



## STAFF REPORT

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**DEPARTMENT:** Administration

**CHAIR:** Councillor G. Canning

**DATE:** October 10, 2017

**REPORT NO.:** **CAO-2017-25, Advancing Midland's Strategic Real Estate Assets**

### **RECOMMENDATION:**

**That Report CAO-2017-25, Advancing Midland's Strategic Real Estate Assets, dated October 10, 2017 be received; and**

**That the proposed Business Plan for the creation of a Municipal Services Corporation pursuant to the Municipal Act, be received; and further**

**That the Chief Administrative Officer through the Consultant Don May, be requested to host a public information meeting for the purpose of receiving public feedback on the proposal and report same to Council prior to Council's final deliberations on the matter.**

### **BACKGROUND:**

Council received report CAO-2017-15 in June of this year as part of Council's direction for a report ***"that identifies more effective use of municipal assets for the purpose of promoting and supporting economic development opportunities for the Town of Midland."***

As part of that report your Administration indicated that there was a further opportunity for the asset maximization given the recent winding down of the agreement between the Town and the former development interest on the Midland Bay Landing project. Council will recall that the Administration identified significant land holdings by the Town throughout the community. These lands encompass a range of existing uses and run the gamut from parks and open spaces to municipal parking lots and leased premises. Few would question the fact that some of these lands have significant development potential, but the main purpose for any of the considerations is about meeting long-term strategic objectives related to community building. That objective is key to focusing on the transformative opportunities for the community, with a process that provides for appropriate community input.

When Council considered the Staff report back in June, the Administration was directed to **“undertake the creation of a business case to support Council’s interest in enhancing and maximizing the Town’s Strategic Real Estate Assets, with the view that the Midland Bay Landing property be the principle asset, with consideration to establish a process to consider future asset transfers.”** With that objective in mind the Administration coordinated a workshop for the Midland Bay Landing Steering Committee on August 17, 2017. The objective of the workshop was to further explore the options and opportunities associated with Midland Bay Landing within a Municipal Services/Development Corporation.

## **ANALYSIS:**

At the recent Midland Bay Landing Steering Committee meeting, the Committee welcomed two external professionals engaged in land development related activities within the context of the municipal as well as the broader not-for profit area including Hospitals, Colleges and Universities. Mr. Don May, RPP, Ontario Land Economist, as well as John Macintyre, Principle with CRESA Toronto (and formerly with BUILD/INVEST Toronto) made presentations to the MBL Steering Committee, outlining their observations and experiences in similar development related initiatives. The objective for the workshop was to have the MBL Steering Committee focus on a variety of issues including, but not limited to:

- Challenges and Opportunities
- Updates on current studies and initiatives
- “Art of the Deal” – ensure clarity, alignment, transparency and ensure a competitive environment
- Current gaps within the Midland framework
- The advantages of professional development management – options to make the process work smoother
- Short Term and Longer Term Vision – Alignment opportunities
- Master Development Approach vs phased parceling approach
- Multiple Developer Scenario – balancing competing interests
- Governance Models – Control versus Direction
- Possible Municipal Services Corporation (MSC)
- Continuum of Delivery Models
  - Internal Real Estate Structure and Development Capabilities/Capacity
  - New Dedicated Strategic Real Estate Program
  - MDC – Land Preparation and marketing/negotiations (MDC Lite)
  - MDC – End to End Development (MDC Heavy)

- Transaction Options
  - Outright Sale of property in shortest possible time
  - Request for Expressions of Interest
  - Formal Request for Proposals
  - Public/Private Partnership models
  
- Interim Options
  - Experienced Professional Project Manager reporting to Council through CAO – executing on direction from Council
  - Team to be formed with Internal and External Support – critical skills include Real Estate, Planning, Development, Risk Management etc.

Coming out of the MBL Steering Committee were a series of recommendations which are embodied within draft minutes (not formally adopted at the writing of this report). This report will provide some of the context surrounding the nature of those recommendations:

- The Committee expressed support for the creation of the “MSC-Lite” option Municipal Services Corporation, and encouraged staff to give serious consideration toward that option in the development of the Business Plan.
- The Committee also encouraged the completion of the outstanding studies and securing the FCM Green Fund grant opportunity for the purpose of bringing investment certainty to the Midland Bay Landing project.
- The Committee encouraged the Administration to examine options (subject to consideration of any risk management considerations that would bring the public into the site as an interim strategy for the purpose of raising the public awareness and access to the Midland Bay Landing project and additional access to the waterfront.

Administration retained the services of Mr. Don May to advance the development of the Business Case related to the creation of the Municipal Services/Development Corporation. Over the past two months he has completed his research and is in a position to present his findings and suggestions respecting the Business Case. It should be noted that the reference in the attached report, regarding the “*Business Case for a Municipal Development Corporation (MDC)*” should be considered as the Municipal Services Corporation per the *Municipal Act, 2001*.

As a refresher, Council may recall that the previous staff report identified the rationale for the creation of a Municipal Services/Development Corporation under the provisions of the Municipal Act. The Municipal Act provides municipalities with the ability to create municipal services corporation(s). Municipalities have seized upon this opportunity for a variety of purposes, all of which are outlined under O.Reg.599/06 of the *Municipal Act, 2001*. The MSC is then incorporated under the Business Corporations Act Ontario.

The primary purpose for the creation of the MSC is for Economic Development Services and the Regulation defines those purposes as any of the following:

- Promotion of the municipality;
- Acquisition, development and disposal of sites in the municipality for residential, commercial and industrial uses;
- Public transportation systems;
- Residential Housing;
- General Parking Facilities;
- Small Business Counselling;
- Community Improvement Plan Administration;
- Improvement, beautification and maintenance of municipally owned land, buildings and structures;
- Convention and Visitor information bureaus; and
- Provision of culture and heritage systems.

There are numerous municipalities who have undertaken this option for one or more of the reasons noted above.

- City of Ottawa (Ottawa Community Lands Development Corporation);
- City of Guelph (Guelph Municipal Holdings Corporation – including a Community Energy Corporation, Guelph Hydro, and Community Development Corporation);
- City of Toronto (Build Toronto – Designed to enhance Toronto’s competitiveness);
- City of North Bay (Invest North Bay);
- Town of Innisfil (InnServices Utilities Inc.);
- City of London (Housing Development Corporation).

The benefits of a new approach include the opportunity to maximize the “ROI” (Return on Investment) of strategic land assets; separate the role of “policy” and “execution”; separate the “approval” role from the “economic development” interests. The Municipal Services Corporation continues to ensure 100% Municipal Ownership (Council is the sole shareholder). The appointed Board of Directors would bring a “skills based” approach to the table which could be supplemented with some Council Representation. Council as the Shareholder would provide the clarity of direction to maintain the checks and balances through the appointment of both the Directors as well as the Auditors of the Corporation. The opportunity to create the municipal services corporation would also ensure that there is a process and structure that transcends the limitations surrounding the municipal election (i.e. lame duck councils). It would enable the important business to continue in so far as advancing the interests of the community and Council.

So what are the major steps the municipality must undertake if it were to pursue a Municipal Services Corporation?

The following steps summarize with some added commentary the prospective actions that would need to be undertaken by the municipality to create the Municipal Services Corporation:

1. The Town would need to develop a “Business Case” that would set out the nature and purpose, identify the benefits and governance of the proposed corporation (staff anticipate the business case could be undertaken and completed within a 3 to 4 month timeframe).
2. Council is required to hold a public meeting to present the proposal (business case) prior to establishing the corporation. Staff would anticipate tabling the business case until the next regular Council meeting to allow for further public feedback.
3. Following the public meeting Council would consider any additional information gathered through the public information session.
4. Subject to Council’s favourable consideration of the Business Case, direction would be provided to develop the shareholder/governance structure, the draft Articles of Incorporation, and any shareholder declarations to restrict the operations of the MSC, along with the required criteria and skill sets proposed for Board membership.
5. Following the adoption of the above noted items, the Town would proceed to register the Corporation with the Province.
6. Concurrent with the actual filing of the registration the Town would advertise to seek individuals with the approved skills for consideration of appointment to the Board.
7. Once the Corporation was officially registered and Council had reviewed the roster of potential candidates and made the selection of Board Members, we would proceed to hold the Inaugural Board meeting of the Corporation to: (target would be within 1 to 2 months following registration)
  - a. Adopt the Corporate By-laws
  - b. Appoint the Board members, Officers and Auditor for the Corporation
8. Council would also consider a Town policy on the management and transfer of Town owned assets.
9. Develop an Asset Transfer Agreement between the Town and the MSC
10. Council approves the transfer of asset(s) to the MSC

11. The MSC Board of Directors would be empowered to manage the assets
  - a. Develop the MSC's policies and procedures
  - b. Establish financial controls, banking, insurance
  - c. Develop a vision, strategic and communication plan
  - d. Develop and adopt a budget for operations and capital programs
  - e. Implement the strategic plan
  
12. The MSC, through the Shareholder Direction, would provide ongoing regular communications as well as file an annual report with the Town to provide details related to the work it is performing on behalf of the Shareholder.

### **FINANCIAL IMPACT:**

The Consultant's fees will flow through the Midland Bay Landing account and be charged against the future land dispositions related to Midland Bay Landing.

### **CONCLUSIONS:**

Council has a unique opportunity, which is also a strategic transformational community asset, Midland Bay Landing. Creating a governance model that would help to better position and leverage this unique asset is critical for the Town's future success.

### **COUNCIL'S STRATEGIC PLAN:**

Council has established several Strategic Planning Priorities which fit with the objectives outlined in this report. First, Council has, under the Economic Development Pillar, identified the desire to establish a policy for the reuse of municipal assets. The proposed process outlined in the report will enable Council to meet that objective. Secondly, Council has also, through the Organizational Excellence Pillar, embarked upon a Governance Review process. The creation of a new Municipal Services Corporation that allows Council to consider expanding the scope and purpose in the future provides the community with enhanced future options.

Prepared by: John Skorobohacz, Chief Administrative Officer

Input from: Wes Crown, Director of Planning and Building Services  
Andy Campbell, Director of Engineering/Water and Wastewater Services  
M. Susan Turnbull, Director of Finance/Treasurer

### **Attachment:**

1. *Business Case for a Municipal Development Corporation (MDC)*, prepared by Don May, dated October 2, 2017

**Town of Midland**

**Business Case for a**

**Municipal Development Corporation**

**(MDC)**

October 2, 2017

Almost There Inc.

# Business Case for a Municipal Development Corporation

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### Appendix

Managing Surplus Public Real Estate & Potential Models and Precedent Review is taken from the Oakville Business Case Study prepared by Barry Lyons & Associates.



## 1.0 Executive Summary

Almost There Inc. was retained to provide the business case for a Municipal Development Corporation (MDC). This discussion is intended for consideration by the Council of the Town of Midland in consultation with the Community.

The basis for the business case is to provide the Town of Midland with the capacity to develop the Midland Landing property. There are various approaches the Town could consider to maximize value and achieve public goals from the lands. If the Town cannot obtain a master developer agreement with the private sector that achieves the Town's goals - the Town may have to undertake the development management that would allow the Town to obtain maximum value through phasing of the development as the market and Town priorities dictate. While the second option would require more resources from the Town - either option would best be performed through the establishment of a Municipal Development Corporation (MDC) in order to achieve the required expertise as well as being able to deal with the demands required for development management.

It is important to note that the Town will maintain control of its assets and the strategic decisions with respect to its assets – it is the implementation of the process to maximize the assets that is the responsibility of the MDC. The Town decides which assets are surplus or need evaluation for Council consideration.

The key principles for an MDC are:

- the ability to negotiate effectively in the market outside of the political system and manage the day to day tasks required for a development or an agreement of purchase and sale;
- to clearly separate the roles and mandate of Town Staff; and,

- to separate the Town’s statutory approval role from the Town’s role in land development.

In Ontario, municipalities have the authority to establish corporations under section 203(1) of the Municipal Act, 2001 (“The Municipal Act”), *“in accordance with such conditions and restrictions as may be prescribed”*. Those conditions and restrictions are set out in Ontario Regulation 599/06. Section 9(1) of Regulation 599/06 provides that a municipality may establish a corporation for the sole purpose of providing one or more economic development services. In section 9(4)(b) of the regulation purposes include *“the acquisition, development and disposal of sites in the municipality for residential, industrial, commercial and institutional uses.”*

Prior to establishing the MDC, the Municipal Act requires the preparation of a Business Case.

This report provides a Business Case for the establishment of a Municipal Development Corporation (MDC). The MDC would be managed by contract part – time staff under the direction of a Board of Directors, chaired by the Mayor, or designate.

This Business Case reviews the need for an MDC to undertake the various duties required to facilitate development. Some of the duties are described as follows:

- Manage and coordinate the development of the Midland Bay Landing property.
- Develop an annual workplan including a budget for consideration and approval by Council.
- Implement the Workplan.

- Possible additional duties as directed by Council:
  - Review of all municipal assets to maximize their function and Return on Investment (ROI).
  - Investigate the purchase of lands where the municipality should take a more active role in providing opportunities (employment lands or social housing etc.)

## 2.0 Introduction

In 2014, the Town of Midland purchased the Indusmin/Unimin property on the waterfront. The purpose of the purchase was to secure certain waterfront lands for the Town and to facilitate the development of the surplus lands.

The lands are immediately adjacent to the downtown core of the Town and the public harbour. The parcel has a water frontage of over 1,100 metres (3,600 feet) and an area of 16.24 hectares.

It is important to note that the Town has completed an extensive planning process with significant public participation to determine the appropriate land uses for the property. Extensive due diligence has been completed with respect to the shoreline protection and soil remediation required for the site to be developed. These studies will be of great assistance in negotiating agreements with developer / builders as the planning and due diligence completed reduce the uncertainty and delay for them.

This report provides the background and discussion for Council to consider a Municipal Development Corporation. The Business Case supports the incorporation of a Municipal Development Corporation to execute the redevelopment of the Midland Bay Landing site and other opportunities as designated to the MDC by Council.

The study reviews and assesses two basic implementation approaches, using in house municipal staff, or creating a new municipal development corporation (MDC) with a mandate to add value to the Midland Bay Landing. It then develops a recommended approach based on key criteria.

## 2.1 Legislative Context

In Ontario, municipalities have the authority to establish corporations under s. 203(1) of the Municipal Act, 2001, “in accordance with such conditions and restrictions as may be prescribed”. Those conditions and restrictions are set out in Ontario Regulation 599/06.

Section 9(1) of regulation 599/06 provides that a municipality may establish a corporation for the sole purpose of providing one or more economic development services. In section 9(4)(b) of the regulation purposes include “the acquisition, development and disposal of sites in the municipality for residential, industrial, commercial and institutional uses.”

Before the establishment of any Corporation there are two key steps:

- Section 6 of the regulation requires the adoption by the municipality of a Business Case study to establish such a corporation. However, there is no direction or requirement with respect to the scope or content of the Business Case.
- Section 8 states that “Before establishing a corporation under section 3, a municipality shall consult with the public about the proposal to establish the corporation”.

Once established, the Town is required to create policies with respect to asset transfers.

In terms of Board composition, the regulation is not prescriptive as to its make-up, only that the directors and officers of such a corporation shall be deemed to be members for the purposes of the Municipal Conflict of Interest Act.

### 3.0 Managing Surplus Public Real Estate

Federal, Provincial and local area municipalities often find themselves with real estate assets that are surplus to the needs of the public interest. The majority of these residual assets are typically small-scale properties, often associated with roads or other public utilities. However, sites such as the Works Yard frequently become surplus to the needs of the municipalities. Traditionally, these sites would be placed into a public disposition exercise and sold “as is”. Until recently, governments did not have the resources and internal skillsets or the mandate to do anything more. Maximizing value through a competitive bidding process was viewed as a sufficient approach to ensure value was achieved, at minimal risk to the public. For many surplus sites this still remains one of the most appropriate approaches.

However, tightening financial resources and increased costs have made all levels of government reconsider all of their assets, including real estate, and explore opportunities that can increase their value, without unnecessary risks. In the Greater Toronto Area, Ottawa, Calgary and other major Canadian centres, where land values have consistently appreciated, all levels of government are considering tactics to add value to strategic sites.

At the same time, the capacity of the public sector to efficiently address key issues such as servicing and planning makes them well suited to add value and maximize the return of the real estate. In addition, skill sets of public employees have also improved giving greater capacity to implement strategies.

Where the need for value added activities has been identified, governments frequently engage subsidiary corporations to dispense of

surplus real estate.

The following are examples of public corporations with mandates to add value to real estate holdings prior to disposition.

### **3.1 Canada Lands Company, Master Developer Approach, Rockcliffe CFB, Ottawa.**

Canada Lands Company was established by the Federal Government in 1995 to create value then dispose of its residual land assets. Since its creation, it has returned dividends to the federal government of over \$750M. Projects are both large and small. One the largest and most complex project has been the 500-acre former Rockcliffe CFB. With the lands transferred from National Defense to CLC, work began negotiating a complex array of planning, development and first nation's issues. After several years of intensive work that turned raw land into a well- articulated development plan, the first phase of the development was released through an RFP in the fall of 2015 and resulted in exceptional value enhancement.

### **3.2 Build Toronto**

Build Toronto (BUILD) is the City of Toronto development corporation established to maximize value of residual municipal land assets. The property at 10 York Street is a small triangle of land owned by the City and formerly leased for a parking lot. Build sought proposals to develop the land which resulted in an innovative joint venture. In its essence, the joint venture involves Build becoming partners with the developer, in this case Tridel. Build contributes a component of the land value in return for a proportionate share of development profits. In this way, by assuming some risk in the project with Tridel, the City benefits from a much more significant return on the lands than the appraised value of the site.



The initial “as is” value of the property was in the \$6 to 8M range. Build’s revenue expectation from the JV is significantly higher.

Build Toronto, Joint Venture, 10 York Street, Toronto<sup>1</sup> Toronto Waterfront Revitalization Corporation Act, 2002 S.O. 2002, Chapter 28

### **3.3 Waterfront Toronto, Toronto’s East Bayfront**

Waterfront Toronto was created in 2001 by all three levels of government to guide the redevelopment of Toronto’s Waterfront. Local, Provincial and Federal representation all share equal votes (4) on its Board of Directors. In the mid 2000’s Waterfront Toronto began working on a masterplan for the East Bayfront that envisioned the introduction of new parks and open spaces to help overcome its industrial legacy. Other activities have included negotiating new planning instruments, acquiring and consolidating land parcels and facilitating soil decommissioning.

By acting as the Master Developer of this area, Waterfront Toronto has broken down the large area into more marketable development blocks with a supporting street and open space system. In doing so, they have returned a sizeable dividend in terms of increased land value to its shareholder – which has been reinvested into new infrastructure.

The continued interest and emergence of new municipal development corporations across Canada, along with an expanded base of real estate development expertise permeating into government employees, are signs that this trend will continue. In addition, public housing authorities, transit providers, airports and other government agencies are also getting into the act and are aggressively considering how they can leverage their real estate assets to better achieve their mandates. Cases like the Regent Park Revitalization, where development revenues were used to offset the renewal of affordable housing units, are encouraging agencies with similar mandates to do the same.

## 4.0 Potential Models and Precedent Review

There are two principal implementation strategies employed by municipalities for managing real estate:

- In House

Midland, along with other municipalities including Hamilton and Edmonton, manage their real estate assets within the existing corporate structure. How these assets are managed varies widely. In many cases, such as Midland, real estate is aligned with the legal function as much of the transaction work is associated with public right-of-ways. However, there are examples where municipalities such as Saskatoon, undertake land development within the overall corporate structure, with dedicated skilled human resources.

- Municipal Development Corporation

Municipally created corporations, established for the express purpose of managing and adding value to public assets, are relatively common in Ontario with variants across Canada. Toronto, Kingston and Ottawa all have established corporations but how they are managed and their mandates are very different. Some Corporations have very broad mandates that include economic development, while others are confined to real estate disposition.

## **4.1 In House Real Estate Management Precedents**

### *4.1.1 The City of Saskatoon*

The City of Saskatoon has within its corporate structure, a Department of Asset and Financial Management, under which is “Saskatoon Land”. Saskatoon Land is charged with creating, servicing and selling development parcels into the market. They compete directly with the private sector and are the largest landowner in the City. Land is sold through a tendering process with reserve pricing (approved by Council). There are limited opportunities for negotiations. The majority of the land supply appears to be greenfield industrial/commercial and residential lots. Saskatoon Land was not established to sell lands residual to the City needs. It is, in effect, a large land development company that takes raw land, zones, services and sells it. It recently bid on, and was awarded, 155 acres of land outside of the City boundaries for suburban development.

### *4.1.2 The City of Edmonton*

The City of Edmonton has about 9,000 land holdings of which about 30 were determined to be high value and potential seed sites for an MDC. The City manages land through several departments although the “Land Enterprise Group” most closely resembles an MDC. Its mandate, however, is specific to Council endorsed projects with the outcomes focused specifically on public objectives such as affordable housing. The City has been under the creation of an MDC given the number of land assets it has and the inability to create partnerships and potential delays associated with working within the City corporate and political structure. Council recently voted to defer its decision

in the matter until fall. Local development interests have raised concerns about the need for the corporation and the unfair competition it could create.

## **4.2 Municipal Development Corporations Precedents**

### *4.2.1 Build Toronto*

Build Toronto “BUILD” was established in 2008 under the *Business Corporations Act* pursuant to s.148 of *the City of Toronto Act* as result of a City Task force mandated to “unlock value” from City lands. It is an important distinction to note that the mandate is not limited to surplus lands.

The City established and retains the right to change the Board composition. Currently, the BUILD board has ten members which include four city Councillors. The private members are primarily senior real estate executives. BUILD’s offices are located outside of City Hall. The shareholder direction provides specific instruction on how it should work with City staff and other agencies such as Waterfront Toronto.

BUILD is required to have a Business Plan, make quarterly reports to the City, as well as an annual report.

Staffing levels have varied over the years but include a full complement of real estate and development planning professionals. BUILD activities have been divided between disposing of City assets after resolving comparatively minor issues to very significant and complex real estate projects. After several years of delivering significant dividends to the City it has been recently criticized publicly for lack of performance. However, the reality is that Build has been focused on the more complex sites that will take time to realize value for the City. BUILD is perhaps the best example of an MDC in that has a very clear mandate and is operationally separate from

the municipal government. Even so, it is important to note that conflicts at both a staff and political level arise from time to time when the Build mandate to maximize value runs counter to broader City objectives.

#### *4.2.2 The City of Ottawa*

In October 2007, Ottawa City Council approved the establishment of the Ottawa Community Lands Development Corporation (OCLDC). Similar to the concept of the Works Yard, the OCLDC was created with a very focused mandate. To facilitate a 50-hectare expansion of an existing “Longfields Subdivision”. Later, the Centrepont Town Centre, a mixed-use, development was also added to their mandate.

The following summarizes its initial corporate structure:

A development corporation with the City as its sole shareholder;

- A work unit, within the City of Ottawa’s Real Estate Services Division with capabilities to do real estate development, was established as the core staffing resource to the OCLDC. To this end, the City established the Real Estate Partnerships and Development Office (REPDO);
- Minimum of five (5) members of the City Council to be members of the board of directors of the corporation;
- Initial officers of corporation appointed by the City Manager from members of City’s Executive and Senior Management teams;
- Corporation projects are undertaken only in accordance with objectives and development plans approved by Council;
- Budgets of the corporation are subject to Council approval;
- Properties and facilities are purchased by the corporation from the City on the basis of market value at the time of the purchase;
- Funding for the corporation, including funds for land purchases from

the City are provided by the City on a loan basis subject to repayment by the corporation, as a first priority, from the net proceeds of its development projects;

- Services provided by the City to the development corporation are in accordance with approved City policies and procedures except where otherwise authorized by Council and the Board of Directors of the corporation; and,
- The mandate of the OCLDC is to promote responsible and innovative developments that enhance the City's ability to respond to changing market demands and further the City's public policy objectives by building strong neighbourhoods.

When positioning underutilized surplus City land or property for development the OCLDC uses the four pillars approach that emphasizes a concern for:

- Financial: For fiscal 2014 the corporation generated \$56M in gross sales revenue, paid \$35M as a net dividend to the City and added approximately \$5.5M to the annual property tax revenue;
- Social: For fiscal 2014 the OCLDC facilitated the development of 1,800 new residential units meeting the needs of various demographic groups;
- Environmental: For fiscal 2014 OCLDC protected 17 hectares of natural environmental area and dedicated additional parkland; and,
- Cultural Sustainability: Provided lands for institutional and community uses. The Ottawa precedent offers a shared resources model where the OCLDC is virtually integrated into the City but still has autonomy.

### 4.2.3 *The City of Guelph*

The City of Guelph also has an initiative to create an MDC but has yet to be realized for its intended purpose.

The City of Guelph is the owner of a large industrial subdivision described as Hanlon Creek Business Park. The project covers about 150 acres of land, much of it a provincially designated Area of Natural and Scientific Interest. To manage the development of the lands, the City hired an experienced real estate development professional. The responsibilities of this person also included the economic development mandate of the City.

During the approval process of the industrial subdivision challenges began to emerge between staff who had competing mandates and interest. Principally, it appears that the economic development mandate to create jobs and tax assessment ran head long into planning objectives such as environmental protection. While staff worked co-operatively together they were not unified in their approach. The subdivision was appealed to the Ontario Municipal Board by local environmentalists which made the issue all the more acute. The hearing was eventually settled and the development is well underway but problems associated with planning approvals as well as negotiating with developers highlighted the need to explore alternative approaches.

At the same time, the City was also considering a major Secondary Plan for its downtown as well as dealing with a large contaminated site that it had obtained through tax arrears (IMICO). The CAO at the time led an initiative to create a MDC that would act independently from Town staff allowing a clear distinction in roles. The MDC would also have latitude to negotiate land transactions without Council's approval, subject to pre-approved guidelines.

In 2014 Council approved a Business Case study supporting the creation of the development corporation. However, the new development corporation has yet to be established pending structural issues with the Board of the Guelph Holding Company – which also manages Guelph Hydro. No work has been done on the board compositions, staff, resources or which lands would be handed from the City to the development corporation.

In the meantime, the General Manager, Business Development and Enterprise has been given authority by Council to negotiate and transact business terms and purchase prices of land within the Hanlon Creek Business Park within pre-approved guidelines.



## 5.0 Key Issues

In considering whether or not to incorporate an MDC, you should assess and evaluate how this could be accomplished within the existing staffing and organizational structure of the Town, or whether a separate Corporation, wholly owned by the Town, is required. In this analysis, the following key issues have been identified as factors for success that should be inherent in the most suitable approach.

- Ability to respond and negotiate with the private sector outside of the political system.

Development requires a different operational organization from government to respond to the requirements in a faster manner. To a large extent, this issue may be overcome by delegating authority to staff to negotiate within certain terms/limits. In the master developer approach, this capacity to negotiate outside of the political system is viewed by the private sector as a significant advantage.

- Separation of statutory approval responsibilities.

The Town should not be viewed as having a conflict of interest with the statutory approval responsibilities or the general responsibility to protect the public interest.

- Ability to execute agreements.

A municipality cannot sign agreements with itself which could restrict the ability to enter into some forms of developments.

- Responsiveness to Council.

Market, economic and environment factors may also cause a need to reconsider the approach to the land. A balance is required between Council oversight and the ability to respond to changing conditions.

- Role and Capacity of Town Staff.

*There are three issues:*

1. *Existing staff workload*
2. *Staff skill sets*
3. *Conflict of duties*

- Support of other Municipal Objectives.

*There may be objectives by the Town which need to be incorporated into the development strategy. These are important to be documented and kept up front in the development implementation.*

- Cost effective and profitable.

*The development also needs clear budgets to maintain cost control and measurable goals and objectives for annual evaluation.*

- Ability to Manage Risks.

*Anticipating and identify risks must be managed with mitigating strategies.*

- Ability to appoint experienced individuals to the Board of the MDC to assist the Town in achieving the goals set out by Council.

## 6.0 Continuum of Delivery Models

Given the key issues identified in Section 5.0 and the above precedent review, a comparison of the delivery models was provided by CRESA (John A. Macintyre). With respect to the need by the Town of Midland to manage the development of the Midland Landing property – the MDC (lite) has key advantages for the use of an MDC:

- Municipality is able to obtain the skill sets required to develop the property effectively.
- Ability to respond and negotiate with the private sector outside of the political system.
- Separation of approval responsibility.
- Ability to execute agreements.
- Role and capacity of Town staff is optimized.

# Continuum of Delivery Models



## Existing Real Estate Structure and Development Capabilities

- Status Quo
- Primary Management Role but without significant value creation expertise or activities
- Typically rewarded for stewardship and management, not innovation or risk taking

## New Dedicated Strategic Real Estate program

- New dedicated individual or group, or retooling of existing team with an executive "champion"
- Focus on value creation and achieving strategic outcomes
- Include Economic Development, Planning, Real Estate and Finance partners.
- Would need enhanced delegated authority and structures to be able to transact in an efficient manner

## MDC – Land Preparation Only (MDC Lite)

- Small dedicated external corporation
- Target to enhance and unlock value on a small number of sites
- Primary "front end" of the development cycle and would vend or JV land with private developers

## MDC – End to End Development (MDC Heavy)

- Larger corporation and board with more capacity (and overhead)
- Target more of an "end to end" development role and would actively JV with developers
- Higher risk and higher overheads but if sufficient land assets and throughput then it can be supported.

Increased Risk, Reward and Overheads

John Macintyre, principle with CRESA provided this summary to the Midland Landing Steering Committee August 10, 2017

## 7.0 Recommended Approach

Ideally a Master Developer Approach is the preferred option however that may not be available to the Town and other alternatives may have to be considered such as a phased approach to developing the land in stages. Staged agreements are easier to negotiate given the variables and complexities are reduced.

- The MDC should pursue the possibilities for a Master Developer Approach.
- The MDC should also pursue possible phasing with different developers and different requirements.
- The MDC should report to Council as set out in the workplan. Initially the reporting may be more frequent given the need for iterative collaboration before the development proceeds.
- This approach also allows greater control over the achievement of community objectives, as they are defined now, and how they may evolve in the future.

## **7.1 Mandate**

The mandate of the MDC should be to maximize the value of the Midland Landing property in both financial and non-financial terms. The opportunity for the MDC to take on additional projects could also be provided for. The mandate, and any other core operating instructions, should be incorporated at the time of the development of the Shareholders Directions.

## **7.2 The Board of Directors and an Advisory Committee**

- The Board of Directors should be composed of the following:
- The Mayor (or designate);
- The Chief Administrative Officer (or designate); and,

Three additional members - Councillors or community members with experience in real estate development.

The administrative support would initially be provided through the Office of the Chief Administrative Officer.

The expertise of the MDC can be supplemented by establishing an Advisory Committee composed of members of the Executive Management Team. The Advisory Committee would provide a link to, and an opportunity to consult with key Town staff on issues and seek advice when and where necessary. It is suggested that the Advisory Committee would meet monthly or as frequently as required by the nature of the consultations required by the Board.

### **7.3 Council Reporting**

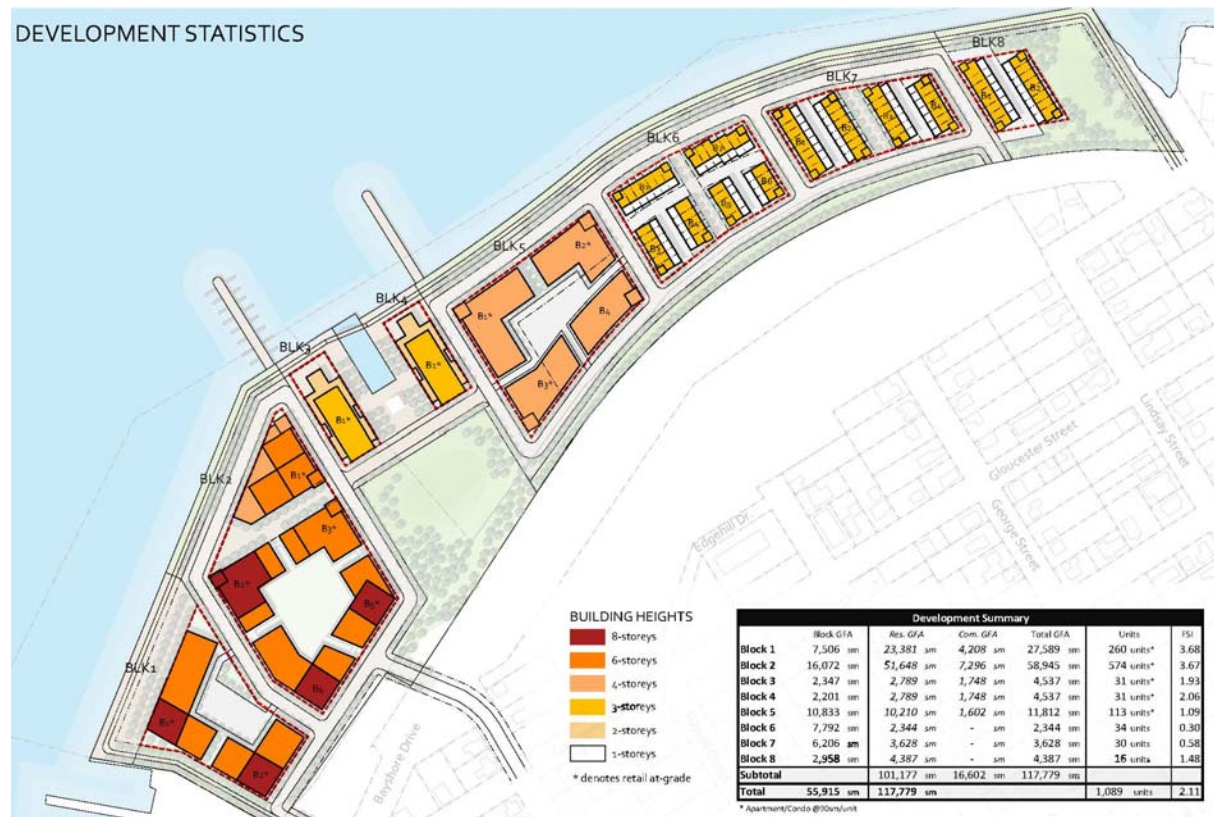
Council reporting would come annually in the form of a Business Plan – or annual report. Each year, the MDC would report on the previous year’s Business Plan results compared to projections, and identify adjustments for the forthcoming year’s plan for Council’s approval.



## 8.0 MDC Preliminary Real Estate Strategy

The real estate strategy is to develop the Midland Bay Landing property within the planning framework and approvals of the Town of Midland. The MDC would also be responsible for the delivery of the necessary road and servicing infrastructure as well as other public uses such as park space. In other words, the entire development including the public open space, remediation and shoreline protection are the responsibility of the development.

**Figure 3 - The Master Plan Concept**



Appendix One is a list of all the background studies completed by the Town for the Midland Landing property.

## **9.0 Proceeding to Establish a MDC**

### **9.1 Development of a Detailed Budget**

The first step towards the creation of an MDC is for the development of a detailed budget. This budget should set out both the internal and external costs for the management and negotiations of the agreements required with the private sector to develop the property.

Council must also approve the corporate bylaws and governance policies for the MDC.

### **9.2 Council and Public Meeting**

If Council chooses to proceed with an MDC – the following steps are required:

- A public meeting, as required in Ontario Regulation 599/06, to solicit community input which could be a regular council meeting duly advertised for the purpose of considering the Business Case, and,
- Allocate budget to undertake the preliminary requirements of securing a required support for the execution of the assigned tasks (likely in the form of a development manager (on a part time or contract basis).

### **9.3 Council Direction to Incorporate MDC**

With the results of the public consultation, staff would report back, with any recommended changes to the Business Case to Council for final consideration and seek:

- Authorization for the incorporation of the MDC; and,
- Undertake the search for a Development Manager.

## 9.4 Preparation of Inaugural Business Plan

The MDC Board with the Development Manager would take the outcomes of masterplan process and incorporate them into the inaugural Business Plan for eventual Council approval. The Business Plan will be based on:

- The views of Council and the public;
- The Development Manager's real estate/development experience; and
- Market research.

The Inaugural Business Plan would include the following core activities:

- Pro forma with costing for roads and servicing for the entire project – including public parkland development, soil remediation and shoreline protection;
- Refine the real estate development strategy including provisions for both a master developer partnership and a phased alternative approach;
- Update/creation of the operating budget and refine funding requirements and dividend forecast if appropriate - assess how dividend should be deployed; and,
- Identify key risks and mitigating strategies.

## **9.5 Council Direction and Approval**

This plan would form the basis of a final review of the MDC for Council's consideration. It would clearly articulate the mandate, operating strategy, outcomes, risks and other matters for their approval and authorization to execute.

## **9.6 Staff**

The MDC would only require a modest staff consisting of a part time project manager. This individual would rely on technical guidance from Town Staff but operate independently and report to Council through its Board of Directors. The MDC would hire expertise to assist with work activities if, and when, required.

### **9.6.1 Development Manager**

Implementing the real estate strategy for the Midland Bay Landing property will require the leadership of a senior professional, who has experience in real estate development and transactions. This should be a person with extensive direct real estate finance/transaction/legal experience in large scale developments.

The Development Manager will be responsible for the leadership of the MDC by:

- working closely with Town staff in the master plan design development;
- retaining and managing consultants;
- negotiating development agreements or performance criteria with Town Staff and subsequently with the private sector;
- leading market soundings and promotional activities;
- leading the preparation of the Business Plan for Council approval;

- leading negotiations with purchasers;
- leading all transactions; and,
- financial reporting.

This position could likely be fulfilled on a part-time, two-to-three-day work-week basis, based on the current mandate and the Midland Landing project.

Once the inaugural Business Plan has been approved there will be a need for the development manager to address the day to day work associated with the master plan development approval, lot creation, marketing of sites, and managing disposition activities such as requests for proposal. This would be a part time position, possibly on a contract basis.

### **9.7 Relationship with Town Staff**

Town staff will be responsible for the review and approval of all Planning Act applications as well as the design review and approval of all new public infrastructure including parks.

The MDC will not rely on Town Staff to undertake work on its behalf. This could lead to conflicts in professional staff mandates. However, the MDC will rely on the Board of Directors as well as an Advisory Committee (AC) for direction. The AC, in particular, will help ensure that there is good communication between the MDC and other departments and that the MDC operates within the Town's policies. The AC will also help ensure that opportunities exist for synergies between the objectives of the MDC and the broader objectives of the Town.

## **10.0 Risk and Mitigating Strategies**

### **10.1 Risk of Failure**

In most businesses, for a variety of reasons, failure is a possibility. The Town has proceeded in a “step wise” fashion that has assessed development issues and possible problems at each stage. As issues have emerged, they have been addressed and set the stage for deeper analysis. There are still several more activities that will occur towards the development of the MDC, namely the Master Plan and Business Plan processes that will continue to refine the approach and mitigate potential downstream issues.

### **10.2 Market Risk**

The demand for urban waterfront land, in desirable communities such as Midland, is projected to remain strong. However, real estate by its very nature, is cyclical and highly sensitive to macroeconomic influences such as interest rate and employment trends. A key risk to the MDC and the Town of Midland is a softening real estate market, However, the very small structure of the MDC, and its reliance on consultants and contract staff make it nimble enough to slow or shut down its operations in the event the market weakens. It is, in fact, a key advantage of the MDC to be able to sell lands as the market dictates.

### **10.3 Environmental Risks**

The potential for discovery of a yet unknown environment problem is a possible risk. The due diligence work to date, have scoped the potential environmental issues to a relatively small sector of the site.

#### **10.4 Political Risk**

Inherent in any municipal activity are the risks of political change that alter the “culture” and historical practice of the Town. The purchase of the Midland Bay Landing property was a significant commitment made by the Town that now requires certain decisions to achieve the responsibilities of that purchase.

#### **10.5 Development Risks**

There are a wide range of risks associated with real estate development. Development costs can easily increase and market conditions can fluctuate, eroding the profitability of the development. By engaging experienced people both in terms of management and oversight there is more risk management by the Town in achieving the goals and objectives of the Town. The governance structure of providing checks and balances between the MDC and the Council are necessary to protect the municipal interest yet obtain the expertise and nimbleness of a MDC.

## 11.0 Summary

The potential for value creation and the benefits of an arm's length corporation to improve negotiating abilities and to separate the Town's statutory approval role from a role of land development underpin the rationale for the creation of an MDC.

This Business Case for an MDC suggests a very small organization with a part time project manager. The MDC would report annually to Council in the form of a Business Plan. The annual business plan would provide the basis for Councils authorization to proceed with the next year's work.

The sale of these lands is expected to cover the costs of the property acquisition including capital carrying costs and the required servicing infrastructure for the entire site and seed the overhead costs of the MDC.

The next step in this project will require initial funding to develop the detailed budget and retain the Development Manager. The budget for this initial work is estimated in the range of \$25 to \$40k.

The initial 12-month workplan and the successful selection of the Development Manager is critical to the success of the MDC.



## Appendix One

### Background Studies

Study	What and By Whom	Status
<b>Topographical Survey</b>	Dearden & Stanton Surveying Inc. A detailed topographical (contour) survey of the entire site.	Complete and delivered to the Town in both hard and electronic formats.
<b>Geotechnical Study</b>	Peto MacCallum Ltd. A preliminary geotechnical investigation of the Midland Bay Landing site providing guidance recommendations concerning foundations and floor slabs, site fill, pavement design and construction, excavation and ground water control, etc.	Complete and delivered to the Town in both hard and electronic formats.
<b>Shoreline Engineering Study</b>	Shoreplan Engineering Limited. An assessment of shoreline conditions and recommended treatments.	Town has received the draft Report. Shoreplan is conducting limited additional field investigations and are scheduled to complete the final report by end of September 2017.
<b>Risk Assessment Study</b>	PGL Environmental Limited. The Risk Assessment study addressing the development of this brownfield site.	Town submitted FCM Green Municipal Fund (GMF) application 20-07-17. FCM has indicated a decision is likely within 4 months of submission. RA Study is contingent on FCM-GMF funding approval for 50%.
Previous Work/Study		
<b>Absolute Title</b>	Survey and legal work to convert lands to Land Titles System. Dearden & Stanton Surveying Ltd. & HGR Graham Partners LLP	Completed.
<b>Phase I and Phase II ESAs</b>	Pinchin & Associates. Required studies enumerating environmental soil conditions and full contaminants of concern.	Completed (prior to acquisition).
<b>Supplemental Phase II ESA</b>	Stantec Inc. Additional site characterization work to enumerate and estimate quantities of contaminants of concern.	Completed (prior to acquisition).