



# **AGENDA**

## **Late Reports Ordinary Council Meeting Tuesday, 29 June 2021**

**Date: Tuesday, 29 June 2021**

**Time: 5:30PM**

**Location: Via Webex as per Open Agenda**

**Scott Waters  
Chief Executive Officer**

## **Order Of Business**

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14.11	SUBMISSION TO THE PROPOSED EXPANSION OF THE CITY OF PALMERSTON LOCAL GOVERNMENT BOUNDARY (TO INCLUDE UNINCORPORATED LAND NORTHCREST RESIDENTIAL DEVELOPMENT) ..	435

## 14 ACTION REPORTS

### 14.11 SUBMISSION TO THE PROPOSED EXPANSION OF THE CITY OF PALMERSTON LOCAL GOVERNMENT BOUNDARY (TO INCLUDE UNINCORPORATED LAND NORTHCREST RESIDENTIAL DEVELOPMENT)

**Author:** General Manager Government Relations & External Affairs

**Authoriser:** Chief Executive Officer

**Attachments:** 1. City of Darwin Submission to Have Your Say [↓](#)

#### RECOMMENDATIONS

1. THAT the report entitled Submission to the Proposed Expansion of the City of Palmerston Local Government Boundary (to include unincorporated land, Northcrest Residential Development) be received and noted.
2. THAT Council endorse City of Darwin's Submission to the proposed expansion, which seeks that the Northern Territory Government cease the current consultation and apply necessary due process, in accordance with previous undertakings, in an open and transparent manner.
3. THAT the Lord Mayor and Aldermen separately write to the Chief Minister requesting that:
  - The current process ceases;
  - A new process be commenced on an Expression of Interest basis, that has appropriate criteria, affording rights to all interested local government authorities and that includes engagement and feedback from the residents of Northcrest;
  - The new process for boundary consideration be conducted on an independent basis by an administrative authority or tribunal; and that
  - Findings are made publicly available; and that
  - The findings are implemented, and the unincorporated land is incorporated into the successful Local Government Area without delay.
4. THAT Council note legal advice in support of City of Darwin's response to the Proposed Expansion of the City of Palmerston Local Government Boundary (to include unincorporated land, Northcrest Residential Development) has underpinned its submission to the Northern Territory Government.
5. THAT Council note the outcome of City of Darwin's consultation through direct engagement with the residents of Northcrest, who have expressed a clear desire for their preferences to be taken into account in the Northern Territory Government's decision-making process with regard to municipal services for Northcrest.

#### PURPOSE

The purpose of this report is to seek Council's endorsement of a submission to the Proposed Expansion of the City of Palmerston Local Government Boundary (to include unincorporated land, Northcrest Residential Development) and to advise of the outcome of a targeted consultation with Northcrest residents and foreshadow correspondence to the Chief Minister

from Lord Mayor and Aldermen imploring the cessation of the current process in favour of an independent and equitable approach in its place.

**KEY ISSUES**

- On 11 May 2021, the Northern Territory Government opened a process for community consultation for the Proposed Expansion of the City of Palmerston Local Government Boundary (to include unincorporated land, Northcrest Residential Development).
- City of Darwin had been in ongoing discussions with Northern Territory Government agencies for several years above the Northcrest development.
- The Northern Territory Government had made undertakings that any decision about the Northcrest development's future local government area would be open and transparent and provide equitable opportunity for local government authorities to submit through an Expression of Interest process.
- City of Darwin officers recommend that the current consultation be ceased and that a new process be adopted by the Northern Territory Government that offers transparency and equity and one that is independently administered.
- City of Darwin carried out targeted consultation with Northcrest residents to support its submission.

**DISCUSSION**

On 11 May 2021, the Northern Territory Government opened a process for community consultation for the Proposed Expansion of the City of Palmerston Local Government Boundary (to include unincorporated land, specifically for City of Darwin's interest, the Northcrest Residential Development).

City of Darwin was made aware of the announcement about the consultation on the day it was released by the Northern Territory Government, on 11 May 2021, through the Department of the Chief Minister and Cabinet's Local Government Division contact by the Executive Director with the Chief Executive Officer.

City of Darwin has been in discussions with the Northern Territory Government for several years, since at least 2016, in regards the Northcrest development and its potential for inclusion in the Darwin local government area and Council has been extensively briefed in regards these discussions and the expectations in what might transpire into a public process for Expressions of Interest for local government authorities for areas of unincorporated land, in City of Darwin's case, the Northcrest development, for inclusion in Darwin's local government area.

In the course of these discussions over time, the Northern Territory Government, through its various Departments, made undertakings that any process for the Northcrest development would be open and transparent and provide equitable opportunity for local government authorities to submit through an Expression of Interest process. The current consultation for the Proposed Expansion of the City of Palmerston Local Government Boundary (to include unincorporated land, Northcrest Residential Development) does not meet those undertakings and is unreasonable in City of Darwin's view because it does not meet natural justice, procedural fairness or open and transparent dealings as they relate to City of Darwin.

Council has, through the Lord Mayor and Chief Executive Officer, made various attempts to engage with the Chief Minister, the Minister for Local Government, the Minister for Planning and the Chief Executive of the Department of the Chief Minister and Cabinet (who administers Local Government) to attempt to understand the decision to consult specifically on Palmerston being identified as the local government area for Northcrest and in a way inconsistent to their prior undertakings. At each juncture, the Lord Mayor and Chief Executive Officer have been directed to submit via the 'Have your say' page being administered by the Northern Territory Government, as part of the consultation on the Proposed Expansion of the City of Palmerston Local Government Boundary (to include unincorporated land, Northcrest Residential Development). The Lord Mayor and Chief Executive Officer have been unable to discuss the matter with the Chief Minister, the Minister for Local Government, the Minister for Planning and the Chief Executive of the Department of the Chief Minister and Cabinet to understand the change in approach, instead being directed to the 'Have your say' website for the consultation in lieu of any meeting or independent discussion. To this end, the Lord Mayor and Aldermen will write to the Chief Minister separately to Council's submission to request an alternate course of action.

City of Darwin officers have sought legal advice in relation to it Council's position and that legal advice has formed the basis of Council's submission to the Northern Territory Government's 'Have your say' page. Legal advice specifically pertains to the absence of due process and consultation that has an apparent *fait accompli*. It also notes that the consultation, which has not been specific to the residents of Northcrest and their preference in terms of a local governments area that best suits their expectations, services and needs but aimed at the wider Darwin and outer regions.

The recommended course of action, outlined in City of Darwin's submission, is that the current consultation be ceased and that a new process be adopted by the Northern Territory

Government that offers transparency and equity and one that is independently administered on the basis that the Northern Territory Government has not acted reasonably or equitably in its current consultative process or consideration as it relates to Northcrest. A submission has been prepared and is attached for Council's endorsement at **Attachment 1**. Should Council endorse the submission, it will be lodged via the 'Have your say' website immediately to meet the closing date of 30 June 2021.

To ensure that Council is informed in its decision making, Council is asked to note the targeted consultation undertaken with Northcrest residents over the course of the previous week to understand their position in relation to the services and amenities they thought appropriate and which local government area they believed would be best for Northcrest. This involved a letterbox drop of a flier, followed by door to door engagement by Council officers in an attempt to understand Northcrest residents' position in relation to the possible incorporation into the Palmerston local government area and the impacts associated with that decision by the Northern Territory Government, inferred through its consultative process with the Darwin, Palmerston and outer regions about the Palmerston boundary changes. The summarised consultation report is at **Attachment 1** to the submission.

Accordingly, this report seeks Council's endorsement of the submission to the Proposed Expansion of the City of Palmerston Local Government Boundary (to include unincorporated land, Northcrest Residential Development) and asks that Council note that a separate request will be directed to the Chief Minister of the Northern Territory referencing Council's submission and seeking that the Chief Minister take action in relation to the current consultation, as follows:

- The current process ceases;
- A new process be commenced on an Expression of Interest basis, that has appropriate criteria, affording rights to all interested local government authorities and that includes engagement and feedback from the residents of Northcrest;
- The new process for boundary consideration be conducted on an independent basis by an administrative authority or tribunal; and that
- Findings are made publicly available; and that
- The findings are implemented, and the unincorporated land is incorporated into the successful Local Government Area without delay.

#### PREVIOUS COUNCIL RESOLUTION

At the 15 June 2021 meeting Council resolved confidentially in regards the development of a submission to the Northern Territory Government's 'Have your say' consultation process for the Proposed Expansion of the City of Palmerston Local Government Boundary (to include unincorporated land, Northcrest Residential Development), in accordance with legal advice, and a consultative process with the residents of Northcrest.

<b>STRATEGIC PLAN ALIGNMENT</b>	6 Governance Framework 6.3 Decision Making and Management
<b>CRITICAL DATES</b>	The 'Have your say' consultation process concludes on 30 June 2021.
<b>BUDGET / FINANCIAL</b>	<b>Budget/Funding:</b> N/A <b>Is Funding identified:</b> N/A

<b>RISK ASSESSMENT</b>	<p> <b>Assets &amp; Infrastructure</b> <input type="checkbox"/>    <b>Environment &amp; Waste</b> <input type="checkbox"/>  <b>Financial</b> <input checked="" type="checkbox"/>    <b>Info Comms &amp; Tech</b> <input type="checkbox"/>  <b>Legal &amp; Compliance</b> <input checked="" type="checkbox"/>    <b>Ops &amp; Service Delivery</b> <input type="checkbox"/>  <b>Reputation &amp; Brand</b> <input checked="" type="checkbox"/>    <b>Work Health &amp; Safety</b> <input type="checkbox"/> </p> <p>In accordance with City of Darwin Risk Management Framework, the post treatment, mitigation risk is: Low</p> <p>Risks identified, in relation to this report, will be managed in accordance with legal advice.</p>
<b>LEGISLATION / POLICY CONTROLS OR IMPACTS</b>	<p><b>Legislation:</b> Local Government Act</p> <p><b>Policy:</b> N/A</p>
<b>RESOURCE IMPLICATIONS</b>	Not applicable
<b>CONSULTATION &amp; ENGAGEMENT</b>	<p><b>Engagement Level:</b> Consult</p> <p><b>Tactics:</b> The consultation approach was targeted to Northcrest residents only and included a webpage, online survey, fact sheet, letterbox drop and door knock. All feedback collected was de-identified to ensure privacy.</p>
<b>COMMUNICATION PLAN FOR THIS INITIATIVE</b>	<p><b>Internal</b> Strategic Directions Group</p> <p><b>External</b> Northcrest Residents</p>
<b>PLACE SCORE STATEMENT</b>	Not applicable
<b>DECLARATION OF INTEREST</b>	<p><a href="https://intranet.darwin.nt.gov.au/document/3331/view">https://intranet.darwin.nt.gov.au/document/3331/view</a></p> <p>The report author does not have a conflict of interest in relation to this matter.</p> <p>The report authoriser does not have a conflict of interest in relation to this matter.</p> <p>If a conflict of interest exists, staff will not act in the matter, except as authorised by the CEO or Council (as the case requires).</p>

## Submission

### City of Darwin

Proposed Expansion of the City of Palmerston Local Government Boundary  
(to include unincorporated land, Northcrest Residential Development)

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## Position Paper - Incorporation of the Northcrest (Berrimah Farm) Development

Date	29 June 2021
Summary	This Submission is prepared by the City of Darwin for the attention and consideration of the Northern Territory Government ( <b>NTG</b> ).
Recitals	<p>A. City of Darwin is a local government authority established pursuant to the <i>Local Government Act 2008</i> (NT).</p> <p>B. Halikos Developments Pty Ltd (<b>Halikos Group</b>) is the developer of the Berrimah Farm/Northcrest area (<b>Northcrest (Berrimah Farm) Development</b>) which is located within a currently unincorporated area.</p> <p>C. City of Darwin has been aware of and in discussions with Halikos Group with respect to the incorporation of the Northcrest (Berrimah Farm) Development into the City of Darwin Local Government Area (<b>LGA</b>) since 2016.</p> <p>D. Negotiations between City of Darwin and Halikos Group with respect to the Northcrest Development were placed on hold in August 2018 following advice received from the Department of Housing and Community Development that an Expression of Interest (<b>EOI</b>) was being developed by the department and the incorporation 'bid' would via an open and transparent process sometime in 2020.</p> <p>E. City of Darwin ceased negotiations with Halikos Group.</p> <p>F. In January 2019, the Northcrest Development incorporation project was transferred to the Department of Trade Business and Innovation (now the Department of Industry, Tourism and Trade).</p> <p>G. On 23 March 2021, City of Darwin met with the CEO of the Department of Industry, Tourism and Trade who advised the incorporation of the Northcrest Development (and the surrounding other unincorporated areas) was now being overseen by the Department of Chief Minister and Cabinet (the <b>Department</b>) and that the Department was working directly with the City of Palmerston to incorporate the unincorporated areas near City of Palmerston, including the Berrimah area and the Northcrest Development.</p>

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- H. On 6 April 2021, City of Darwin wrote to the CEO of the Department advising of City of Darwin's previous negotiations with Halikos Group regarding the Northcrest Development.
  - I. On 11 May 2021, the CEO of City of Darwin received a telephone call from the Executive Director of Local Government and Community Development (a division within the Department) advising public consultation on the City of Palmerston incorporating the Northcrest Development into its LGA was about to be released.
  - J. On 24 May 2021, the CEO of the Department responded to City of Darwin's correspondence dated 6 April 2021 by encouraging City of Darwin to provide feedback through the Have Your Say feedback platform.
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## 1. History

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City of Darwin has been aware of and in discussions with Halikos Group with respect to the incorporation of the Northcrest Development into City of Darwin's LGA since 2016.

## 2. City of Darwin's position and submissions

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### 2.1 Procedural fairness and a reasonable decision-making process

- (a) Procedural fairness is observed where a decision-maker gives the people or parties that would be adversely affected by the decision in question, an opportunity to make submissions on it and have their views accounted for, prior to the relevant final decision being made.
- (b) Importantly, before making a decision, a decision-maker will have taken into account all relevant information, excluded irrelevant matters, and reached a conclusion that, on the weight of the evidence, is reasonable in the circumstances.
- (c) City of Darwin contends that the decision to propose that the currently unincorporated area at Elrundie form part of the City of Palmerston LGA:
  - (i) did not observe matters of procedural fairness as they concern the City of Darwin; and
  - (ii) therefore, has not accounted for all relevant information.

**City of Darwin should have been consulted on the incorporation proposal given its long history with the Berrimah area**

- (d) City of Darwin has had a long, documented history with Halikos Group on their land development area, the Northcrest Development, becoming part of the City of Darwin LGA. This includes discussions, since at least 2016, on City of Darwin providing the servicing for the Northcrest Development. Copies of that correspondence and related resolutions have been forwarded to the Department of the Chief Minister and Cabinet (the **Department**).
- (e) Given this length of interest, of which the predecessor department was informed since at least 2018, it is unreasonable that City of Darwin has not been given an opportunity by NTG to separately communicate a position on (and prior to) its recent decisions:
  - (i) proposing to incorporate areas of unincorporated land, particularly that at Berrimah, into the Palmerston LGA; and
  - (ii) notifying that proposal for public exhibition and feedback.

**Consultation with City of Darwin warranted due to predecessor Department advice**

- (f) City of Darwin holds records of discussions with the Acting Executive Director for Local Government (within the Department of Housing and Community Development) in 2018, on the inclusion of the unincorporated area at Berrimah within its LGA. The CEO for the City of Darwin recollects - that as a result of the interests of City of Palmerston and Litchfield Council to include the unincorporated area within each of their LGAs, the Acting Executive Director indicated that an Expression of Interest (**EOI**) would be developed and the incorporation 'bid' would be via an open and transparent process some time in 2020.
- (g) Due to administrative departmental and machinery of government changes, as well as COVID-19 related considerations, the City of Darwin understands that the incorporation project was transferred to different departments.
- (h) Following several contact attempts by the City of Darwin to ascertain a status position with the Department's predecessor on the incorporation project throughout 2020 and again earlier this year, it was a significant concern for its CEO to be advised in March 2021 that:
  - (i) the matter was now being administered by the Department; and
  - (ii) rather than an EOI process, the NTG (via the Department) had made a decision to incorporate Northcrest (including Berrimah) into the City of Palmerston LGA.
- (i) The City of Darwin ought to have been consulted as part of the discussions and negotiations the Department was having on incorporation given its documented interest in the project and its previous discussions with the Department's predecessor agency and representatives. It is unreasonable that the City of

Darwin has not been previously afforded this opportunity prior to the Department making its recent decisions:

- (i) proposing to incorporate areas of unincorporated land, particularly that at Berrimah, into the Palmerston LGA; and
- (ii) notifying that proposal for public exhibition and feedback.

**The Department has not acted reasonably**

- (j) All public authorities and government bodies in Australia are required to undertake decision-making in accordance with the relevant law and through a fair process. This means that agencies such as the Department, have an obligation and responsibility to act reasonably when making decisions.
- (k) City of Darwin has no information on how the Department made its decisions or its reasons. Specifically, it is not currently clear on what basis, or for what reasons, the Department relied on to:
  - (i) discount or put aside the EOI process previously indicated; and instead
  - (ii) make a proposal to incorporate areas of unincorporated land, particularly that at Berrimah, as part of the Palmerston LGA without having also consulted the City of Darwin given its documented history with the Berrimah portion of the current unincorporated area since 2016 and its previous discussions with the Department's predecessor representatives since 2018; and
  - (iii) notify that proposal for public exhibition and feedback.
- (l) City of Darwin, despite years of attempting to engage with relevant landowners and the predecessor agencies of the Department, has not until very recently, been made aware of or been privy to the discussions the Department appears to have had with the City of Palmerston. The extent of those discussions is not known and was not, until recently, ever foreshadowed. Consequently, it is the City of Darwin's contention that there is a lack of transparency to the process the Department followed in formulating its recent incorporation proposal and decision to seek public feedback on it. Accordingly, it is the City of Darwin's view that the Department:
  - (i) has not acted reasonably in light of the directly relevant information on this matter, concerning the Berrimah/Northcrest area, that was held by its predecessor agencies and representatives; and
  - (ii) has made an error in decision-making.

**Freedom of Information access request option**

- (m) In order to better consider the reasonableness of the decisions the Department has made, the City of Darwin could lodge a Freedom of Information (FOI) access request to the Department under the *Information Act 2002*, for copies of the information it relied on and indeed also to the City of Palmerston.



- (n) For efficiency, the City of Darwin's preference would be for the Department to proactively or informally release that information so it may be considered by others.

## 2.2 Competition policy and consumer protection principles

- (a) City of Darwin is of the opinion that NTG's recent conduct does not have regard to the relevant competition principles and their benefits.
- (b) In 2015, the Competition Policy Review Panel completed a comprehensive review of Australia's competition policy and framework, commenting that "[c]ompetition principles should be based around the central idea that competition policy, laws and institutions should promote the long-term interests of consumers."<sup>1</sup> Similarly, section 2 of the *Competition and Consumer Act 2010* (Cth) (**CCA**), set out that the object of the Act "...is to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection."
- (c) Whilst the CCA is excluded from operating in connection with matters permitted via an enactment (such as the *Local Government Act 2008* (NT)), the spirit of intendment of the exemption is that the legislative enactments will, for example, in decision making in connection with local government services to rate payers, encapsulate principles that do 'enhance the welfare of them through the promotion of competition and fair trading' and wider protection of consumers.
- (d) It follows, that the broader intention of the CCA is that any legislative enactments address consumer protection aspects unless there is some good policy reason for them not to do so.
- (e) The current *Local Government Act 2008* (NT) (**LG Act**) does not provide any structures or mechanisms to address these broader policy protections.
- (f) Section 9 of the LG Act appears to provide broad powers in relation to decisions involving the allocation of new LGAs.
- (g) This is unlike other Australian jurisdictions where there are clear statutory and regulatory structures, mechanisms and processes to allocate new LGAs, for example:
  - (i) **New South Wales** - Chapter 9 of the *Local Government Act 1993* (NSW) (**NSW Act**) deals with the constitution of land as a LGA and the constitution of councils to manage that area.
    - (A) Section 218A empowers the Governor, by proclamation, to amalgamate two or more areas into one or more new areas. The Governor may make that proclamation once a proposal for amalgamation has been 'examined and reported' to the Boundaries Commission (a body corporate constituted by the

<sup>1</sup> Australian Government, *Competition Policy Review – Final Report* (2015) 96.

NSW Act) or a Departmental Chief Executive (**CE**), which will have held a public inquiry on the amalgamation proposal.

(B) Importantly, the Boundaries Commission (or Departmental CE) is required to have regard to specific factors in section 263(3) of the NSW Act including:

- (1) the financial advantages or disadvantages of the proposal to the residents and ratepayers of the areas concerned;
- (2) the community of interest and geographic cohesion in the existing areas and in any proposed new area;
- (3) the existing historical and traditional values in the existing areas and the impact of change on them;
- (4) the requirements of the area concerned in relation to elected representation for residents and ratepayers at the local level, the desirable and appropriate relationship between elected representatives and ratepayers and residents and such other matters as it considers relevant in relation to the past and future patterns of elected representation for that area; and
- (5) the impact of any relevant proposal on the ability of the councils of the areas concerned to provide adequate, equitable and appropriate services and facilities.

(C) The Boundaries Commission then sends its report on the amalgamation proposal to the Minister, who may then recommend to the Governor whether the proposal is implemented (including with any modifications arising from the Commission's report (or if the report is from a Departmental CE, then that report plus the Commission's comments on it)).

(ii) **Queensland** - pursuant to Chapter 2 Part 3 of the *Local Government Act 2009* (Qld) (**Qld Act**) only the responsible Minister may propose a "local government change" which must then be assessed by the Change Commission (an independent body created under the Qld Act). The Change Commission will make an assessment as to whether the change proposed is in the public interest and subsequently make a recommendation for implementation by the Governor in Council. The Change Commission will inform the public of the results of the assessment and the reasons for that result.

(iii) **Victoria** - pursuant to Part 7 Division 9 of the *Local Government Act 2020* (Vic) the Governor in Council may, on the recommendation of the relevant Minister, make an order to alter the boundaries of a local government. However, the Minister cannot make such a recommendation (provided the boundary changes are not minor) unless the Minister has established a restructuring advisory panel to conduct a

review into the matter and has subsequently considered the restructuring advisory panel's report.

- (h) In particular, interstate laws acknowledge relevant considerations to boundary determinations may include:
- (i) whether the change is in the public interest, including whether there are financial advantages for the residents and ratepayers;<sup>2</sup>
  - (ii) the views and submissions of other local governments that would be affected by the proposed change, including their extent of support for the proposal;<sup>3</sup>
  - (iii) the views (and extent of support) of the residents and ratepayers obtained through holding a public hearing or some other method of community engagement;<sup>4</sup>
  - (iv) whether the proposed LGA has regard to communities of interest; such as whether the area reflects local communities (ie. the geographical pattern of human activities) and the linkages between local communities, whether there area has a centre of administration and service easily accessible it is population and whether there is effective elected representation to the residents and ratepayers of the proposed area;<sup>5</sup>
  - (v) the financial implications and impact on resources that the proposed changed is likely to have on any local government affected by the proposal;<sup>6</sup>
  - (vi) whether the local government is able to offer its community a reasonable range of services and facilities delivered on an efficient, flexible, equitable and responsive basis;<sup>7</sup>
  - (vii) whether the local government is in a position to facilitate sustainable development, the protection of the environment and the integration of other land use schemes;<sup>8</sup> and
  - (viii) the impact on that various rights and interests of any local government employees affected by the proposal.<sup>9</sup>

<sup>2</sup> *Local Government Act 2009* (Qld) s 19(2); *Local Government Act 1999* (SA) s 26(1)(c); *Local Government Act 1993* (NSW) s 263(3).

<sup>3</sup> *Local Government Act 2009* (Qld) s 19(3); *Local Government Act 2020* (Vic) s 239(2); *Local Government Act 1999* (SA) s 31(3); *Local Government Act 1993* (NSW) s 263(3).

<sup>4</sup> *Local Government Act 2009* (Qld) s 19(3); *Local Government Act 2020* (Vic) s 239(2); *Local Government Act 1999* (SA) s 31(3); *Local Government Act 1993* (NSW) s 263(3).

<sup>5</sup> *Local Government Regulation* (Qld) r 9(1); *Local Government Act 1999* (SA) s 26(1)(c); *Local Government Act 1993* (NSW) s 263(3).

<sup>6</sup> *Local Government Act 1999* (SA) s 31(3).

<sup>7</sup> *Local Government Act 1999* (SA) s 26(1)(c); *Local Government Act 1993* (NSW) s 263(3).

<sup>8</sup> *Local Government Act 1999* (SA) s 26(1)(c).

<sup>9</sup> *Local Government Act 1999* (SA) s 31(3); *Local Government Act 1993* (NSW) s 263(3).



## 2.3 Territory Economic Reconstruction Commission Policy

- (a) As you are aware, the Territory Economic Reconstruction Commission (**TERC**) handed down its final report in December 2020.
- (b) Recommendation RG1 is to, "Quickly streamline regulatory processes to make it easy to do business in the Territory"<sup>10</sup>, which the report suggested may be achieved through the some of the following related actions:
  - (i) Map all regulatory processes, ensure they are time bound and identify opportunities for improvement;
  - (ii) Streamline and reduce timeframes by identifying opportunities to enable concurrent regulatory processes, e.g. public notifications;
  - (iii) Ensure accountability by requiring public reporting on standards with overarching responsibility and coordination assigned to a single agency to ensure continued focus and momentum;
  - (iv) Publish regulatory impact statements within appropriate timeframes;
  - (v) Develop products that provide clarity and support proponents to navigate the regulatory system;
  - (vi) Empower regulators to make risk-based decisions, delegate responsibility down throughout hierarchy in a clear and accountable way;
  - (vii) Audit capability and resource to develop and recruit against capability gaps; and
  - (viii) Build strategic partnership to improve regulatory efficiency.<sup>11</sup>
- (c) Whilst City of Darwin understands the recommendations presented by the TERC final report are still being implemented, these issues are at the heart of City of Darwin's concerns flowing from NTG's decision with respect to the incorporation of the Northcrest Development.
- (d) As outlined above at 2.2(g) to (h) the laws of other Australian jurisdictions already contain clear statutory and regulatory structures, mechanisms and processes to allocate new LGAs. They seemingly already reflect the recommendations made by TERC and an iteration of the interstate laws and regulations being implemented in the Northern Territory would avoid what has recently occurred, including:
  - (i) The regulatory processes concerning the incorporation of the Northcrest Development were not clearly articulated. NTG failed to give any clear advice or directions on the processes that would be followed;

<sup>10</sup> Territory Economic Reconstruction Commission Final Report, pg. 25

<sup>11</sup> Territory Economic Reconstruction Commission Final Report, pg. 110

- (ii) City of Darwin has not had the opportunity to be heard prior to NTG's recent decision on the proposal to incorporate areas of unincorporated land, particularly that of the Northcrest Development, into the Palmerston LGA and seek public feedback regarding same. City of Darwin ought to have been given the opportunity to be heard having regard to its interest in the Northcrest Development;
  - (iii) City of Darwin has not been afforded a review by an independent body that is available and mandated in many other Australian jurisdictions;
  - (iv) The Department, nor its predecessors, have been open and transparent with City of Darwin as to their negotiations with City of Palmerston;
  - (v) City of Darwin has not had the benefit of continuity in dealing with one independent body or even one department from start to finish.
  - (vi) City of Darwin and the public more generally are not aware of the relevant considerations NTG had regard to in making their boundary determination; and
  - (vii) City of Darwin has no information on how the Department made its decisions nor its reasons for doing so.
- (e) City of Darwin's experience with NTG over the preceding years with respect to the Northcrest Development suggests there may be significant capability and/or resource gaps within NTG, including:
- (i) potential underfunding/resourcing for particular departments resulting in the Northcrest Development incorporation being moved from one department to another;
  - (ii) potential capability insufficiencies preventing a process and framework from being established with respect to changes in LGAs; and
  - (iii) potential capability and resourcing insufficiencies which have impeded NTG from fully considering and comparing each interested local government and what they have to offer.
- (f) NTG's conduct with respect to the incorporation of the Northcrest Development has:
- (i) resulted in a significant waste of costs and resources on the part of City of Darwin. Other interested stakeholders such as Litchfield Council may have also experienced similar loss and waste;
  - (ii) caused disadvantage to the City of Darwin, the Northcrest residents and City of Darwin residents and ratepayers; and
  - (iii) cast doubt and uncertainty over the entire decision which, in turn, is not beneficial to the City of Palmerston nor NTG.

### 3. Community engagement – Northcrest residents

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In an effort to understand Northcrest residents' preference as to the LGA that the Northcrest development be included, City of Darwin undertook a targeted consultation exercise. The consultation report relating to that consultation is at **Attachment 1**.

### 4. Preferred way forward

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City of Darwin's strong preference is to suspend the Department's current public feedback process on the incorporation proposal that is being sought, and instead discuss the incorporation project with the Department (and others if necessary) to see if another way forward can be agreed.

Specifically, City of Darwin seeks that:

- The current process ceases;
- A new process be commenced on an Expression of Interest basis, that has appropriate criteria, affording rights to all interested local government authorities and that includes engagement and feedback from the residents of Northcrest;
- The new process for boundary consideration be conducted on an independent basis by an administrative authority or tribunal; and that
- Findings are made publicly available; and that
- The findings are implemented, and the unincorporated land is incorporated into the successful Local Government Area without delay.

In the alternative, the City of Darwin will be compelled to explore other options in relation to the Department's decision. This includes considering whether further legal advice is sought or whether other remedies might be available such as an injunction (including interlocutory) of the Department's incorporation proposal decision, or administrative/judicial review.

### 5. Conclusion

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For the reasons outlined in this Submission, it is clear that there has been no procedural fairness provided in matters leading up to and, indeed including, the Have Your Say consultative process.

That process appears to assume a *fait accompli* in terms of City of Palmerston's LGA being extended to include the Northcrest development and is absent of any transparent process for the consideration of relevant matters, the disregarding of irrelevant matters and the making of an informed and reasoned decision with appropriate transparency.

City of Darwin calls on the NT Government to:

- Cease the current process;

- Commence a new process on an Expression of Interest basis, with appropriate criteria, affording rights to all interested local government authorities and that includes engagement and feedback from the residents of Northcrest;
- Put in place steps for the new process for boundary consideration to be conducted on an independent basis by an administrative authority or tribunal;
- Make any findings public in an open and transparent manner; and
- Consideration is given to those findings to ensure that they are implemented, and the unincorporated land is incorporated into the successful Local Government Area without delay.

## Attachment 1



# Consultation Summary

## Municipal Boundary Review 2021

### Background

The Northern Territory Government (NTG) is proposing to expand the City of Palmerston local government boundary to include the Northcrest residential area. City of Darwin sought feedback on the proposal from Northcrest residents during June 2021.

### Consultation goal

The goal of the consultation was to seek feedback from Northcrest residents on the proposal by NTG to expand the City of Palmerston local government boundary to include the Northcrest residential area.

### Methodology

The consultation approach was targeted to Northcrest residents only and included a webpage, online survey, fact sheet, letterbox drop and door knock. All feedback collected was de-identified to ensure privacy.

Engage Darwin	City of Darwin's consultation platform <a href="https://engage.darwin.nt.gov.au/northcrest">engage.darwin.nt.gov.au/northcrest</a> was established and contained background information, FAQs and a link to an online survey.
Online survey	An online survey was developed with the following questions: <ol style="list-style-type: none"> <li>1. Please confirm that you are a resident of Northcrest, Northern Territory</li> <li>2. Do you currently use City of Darwin facilities such as libraries, pools and playgrounds, over those provided by other Councils?</li> </ol>



	<p>3. Did you have an expectation when you acquired your property in Northcrest that you would be in any particular Council area?</p> <p>4. If yes, was it City of Darwin?</p> <p>5. To your knowledge, did the Northern Territory Government ask Northcrest residents what their preference would be before the proposal was announced to the public on 13 May 2021?</p>
Fact sheet	City of Darwin prepared a fact sheet, outlining the proposal, providing information on the municipality, some broad information on our rating strategy and ways to provide feedback, both to City of Darwin and to the NTG consultation process.
Letterbox drop	This fact sheet was letterbox dropped to all occupied homes in the Northcrest residential area.
Door knock	<p>City of Darwin staff door knocked Northcrest residential area during the week commencing 21 June 2021, with 27 face-to-face conversations taking place. During those conversations, residents were provided information on the Municipal Boundary Review, were encouraged to provide feedback, and if time, they completed the online survey. Several residents opted to do the survey at a later time.</p> <p>Several properties remain as vacant lots or under construction in Northcrest. All up there were 79 homes door knocked.</p>

### Feedback

Feedback was received via the one-on-one discussion during the door knock and via the online survey. The feedback received is outlined below.

### Door knock discussions

Overwhelmingly, the discussions that took place with Northcrest residents were positive, with the majority of people thanking City of Darwin for making the time to come and speak to them about the Municipal Boundary Review.

The following themes emerged through the door knock discussions:

- Several felt that there was a **lack of consultation** to date on the proposal. Several people thought the decision was **fait accompli** and did not realise that the proposal was still open for consultation. They welcomed the opportunity to be part of the decision making.
- There was a general **lack of understanding** for what the Municipal Boundary Review meant, some mentioned a flyer in the mail and a BBQ held at the park with the Mayor of Palmerston.
- There is an **overwhelming preference from Northcrest residents to be part of City of Darwin** with the perceived benefits of this being:
  - Feeling **already connected** to City of Darwin either through previously living in the municipality, children going to school in the municipality, or wishing their children to continue to be schooled in the municipality.
  - Feeling **satisfied with services and facilities provided under City of Darwin** through living in the municipality previously and / or currently using City of Darwin facilities.
- Several residents mentioned **schooling** being a big factor for why they would like Northcrest to be part of City of Darwin, with them expressing a desire for their children to attend or continue to attend schools within the municipality.
- **Property values** were mentioned by some as a reason they'd like to be part of City of Darwin, with a general perception that these would be more favourable in City of Darwin.
- Access to **Shoal Bay Waste Management Facility** was mentioned as desirable for some with it within easy access and proximity to Northcrest.
- Several residents said that they **expected** Northcrest to be within City of Darwin when they purchased their home.

#### Online survey

There were **43 surveys** completed with all those completing the survey identifying as being a resident of the Northcrest residential area. The findings of these are provided below.

The majority of survey respondents identified as already using City of Darwin facilities over those provided by other Councils

When asked the question on whether they currently use City of Darwin facilities such as libraries, pools and playgrounds, over those provided by other Councils, 39 survey respondents said yes, three said no and one said they were unsure.

The majority of survey respondents expected when they acquired their property in Northcrest that they would eventually be within City of Darwin

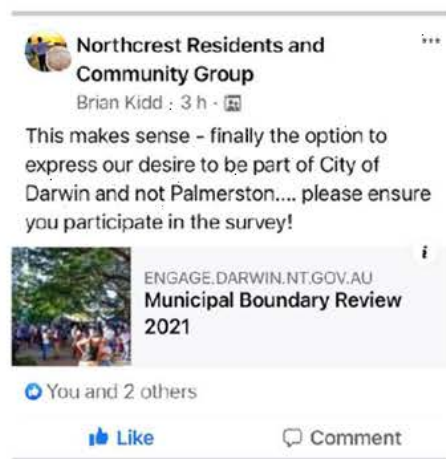
When asked the question on whether they had an expectation when they acquired their property in Northcrest that they would be in any particular Council area, 37 survey respondents said yes, five said no and one said they didn't consider it. Of those that answered yes to that question, 37 survey respondents expected City of Darwin, four didn't and two didn't care.

The majority of survey respondents felt that there was no consultation on the proposal to include Northcrest residential area into City of Palmerston

When asked the question as to whether, to their knowledge, the Northern Territory Government ask Northcrest residents what their preference would be before the proposal was announced to the public on 13 May 2021, 33 survey respondents answered no, two answered yes and eight were unsure.

### Social media

In addition to the feedback received directly to City of Darwin during our consultation, the **Northcrest Residents and Community Group Facebook** page posted information about the consultation, stating that the consultation made sense and was overdue and encouraged residents to participate in the survey (see below).





### Analysis

The feedback received during City of Darwin's consultation regarding the NTGs proposal to expand the City of Palmerston local government boundary to include the Northcrest residential area delivers some strong insights into the perception and aspirations of this community.

The strongest messages from the consultation, and the sentiment captured in relation to these are as follows:

- The Northcrest community feels there was no consultation on the proposal, with several feeling the decision was fait accompli. Therefore, several of these residents had disengaged from the consultation being run by the NTG with them believing that the decision was already made. However, all of those spoken to were interested to understand more about what it meant and welcomed the opportunity to discuss it further.
- The majority of people spoken to and surveyed are strongly connected to City of Darwin, having lived in the municipality prior to moving to the Northcrest residential area, many working within the municipality and several having children attending school in the municipality. They also expressed a desire to keep their primary school aged children enrolled in middle and senior schools in City of Darwin.
- Several respondents expressed satisfaction with the services and facilities on offer within City of Darwin, having experienced those as previous residents and/or still continuing to enjoy several of them including public pools and libraries. Being able to transfer existing registrations such as pet registration, was mentioned as beneficial for one resident who felt frustrated that she is currently unable to register her pets at all.
- Several respondents spoke to wanting to remain in City of Darwin because of the easy access and proximity to Shoal Bay Waste Management Facility.
- While not a strong theme, a number of respondents felt that their property values would be stronger if Northcrest became part of City of Darwin over other councils.
- Finally, several respondents spoke at length about their expectation that Northcrest would become part of City of Darwin, when they purchased their property.