

## PART 3 - OVERLAYS

### 3.1 Preliminary

1. Overlays identify areas of land that have specific development requirements.
2. The requirements of an Overlay can prevail over or be in addition to:
  - (a) the provisions of the zone including the purpose and outcomes and the assessment table in [Part 4](#); and
  - (b) development requirements in [Parts 5](#) and [6](#).
3. Specific development requirements in relation to land identified in an overlay may be associated with (but not limited to):
  - (a) physical constraints (i.e. flooding);
  - (b) sensitivity to particular impacts of development;
  - (c) existing or planned significant developments;
  - (d) buffers or setbacks to essential infrastructure such as sewerage treatment facilities;
  - (e) facilitating development or uses that meet the unique needs of a locality; or
  - (f) flexibility within the Scheme to achieve desired development outcomes.
4. Where an Overlay requires **consent**, the following level of assessment applies:
  - (a) if shown as *Permitted* on the relevant assessment table in Part 4 it is *Merit Assessable*;
  - (b) if shown as *Merit Assessable* on the relevant assessment table in Part 4 it is *Impact Assessable*;
  - (c) all other development is *Impact Assessable*.
5. Overlays which apply in this Planning Scheme are listed in the table to this clause.

<b>Table to Clause 3.1: Planning Scheme Overlays</b>	
<b>Overlay</b>	<b>Scheme Map Identifier</b>
<a href="#">Clearing of Native Vegetation</a>	<b>CNV</b>
<a href="#">Restricted Clearing of Native Vegetation</a>	<b>RCNV</b>
<a href="#">Coastal Reclamation</a>	<b>CR</b>
<a href="#">Land in Proximity to Airports</a>	<b>LPA</b>
<a href="#">Land Subject to Flooding</a>	<b>LSF</b>
<a href="#">Land Subject to Storm Surge</a>	<b>LSSS</b>
<a href="#">Land Adjacent to a Designated Road</a>	<b>LADR</b>
<a href="#">Darwin Harbour Dredging</a>	<b>DHD</b>
<a href="#">Residential Development in Major Remote Towns</a>	<b>MRT</b>
<a href="#">Rapid Creek Flood Response</a>	<b>RCFR</b>

## 3.2 CNV – Clearing of Native Vegetation

### Purpose

Identify areas with limits to the **clearing of native vegetation** and ensure that clearing in these areas does not:

- (a) impact on the conservation values of land within Zone CN; or
- (b) unreasonably contribute to environmental degradation of the locality.

### Administration

1. The **clearing of native vegetation** of more than one hectare in aggregate of land (including any area already cleared of native vegetation) within the area subject to the *Clearing of Native Vegetation Overlay* requires **consent**. This Overlay applies to land within Zones RR, RL, R, H, A, CP, CN, RD, WM and Unzoned land.
2. Notwithstanding sub-clause 1, all **clearing of native vegetation** in Zone CN requires **consent**, other than as provided for by sub-clause 4.
3. The consent authority may **consent** to the **clearing of native vegetation** that is not in accordance with subclause 5 only if it is satisfied that it is consistent with the purpose of this requirements and is appropriate in the context of the **site** and the locality having regard to such matters as:
  - (a) the suitability of the site for the proposed use;
  - (b) the values associated with the environmental characteristics (as applicable);
  - (c) the significance, extent and likelihood of any potential environmental impacts; and
  - (d) the measures the application proposes will be implemented to mitigate any potential impacts.
4. This Overlay does not apply if the **clearing of native vegetation** is required or controlled under any Act in force in the Territory, or is for the purpose of:
  - (a) a firebreak as specified by the *Bushfires Management Act 2016* or the *Fire and Emergency Act 1996*, up to 5m wide along a boundary of a lot having an area of 8ha or less, up to 10m wide on a lot having an area greater than 8ha unless otherwise specified by a Regional Fire Control Committee;
  - (b) an internal fence line up to 10m wide on a lot having an area greater than 8ha;
  - (c) a road to **access** the land or other land; or
  - (d) the maintenance and repair of public infrastructure.

**Editor's note: examples of legislation that may have effect under subclause 4 may include *Territory Parks and Wildlife Conservation Act 1976*, the *Mining Management Act 2001*, the *Pastoral Land Act 1992*, and the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).**

#### Requirements

5. The **clearing of native vegetation** is to:
  - (a) avoid impacts on environmentally significant or sensitive vegetation;
  - (b) be based on land capability and suitability for the intended use;
  - (c) avoid impacts on drainage areas, wetlands and waterways;
  - (d) avoid habitat fragmentation and impacts on native wildlife corridors; and
  - (e) avoid impacts on highly erodible soils.
  
6. An application for the **clearing of native vegetation** is to demonstrate consideration of the following:
  - (a) the *Land Clearing Guidelines* (as amended from time to time) by the agency responsible for natural resources and the environment;
  - (b) the presence of threatened wildlife as declared under the *Territory Parks and Wildlife Conservation Act 1976*;
  - (c) the presence of sensitive or significant vegetation communities such as rainforest, vine thicket, closed forest or riparian vegetation;
  - (d) the presence of essential habitats, within the meaning of the *Territory Parks and Wildlife Conservation Act 1976*;
  - (e) the impact of the clearing on regional biodiversity;
  - (f) whether the clearing is necessary for the intended use;
  - (g) whether there is sufficient water for the intended use;
  - (h) whether the soils are suitable for the intended use;
  - (i) whether the slope is suitable for the intended use;
  - (j) the presence of permanent and seasonal water features such as billabongs and swamps;
  - (k) the retention of **native vegetation** adjacent to waterways, wetlands and rainforests;
  - (l) the retention of **native vegetation** buffers along boundaries;
  - (m) the retention of **native vegetation** corridors between remnant **native vegetation**;
  - (n) the presence of declared **heritage places** or archaeological **sites** within the meaning of the *Heritage Act 2011*; and
  - (o) the presence of any sacred **sites** within the meaning of the *NT Aboriginal Sacred Sites Act 1989*.

**Editor's Note: [Schedule 2 \(Definitions\)](#) includes a number activities that are not considered clearing of native vegetation.**

### 3.3 RCNV – Restricted Clearing of Native Vegetation

#### Purpose

Ensure that the **clearing of native vegetation** does not diminish the natural setting and associated established landscape *amenity* of an area, and to assist in achieving water management principles.

#### Administration

1. The **clearing of native vegetation** is to comply with the requirements of Overlay 3.2 (Clearing of Native Vegetation Overlay) in addition to any requirements of this Overlay.
2. The consent authority must not **consent** to the **clearing of native vegetation** that is not in accordance with sub-clause 3.

#### Requirements

3. The **clearing of native vegetation** must not exceed that reasonably necessary for the construction of a **dwelling, outbuildings** and associated residential uses.

### 3.4 CR – Coastal Reclamation

#### Purpose

Ensure that landfill of coastal areas does not adversely affect adjacent land or waters, or the quality of adjacent waters, and is suited to its intended purpose.

#### Administration

1. The placement of fill material below the level of the highest astronomical tide requires **consent**.
2. The consent authority in considering an application for coastal landfill must have regard to the advice of the agency responsible for natural resources and the environment.

#### Requirements

3. An application for the placement of fill material is to demonstrate how the fill material will:
  - (a) suit the future use of the reclaimed land;
  - (b) minimise the impact of fill works on adjoining land and waters;
  - (c) provide appropriate edge treatment of the fill in order to prevent future erosion and siltation of adjacent waters; and
  - (d) prevent the formation of acid sulphate leachates.

### 3.5 LPA – Land in Proximity to Airports

#### Purpose

Identify areas which may be subject to additional **amenity** impacts and/or restrictions due to its proximity to an airport, and ensure that the use and development of land in these areas:

- (a) minimises the detrimental effects of aircraft noise on people who reside or work in the vicinity of an airport;
- (b) does not result in any new use or intensification of development on land that would prejudice the safety or efficiency of an airport;
- (c) does not result in any new use or intensification of development that would jeopardise the curfew free operation of the Territory's airports (where applicable); and
- (d) retains the non-urban character of the land.

#### Administration

1. This Overlay applies to land that is within Zones RL, R, A, CP, CN, RD, WM and FD and subject to the **Australian Noise Exposure Forecast (ANEF)** 20-unit value contour line or greater as defined on the ANEF maps produced by the Department of Defence.
2. The use and development of land subject to this Overlay requires **consent**.

#### Requirements

3. In determining an application for the development of land the consent authority is to have regard to the 'Building Site Acceptability Based on ANEF Zones' (Table 2.1) in AS 2021 – 2000.
4. Lighting associated with development on land within flight approach paths is to ensure it does not to prejudice the safe operation of an airport.
5. The use and development of land is not to be of a nature that attracts birds or bats to an extent that prejudices the safe operation of an airport.

### 3.6 LSF – Land Subject to Flooding

#### Purpose

Identify areas with a known risk of inundation from riverine flooding and ensure that development in these areas demonstrates adequate measure to minimise the associated risk to people, damage to property and costs to the general community.

#### Administration

1. Land subject to this Overlay is to be used or developed only with **consent**.
2. This Overlay does not apply to:
  - (a) **outbuildings** and extensions to existing **dwelling**s; and
  - (b) extensions to existing commercial or industrial buildings; which, but for this Overlay, would not require **consent**;
3. This overlay does not apply to the use and development of land for **dwelling**s-group or **dwelling**s-multiple when the land is subject to Overlay 3.11 RCFR (Rapid Creek Flood Response).
4. In this Overlay:
  - (a) “flood level” means the water level associated with a 1.0% AEP flood event or where that level cannot be determined, the level determined by the Controller of Water Resources within the meaning of the *Water Act 1992*;
  - (b) “AEP” means Annual Exceedance Probability, which is the likelihood, in percentage terms, of a flood of a given size occurring in a specified area in any one year;
  - (c) “DFE” means Defined Flood Event, which:
    - i. in an area subject to a floodplain management plan that defines a flood event, is as specified in that plan; or
    - ii. if there is no floodplain management plan that defines a flood event for an area, is the 1% AEP flood event;
  - (d) “DFA” means Defined Flood Area, which is the area that is inundated by the DFE as defined on mapping produced by the NT Government;
5. The consent authority may **consent** to a use or development that is not in accordance with sub-clause 5 only if it is satisfied that the application demonstrates that there is no increased risk to people and property including adjoining property, or increased cost to the community.

#### Requirements

6. In a DFA:
  - (a) the storage or disposal of environmentally hazardous industrial material and the development of **fuel depots** should be avoided;

- (b) the minimum floor level of **habitable rooms** should be 300mm above the flood level for the **site**; and
- (c) the use of fill to achieve required floor levels should be avoided.

### 3.7 LSSS – Land Subject to Storm Surge

#### Purpose

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.

#### Administration

1. This Overlay applies to land subject to the PSSA and/or the SSSA.
2. This Overlay does not apply to:
  - (a) **outbuildings** and extensions to existing **dwelling**s; or
  - (b) extensions to existing commercial or industrial buildings; or
  - (c) a use or development within the SSSA that would otherwise be *Permitted*, and complies with the requirements of Part 5.
3. This Overlay does not apply to:
  - (a) **outbuildings** and extensions to existing **dwelling**s; or
  - (b) extensions to existing commercial or industrial buildings; or
  - (c) a use or development within the SSSA that would otherwise be *Permitted*, and complies with the requirements of Part 5.
4. This overlay does not apply to the use and development of land for **dwelling**s-group or **dwelling**s-multiple when the land is subject to Overlay 3.11 RCFR (Rapid Creek Flood Response).
5. In this Overlay:
  - (a) “AEP” means Annual Exceedance Probability, which is the likelihood, in percentage terms, of inundation by storm surge;
  - (b) “PSSA” means Primary Storm Surge Areas, which are those coastal areas within a 1% AEP of inundation by storm surge as defined on mapping produced by the NT Government;
  - (c) “SSSA” means Secondary Storm Surge Areas, which are those coastal areas adjacent to the PSSA with a 0.1% AEP of inundation by storm surge as defined on mapping produced by the NT Government; and
  - (d) “storm surge” means the elevation in sea level which accompanies the movement of a cyclone particularly near, or over, a coastline, attributed to a cyclone’s intensity and wind stress build-up.

6. Land within the PSSA is to be used or developed only with **consent**.
7. The consent authority may **consent** to a use or development within the PSSA that is not in accordance with sub-clauses 7-9 only if it is satisfied that the application demonstrates that there is no increased risk to people and property, including adjoining property.
8. The use or development of land within the SSSA should have regard to sub-clauses 8 and 9.

#### Requirements

9. 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.
10. Development within the SSSA should be confined to those uses permitted in the PSSA as well as industrial and commercial land uses.
11. Residential uses, strategic and community services (such as power generation, defence installations, schools, **hospitals**, public shelters and major transport links) should be avoided in the PSSA and the SSSA.

### 3.8 LADR – Land Adjacent to a Designated Road

#### Purpose

Ensure that **access** to a designated road from adjacent land does not prejudice traffic safety or the integrity and operation of the infrastructure.

#### Administration

1. **Access** to a use or development or proposed use or development from a designated road identified on this Overlay requires **consent**.
2. Despite sub-clause 1, this Overlay does not apply where the agency responsible for the management of the designated road has provided written approval for the **access**.
3. The consent authority may only **consent** to an **access** to a use or development where the **access** complies with sub-clause 4.

#### Requirements

4. Any **access** from a designated road corridor must be in accordance with the requirements of the agency responsible for the management of the designated road, to the satisfaction of that agency.

### 3.9 DHD – Darwin Harbour Dredging

#### Purpose

Ensure dredging within Darwin Harbour does not degrade the environmental value of the harbour waters.

#### Administration

1. The *Darwin Harbour Dredging Overlay* applies to the seabed within Darwin Harbour, being the waters south of a straight line between Charles Point and Gunn Point.
2. Dredging of the seabed within the *Darwin Harbour Dredging Overlay* requires **consent**.
3. The consent authority in considering an application for dredging must have regard to the advice of the agency responsible for natural resources and the environment.

#### Requirements

4. An application for dredging is to demonstrate consideration of the *Guidelines for the Environmental Assessment of Marine Dredging in the Northern Territory* (as amended from time to time) produced by the NT Environmental Protection Authority.

### 3.10 MRT – Residential Development in Major Remote Towns

#### Purpose

Provide for the development of **dwelling-groups** and **dwelling-multiple** without **consent** in Major Remote Towns.

#### Administration

1. This overlay applies to land within Zone LMR in a Major Remote Town specified in [Schedule 8](#).
2. Land subject to this overlay may be developed without **consent** if it:
  - (a) complies with sub-clauses 4;
  - (b) complies with Parts 3 and [5](#) of this Planning Scheme except as provided for by sub-clause 5; and
  - (c) is consistent with the zone purpose and outcomes.
3. Where the development does not comply with sub-clause 2, the development is subject to the assessment requirements as established in the relevant assessment table for Zone LMR in [Part 4](#).

#### Requirements

4. A **dwelling-group** or **dwelling-multiple** in a Major Remote Town is to provide:
  - (a) a dwelling density of 1 per 450m<sup>2</sup>;
  - (b) fencing to private open space of a minimum height of 1.2m; and
  - (c) retention of significant shade trees on the **site**, and one shade tree is to be provided per private open space.

**Editor's Note: Prior to the commencement of works, the developer must demonstrate to Power Water Corporation (PWC) that the infrastructure network/s (power, water and sewer) have capacity to support the additional loads, and that the services meet the requirements of PWC.**

### 3.11 RCFR – Rapid Creek Flood Response

#### Purpose

Facilitate re-development along Rapid Creek for residential purposes in a manner that:

- (a) mitigates the 1%AEP riverine flooding and storm surge risk to proposed and existing development; and
- (b) reduces risk to the community and improves resident safety during a flood event.

#### Administration

1. This overlay applies to Lots 1086, 1087, 1214, 1218, 1225, 1226, 1227, 1234, 1235, 1236, 1237, 1245, 1246, 1247, 1257, 1258, 1259, 1272, 1273, 1525, 1526, 1609, 1610, 1611, 1612, 1668, 1669, 1670, 1674, 1675 Town of Nightcliff.
2. This overlay applies only to use and development of land for **dwelling-group** and **dwelling-multiple**.
3. Development subject to this overlay requires **consent**.
4. The use and development subject to this overlay is not subject to the following overlays:
  - 3.6 (LSF – Land Subject to Flooding) and
  - 3.7 (LSSS – Land Subject to Storm Surge).
5. For the purposes of this overlay, the defined flood height for a site is the higher level of either:
  - (a) the 1% AEP riverine flood level established under Appendix C of the [Rapid Creek Flood Study – Flood Modelling Results 2018](#); or
  - (b) the primary storm surge level.
6. An application for development subject to this overlay must include documentation prepared by a suitably qualified registered and practicing

engineer recognised under the National Engineering Register certifying that the proposed development will meet the requirements of subclauses 8-11. Documentation must include:

- (a) a stormwater management plan and
- (b) a structural conditions report.

7. The consent authority must not **consent** to a development that is not in accordance with the requirements of this overlay as certified by documentation required under subclause 6.

### Requirements

8. The minimum finished site level at any point (except required access ramps) must be at least equivalent to the defined flood height for that site.
9. The minimum floor height of all habitable rooms must be 300mm above the defined flood height for that site, including any retained existing development that may need to be adapted to comply.
10. The development must adequately mitigate the potential impacts of stormwater associated with the conveyance of any pre-existing stormwater flows from an adjoining or adjacent property to the street or a public drainage system; and
11. The development must be capable of withstanding hydrostatic and hydrodynamic forces of flood waters and storm surge impacting on the specific site