consider alternative locations for development and must consider the application as submitted. Notwithstanding, Mr Redmond stated any stormwater outfalls should not be located within mangrove forests, and that an existing open, unlined drain may be a more cost-effective solution.

Mr Redmond stated that there were other sources of spoil located on-site that could be utilised for the infilling of gullies. Mr Cunningham responded that there is established case law about the ability of the Authority to consider alternative sites than that proposed in an application. Notwithstanding, Mr Cunningham emphasised that a significant body of work went into the application to ensure that the best outcome is being achieved from both an engineering and environmental approach, and that controls will be put in place to minimise the amount of clearing, such as clearly defined no go areas. Mr Cunningham opined that the minor clearing and subsequent rehabilitation of the areas around the gullies will improve environmental outcomes. Mr Cunningham further noted that the Flora and Fauna Division did not raise any concerns in relation to this application.

Mr Tutty acknowledged that the erosion at the site is serious, and that works need to occur. However, Mr Tutty raised concerns that section 51(2) of the Planning Act 1999 has not been appropriately considered and emphasised that the Lee Point residential development was considered under the *Environmental Assessment Act 1982*, and that the application seeks significant variation to what was considered and approved by the NT EPA.

The Authority note that section 51(2) of the Act states *If a development proposal is required to be referred to the NT EPA under Part 4, Division 3 of the Environment Protection Act 2019, the consent authority must not make a decision under this Division in relation to a development application for the proposal unless:*

- (a) the NT EPA has determined that an environmental impact assessment is not required under that Act for that proposal; or*
- (b) if the NT EPA has determined that an environmental impact assessment is required – an environmental approval has been granted under that Act for the proposal and the decision is consistent with that approval; or*
- (c) the Environment Protection Act 2019 otherwise permits the making of the decision.*

Mr Cunningham advised that in relation to the references to different legislation, and to the suggestion that the proposed works represent a significant variation to an existing approval, their position is that 51(2) does not prevent the Authority from making a determination under the *Planning Act 1999*. Mr Cunningham advised that the NT EPA assessment report for the Lee Point residential development included reference to the gully erosion works, and as such, these works were identified and considered at that time. Mr Cunningham also reiterated that the relevant approval under the *Environment Protection and Biodiversity Conservation Act 1999* states the gully areas can be cleared and remediated. The Authority confirms that the application does not require referral to the NT EPA as the relevant body, the Environment Division of the Department of Lands, Planning and Environment, which performs functions on behalf of the NT EPA, did not require such referral. As such, the relevant trigger for the application of Section 51(2) has not occurred and the Authority may make a decision in relation to this application.

Mr Tutty queried what measures the application takes to minimise the change in landform, in accordance with Zone CN outcome 6(d), and highlighted that the Authority must be satisfied that the application achieves this outcome. Mr Tutty also queried the volume estimations for the excavation and fill; that the memo states the hydrological flows will be maintained at the site; that if the friends of the Casuarina Coastal Reserve submission indicated that 2027 is the earliest opportunity works can start, then how will the site be made safe for the duration of the 2026-27 wet season; the applicant's response about conditions precedent in relation to the Lee Point residential development being dealt with; that the erosion and sediment control plan provided the application is only for the dry season. Mr Tutty further averred that the Authority must consider the stormwater detention basin design. Mr Tutty also queried the proposed revegetation of the gullies and noted that plans showing this have not been provided with the application, and that this was suitable grounds for deferring any determination of the application. Mr Cunningham responded that requirements for rehabilitation can be addressed through reference to any drawings endorsed with a development permit.

Mr Terrance Sirianni advised that many of his initial queries in relation to this application have been addressed. Notwithstanding, Mr Sirianni made the following queries:

- 1 Can the applicant confirm where the material will be sourced from, and clarify how will it be found suitable.
- 2 If contamination is found within the source material, what is the procedure. Mr Sirianni queried whether works will cease and whether the contaminated material be assessed.
- 3 Will any noise or dust monitoring be required, and if so, by whom and when? Mr Sirianni further queried if the community experience any issues, who can they contact, and whether a number be provided for the public.

In response, Mr Cunnington advised the following:

- 1 Spoil material will be virgin excavated material sourced from the adjacent development of a stormwater detention basis, and that previous contamination investigations have found that there is no reason to suspect contamination at that area.
- 2 There are obligations under relevant workplace health and safety and waste management legislation and regulations to manage unexpected finds.
- 3 Dust monitoring is dealt with under workplace health and safety and waste management legislation and regulations. Mr Cunnington further clarified that there are no specific details available at this time as this will be done by any future contractor engaged to undertake the works.

Mr David Percival queried whether the fill will be taken from the 2CRU site, and advised that plenty of asbestos containing materials (ACM) have been encountered at the site. Mr Cunnington responded that previous investigations found that ACM was associated with asbestos in structures and contamination remediation works have removed these structures from site. Mr Cunnington further advised that an environmental consultant has been engaged in relation to the Lee Point residential development, and processes are in place to ensure this is being managed. In addition, the Chair advised that there are obligations in relation to this matter under other legislation, and, while noting the concern of Mr Percival, considers that the enforcement of external legislation is beyond the remit of the Authority and not the subject matter for a development permit issued under the *Planning Act 1999*. Mr Percival acknowledged this situation and reiterated his concern that this is an important matter for the Authority to consider. Mr Percival also queried if there had been consideration for a scenario in which revegetation of the gullies was not successful. Mr Percival noted the difficult climate and that ongoing irrigation would be required to ensure that revegetation was successful. In response, the Chair advised that works being undertaken in accordance with a permit are subject to the conditions of that permit, and as such, are an enforceable matter.

Ms Christine Cox stated her support for the comments and concerns that had been raised at the meeting. Ms Cox acknowledged that the remediation of the sites is important but stressed that there are situations where mistakes have been made, so wants to ensure this is done better. Ms Cox noted that everything should be adequately considered. Ms Cox advised that she has lived in the locality, worked with locals, and emphasised that any works at the site are worth doing well. Ms Cox summarised that there are still so many outstanding questions and considerations.

The submissions received and evidence heard at the meeting have been taken into account by the Authority and carefully considered in the context of this application. For the reasons discussed above, the Authority considers that matters raised in the submissions and at the meeting are adequately dealt with or are addressed by the inclusion of permit conditions.

5. Pursuant to section 51(j) of the *Planning Act 1999*, the consent authority must take into consideration the capability of the land to which the proposed development relates to support the proposed development and the effect of the development on the land and on other land, the physical characteristics of which may be affected by the development.

The Authority notes that the proposed infilling of the identified gullies to natural ground level will improve site drainage and result in a topography that is sympathetic and consistent with the original landform of the development sites. Consideration of the development sites location in a modelled secondary storm surge areas and being affected by the CNV – clearing of native vegetation overlay is at section 3 of these reasons.

The application was also circulated to the local government council (City of Darwin) and relevant service authorities. No issues were identified or raised in relation to land capability with all matters able to be adequately addressed through the application of standard permit conditions and annotations relating to erosion and sediment controls, weed management and the preparation of a site construction management plan.

The City of Darwin also provided advice to the Authority within its comments. The Authority acknowledges this advice and highlights that the proposed development must be assessed against the relevant planning controls, in the context of the components of the development that triggered the requirements for consent under the planning scheme.

The Authority notes the proposed development is considered to comply with the requirements of Clause 5.8.9 (Excavation and fill) as detailed as section 3 of these reasons. Furthermore, there are no specific requirements in the NTPS2020 or the *Planning Act 1999* for the proposed development to consider ongoing irrigation during the initial establishment period, fill material suitability, potential impacts on groundwater availability to existing vegetation, or the preparation of an arboricultural impact assessment to protect trees proposed to be retained. Therefore, the Authority considers that these matters fall outside the remit of the current application.

6. Pursuant to section 51(1)(n) of the *Planning Act 1999*, the consent authority must take into consideration the potential impact on the existing and future amenity of the area in which the land is situated.

Amenity is defined in the Planning Act 1999 as in relation to a locality or building, any quality, condition or factor that makes or contributes to making the locality or building harmonious, pleasant or enjoyable.

While the works are likely to impact on visual amenity through the clearing of vegetation and temporarily effect the audible amenity through the use of machinery, the proposed works are considered acceptable as the rehabilitated gullies will likely provide a greater environmental outcome than being left in their current state. As such, these works will reasonably improve the amenity of the area.

7. Pursuant to section 51(1)(r) of the *Planning Act 1999*, the consent authority must take into consideration any potential impact on natural, social, cultural or heritage values, including, for example, the heritage significance of a heritage place or object under the Heritage Act 2011.

There are no known specific social, cultural or heritage values of note in proximity of development sites, nor were any identified as part of the public exhibition or assessment of this application.

The Authority notes that while the site contains recognised natural values, such as threatened species, the proposed works are specifically intended to address ongoing land degradation associated with active erosion gullies. In the absence of intervention, continued erosion is likely to result in further loss of soil stability, vegetation, habitat values and downstream environmental quality. The proposed infilling and stabilisation works are reasonably expected to arrest the degradation process and protect the long-term ecological function of the site. Any short-term disturbance associated with construction activities will be localised and temporary in nature and will be managed through the implementation of appropriate environmental controls and rehabilitation measures.

Importantly, the Authority notes that the proposal has been designed to facilitate the recovery and enhancement of natural values through landform stabilisation and revegetation. By restoring stable conditions, the works will reasonably reduce sediment loss, improve the capacity for native vegetation establishment, and promote the gradual re-establishment of habitat characteristics over time. As a result, the proposed works are expected to deliver a net environmental benefit, with the long-term ecological outcomes outweighing the limited and temporary impacts associated with undertaking the rehabilitation works. Consequently, the presence of natural values is not considered a constraint and, on balance, support the need for active rehabilitation of the development sites.

Right of Review

Applicants are advised that a right of review to the Northern Territory Civil and Administrative Tribunal exists under Part 9 of the *Planning Act 1999*. An application for a review under section 114 against a determination of a development application must be made within 28 days of the service of this notice.

The Northern Territory Civil and Administrative Tribunal can provide information regarding the Notice of Review form and fees payable. The address for lodgement of a Notice of Review is: Northern Territory Civil and Administrative Tribunal, PO Box 41860 CASUARINA NT 0810 or Level 1, The Met Building, 13 Scaturchio Street, CASUARINA NT 0810 (Telephone: 08 8944 8720 or Facsimile 08 8922 7201 or email AGD.ntcat@nt.gov.au).

There is no right of review by a third party under Part 9 of the Planning Act 1999 in respect of this determination.

If you have any queries in relation to this Notice of Consent or the attached Development Permit, please contact Development Assessment Services on telephone (08) 8999 6046.

Yours faithfully



MADISON HARVEY
Delegate

24 August 2026

Attachment

cc City of Darwin
Submitters