



STAFF REPORT

DEPARTMENT: Administration

CHAIR: Councillor G. Canning

DATE: November 27, 2017

REPORT NO.: **CAO-2017-30**
**Municipal Services/Development Corporation - in Support of the
Future Development of Midland Bay Landing**

RECOMMENDATION:

That Council Receives Report CAO-2017-30, being an update on the status of the public engagement related to the proposed Midland Bay Landing – Municipal Services/Development Corporation, dated November 27, 2017; and

That Council supports the creation of a Municipal Services/Development Corporation for the purpose of advancing the Midland Bay Landing development; and

That Administration be AUTHORIZED to proceed with the INCORPORATION of the new entity; and

That upon registration of the new company, the Administration be requested to provide Council with a proposed SHAREHOLDER DIRECTION as well as the BOARD of DIRECTORS skills and competency matrix/profile along with a recruitment strategy.

BACKGROUND:

Midland Bay Landing (formerly the Unimin Lands) is a 16.24 hectare waterfront redevelopment property. The property is comprised of almost 1,100 metres of frontage on Midland Bay, part of Georgian Bay; the site is adjacent to Downtown Midland. In June 2013, Council approved the *Unimin Waterfront Lands Master Plan* to guide the future redevelopment of this brownfield site. As part of a visionary approach and to ensure that this important waterfront property be developed in accordance with the planning vision, the Town of Midland acquired the site on July 15, 2014 for a purchase price of \$3.4 million.

Midland Town Council established a Waterfront Development Steering Committee as a means to provide input in guiding the project's progress. The Town engaged in an exercise to identify potential developers through a Request for Expressions of Interest in July 2014.

The Town made a selection and began the journey with a Memorandum of Understanding to form the basis of the future development obligations.

Unfortunately, despite the best of efforts to advance the project, Mutual Full and Final Releases between the Town of Midland and Mountain Ridge Estates Development Inc. (an affiliate of Consar Building Corporation), in respect of the termination of the two-year old agreement for the Midland Bay Landing development, were executed in April 2017.

The termination of the agreement has afforded the Town (through the Midland Bay Landing Steering Committee) to step back and re-evaluate the project including the opportunity to examine alternative options that would enable the Town to manage this significant waterfront development opportunity. Over the course of these past several months, your Midland Bay Landing Steering Committee has undertaken a review of the various options pertaining to measures that would advance the Midland Bay Landing site. The analysis section of this report covers some of those options as well as the recent “unsolicited proposals” to acquire the subject lands.

In addition, the Town has used this period of time to advance a number of the foundational background studies required for the advancement of the project. Council may recall in June of this year, Administration was authorized to proceed with a series of technical studies that unfortunately were not completed by the previous developer. Some of the “next steps” recommended by the Midland Bay Landing Steering Committee included the completion of Shoreline Engineering Study, Geotechnical Study, RA/Environmental Conditions Study and a Topographical Survey report.

Staff Report PL-2017-41 recommended that the Town undertake and complete a limited number of the foundational studies given those studies would provide significant technical and future development support to the Town as it moves forward with the Midland Bay Landing site. Council will also recall that we identified the potential for a Federation of Canadian Municipalities/Green Fund grant to assist with defraying the costs for certain aspects of the above noted reports. Council will receive an update respecting the status of these efforts by way of a separate staff report (PL-2017-74 Midland Bay Landing – FCM Green Municipal Fund Grant).

ANALYSIS:

Once the Town hit the “pause-button” with the Midland Bay Landing development proposal, the Midland Bay Landing Steering Committee wanted to re-engage to determine how best to address the situation and determine what lessons could be applied going forward. As a result, the Steering Committee undertook a half-day workshop on August 17, 2017. The workshop agenda included two key parts. The first part of the agenda addressed the current context of the property including an examination of the challenges and opportunities. The second half of the workshop was more focused on the short vs. long term strategies along with consideration of the type of organization structure and resources that could best achieve the desired results.

The following summary is extracted (in part) from the MBL Steering Committee Minutes dated August 17, 2017:

“Following the presentation by Don May* and John Macintyre**, the Committee members engaged in roundtable discussion reaching consensus on the following go forward items:

The Committee supports the development of the “MSC-Lite” option Municipal Services Corporation, and requests staff consider that option as the Business Plan for the MSC is being developed for future consideration (timeframe 2-3 months).

Completion of the outstanding studies and secure the FCM Green Fund grant opportunity for the purpose of bringing investment certainty to the Midland Bay Landing project (timeframe 3-6 months).

Subject to ensuring that any environmental risks are appropriately addressed Administration put forward an interim strategy for the Midland Bay Landing site for the purpose of bringing the public to the waterfront and developing both the awareness of the Midland Bay Landing project and allowing greater access to the waterfront. That the proposed plan be incorporated into the 2018 budget process for Council’s consideration (timeframe 6-12 months).

That subject to the acceptance of the Business Plan for the MSC – Lite option the appropriate resourcing be identified to ensure the future success of the MSC and the funding proposal be included in the 2018 Budget deliberations (timeframe 4-6 months).”

**Mr. May is both a Registered Professional Planner and an Ontario Land Economist who has been instrumental in facilitating a large scale development over a number of years on behalf of a hospital board in Hamilton Ontario. Co-author of AMO handbook – Council Member’s Toolkit - A Practical Guide to Evaluating Municipal Asset Management.*

***Mr. Macintyre is a principal with CRESA Toronto which is a large commercial real estate firm that specializes in representing tenant interests. Mr. Macintyre has a strong background in strategic real estate development, having spent five years as Senior Vice President of Build Toronto, the City of Toronto’s real estate development corporation, where he was responsible for a range of development projects. His other public sector leadership roles include Invest Toronto (Toronto Economic Development Corporation).*

Based upon the input from the Midland Bay Landing Steering Committee along with Council’s Strategic Planning Priorities, Administration presented Report CAO-2017-25 on October 10, 2017, which was intended to advance Midland’s Strategic Real Estate Assets.

Within a framework of innovation and compliant with the tools available to municipal councils, the proposed Municipal Services/Development Corporation Business Case was presented for Council’s consideration. On October 10, 2017 Council directed the CAO and our Consultant, Mr. Don May, to host a public information meeting for the purpose of receiving public feedback on the concept and to report back to Council with the results.

The balance of this report will address the public information meeting held on Monday October 30, 2017. A number of interested residents (including Council Members) attended the open house. Mr. May, along with Wes Crown (Director of Planning and Building Services) and John Skorobohacz (CAO) made presentations respecting the Midland Bay Landing Project.

Mr. Crown addressed the planning related work that Council and the community had undertaken since the property was acquired. In addition, he addressed the nature of the various studies which the Town was in the process of having completed.

Mr. May spoke about the nature of the development industry, and why the proposed Municipal Services/Development Corporation was an appropriate vehicle within which the Town could deliver upon the planning/community building vision it had created. He also noted that the concept of such a corporation was not new. He identified a number of Ontario municipalities which have initiated such an approach; as well he noted that similar municipal corporate structures operate in Western Canada (notably Saskatoon, Edmonton and Calgary). Mr. May addressed the concept of a full master development process vs. a phased approach, and the pros and cons of such an approach for the development of the Midland Bay Landing property.

The CAO addressed the governance model associated with the Municipal Services/Development Corporation and noted that the Corporation would act in the capacity as a Trustee on behalf of Council given that ownership of the lands would remain under the control of Council until such time as the development details had been fully flushed out. The CAO also addressed the requirement to establish a skills-based Board of Directors which would be appointed by Council. In addition, the control over the Corporation would be established through the creation of the Shareholder Direction which would guide the Corporation and establish the working relationship between the Shareholder (Council) and the Corporation. The Shareholder Direction would also establish a reporting mechanism for the Corporation to provide regular updates to Council.

There were a number of questions asked by those in attendance. A brief synopsis of the nature of the questions including a short response follows:

- 1. Should we complete soils/environmental studies to determine soil contamination now rather than wait to find buyers? Also are there potential grants available to help offset the costs of these studies?*

The original development agreement called upon the developer to complete the studies; unfortunately they failed to complete them. Yes, it would be both helpful as well as add some certainty to the development process to have these studies completed before we engage a future developer.

Yes, there are some grants available and the Town has made application to access these funds. We hope to be able to report favourably on our efforts before the end of the year.

2. *How would you determine the phasing of the Midland Bay Landing development?*

In large part the market place will be a significant driver in determining the phasing strategy. The Corporation will need to have a good understanding of the demand for commercial vs. residential development opportunities in Midland in order to properly assess how best to present the phasing options.

3. *Will the shoreline protection/walkway have to wait to be built until the entire project is built out?*

Ideally the shoreline protection and public realm will advance concurrently with each phase of the development, however the Corporation may look at how best to incent the development of each phase as a means to achieve the completion of these works in the most economical and efficient manner.

4. *What is Council's role in decision making if we have a Municipal Services/Development Corporation?*

Council remains 100% owner/shareholder of the Corporation, Council appoints the Directors, and oversees the work of the Corporation through the Shareholder Direction.

Council remains the approval authority for all of the related planning and development applications. Council holds the Corporation accountable for delivering on the vision for the project. Council is removed from the day-to-day decision making and the negotiations with potential development interests. The Corporation has the ability to continue to advance the work on behalf of Council regardless of other initiatives which may from time to time distract Councillors. (e.g. municipal elections).

5. *What was the cost to purchase MBL in the first place?*

The lands in question were acquired at a cost of \$3.5 Million.

6. *Have we received other expressions of interest/offers to purchase since the original deal has unravelled?*

Yes. In fact the Town does continue to receive offers and expressions of interest for the Midland Bay Landing project. As those offers are received the obligation of the Administration is to present the details of these offers to Council. Council then evaluates the information to determine the appropriate course of action. That process will continue up to the point that the new Corporation is put in place. Once the new Corporation is in place along with the Board of Directors, then Council would assign the responsibility to the new company to undertake the evaluations of any future offers.

7. *If we receive other offers for the entire property will we consider them now or just do the MS/DC?*

Yes currently Council considers all offers and expressions of interest. See response to Question #6.

8. *Why an MS/DC rather than the current committee?*

The Midland Bay Landing Steering Committee's mandate is to consider and provide recommendations to Council on the overall Conceptual Plan, including Architectural

Guidelines, Urban Design Guidelines and other related special projects, in accordance with the Waterfront Masterplan. In addition the Committee is to work with the private developer to develop a public communications plan for communication during the design and development phases of the development and provide regular updates to Council.

The Corporation would have significantly greater responsibilities as it relates to the overall negotiations and oversight of the proposed development. The Corporation would be tasked with actually running any public procurement initiatives to secure proponents for the project and any phases thereof, negotiate terms of any potential agreements, establish the timelines and deliverables respecting each phase of the project, etc. The subsequent Shareholder Direction is proposed to set the scope and range of responsibilities that the new company would be tasked with.

9. Do you have some idea as to the cost to start up the MS/DC (project manager, support staff, office, etc.)?

It is anticipated that all of the costs to start up and operate the MS/DC would be fully recoverable from the actual proceeds of the sale of the lands.

The costs and expenses for a part-time Executive Director/Project Manager are estimated to be approximately \$60 - \$70K/yr. Additional costs respecting support staff would be kept to a minimum and likely provided through the Town (with some minimal recovery at \$10-\$15K/yr).

10. Why can't we just have staff do the work and go through Council for approvals?

There are two reasons that using existing staff resources to undertake this work is not practical. First, let's consider the fact that currently the Town is responsible for all development approvals. Therefore the staff that most likely would be advising and guiding the process would in fact be the same who would be engaged in reviewing and recommending the approvals of the applicable development proposals. This would place the staff in direct conflict with their regular responsibilities. In addition, it would subject the staff to accusations that they are favouring the development proposals because they have a hand in shaping those same development proposals.

Secondly, land development requires a certain set of skills which are not typically found within the municipal administration. Although our staff have expertise in land use planning, engineering, service delivery, etc., we are not land developers and do not bring that mindset and skill-set to the table. If we are seeking to ensure that the Town maximizes the return on the proposed development then we will require the expertise that will help us achieve that potential. Recruiting someone into the municipal administration with that skill-set could be an option, but it once again would mean that each level of the development process as previously identified would be back into the same framework. Unfortunately, the speed at which business decisions need to be made does not favorably align with the governance model under which the Municipal Council operates.

11. Would we consider a hotel chain for one of the phases?

The options are wide open for the MS/DC to consider a range of potential investments. The new corporation would evaluate each opportunity as it arises and make their recommendations based upon the nature of the investment proposal.

12. How will we ensure transparency and openness for residents, and an opportunity for Council to be part of decisions?

The new Corporation would operate similar to the MPUC. The Town has been the sole shareholder of the MPUC for many years and has operated and provided hydro services to the community over the years. Council and the community have been apprised of the operation of the MPUC in a transparent and open manner. Similarly, Council, through the Shareholder Direction, will have the ability to establish a formal reporting relationship that will create the opportunity for the Corporation to report on the progress of the project.

Keep in mind that certain matters would remain confidential as in any negotiations until such time as the parties have mutual agreement on the terms. We should also bear in mind that Council will continue to retain ownership of the lands on behalf of the municipality. The new Corporation would be acting as Council's trustee in advancing the project and the development objectives.

13. Will any future development be trying to achieve the same level of public space as the original agreement that the Town had negotiated?

The Master Plan sets out the vision for the site and includes the desired open/public space amenities. Council's vision for public waterfront access is a cornerstone of the Midland Bay Landing Project. Of the almost 40 Acres of Waterfront lands the public shoreline walkway and public park area encompass almost 4.45 hectares (11 acres), or 27% of the overall site. Clearly the intention of Council is to ensure the continued waterfront ownership and access, and public amenities are a legacy for the community to enjoy well into the future.

14. How will the Board Members be selected, and will there be any remuneration for their efforts?

Following the incorporation of the new entity, the Administration will be tasked with preparing a skills matrix for the appointment of board members. Clearly there will be a need for individuals to have certain key skills. Some of those skills may include: experience with complex business strategies, senior level experience in real estate, property development, waterfront community development, brownfield re-development, investment industry, environmental sustainability, etc., and backgrounds in law, finance risk management, urban planning, engineering, etc.

The question of board remuneration has yet to be determined.

15. What are the anticipated next steps?

Subject to Council supporting the concept of moving forward with the Municipal Services/Development Corporation, the Town would proceed with the incorporation documentation and submit the details to the Province for both notice to the Province, as well as for the purpose of incorporation of the entity.

In addition, Administration would be working on the applicable Shareholder Direction, setting out the expectations for the Corporation and the reporting relationship. Work would also commence on the creation of the skills and competency matrix for the Board Members along with a recruitment strategy for Council's consideration. It is anticipated that this phase of the process would be completed by end of the first quarter of 2018, and recruitment would be concluded shortly thereafter.

Since the original development agreement was mutually terminated by both parties, the Town of Midland continues to receive expressions of interest (offers to purchase) as noted in the Q & A section above. In all cases, the Administration presents these unsolicited proposals to Council for its consideration. To-date Council has not demonstrated any desire to deviate from the longer term commitment to realizing the master vision for the Midland Bay Landing property. Once the new entity is created and the Board is populated, any future inquiries would be directed to the Municipal Services/Development Corporation.

COUNCIL'S STRATEGIC PLAN:

Under the priority of ***Economic Development and Tourism***, it is clear that the Midland Bay Landing project holds the potential to be a significant economic driver for the Town and holds a key place in the future of the Downtown revitalization. Council has remained focused on ensuring the long term success of this project.

CONCLUSIONS:

As a number of studies continue to unfold the prospects for the Midland Bay Landing project remain very promising. The Business Case which has been presented to Council and the community provides a fresh opportunity for the project to gain new life and strategic focus.

Council is being asked to support the creation of the Municipal Services/Development Corporation to support the development potential and future success of this prime waterfront opportunity.

FINANCIAL IMPACT:

The estimated annual costs required to advance the initiative as outlined is within the range of \$70K to \$85K. These expenditures are proposed to be added to the balance of the internal loan and would be recovered through the early phases of the development.

Prepared by: J. Skorobohacz, Chief Administrative Officer

With input from: Wes Crown, Director of Planning and Building Services
Andy Campbell, Director, Engineering, Water & Wastewater

Attachment

1. Business Case dated October 2, 2017, with Addendum dated November 16, 2017

Town of Midland

Business Case for a

Municipal Development Corporation

(MDC)

October 2, 2017
with Addendum dated Nov. 16, 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.

Addendum (November 16, 2017)

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, Toronto¹ 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



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.

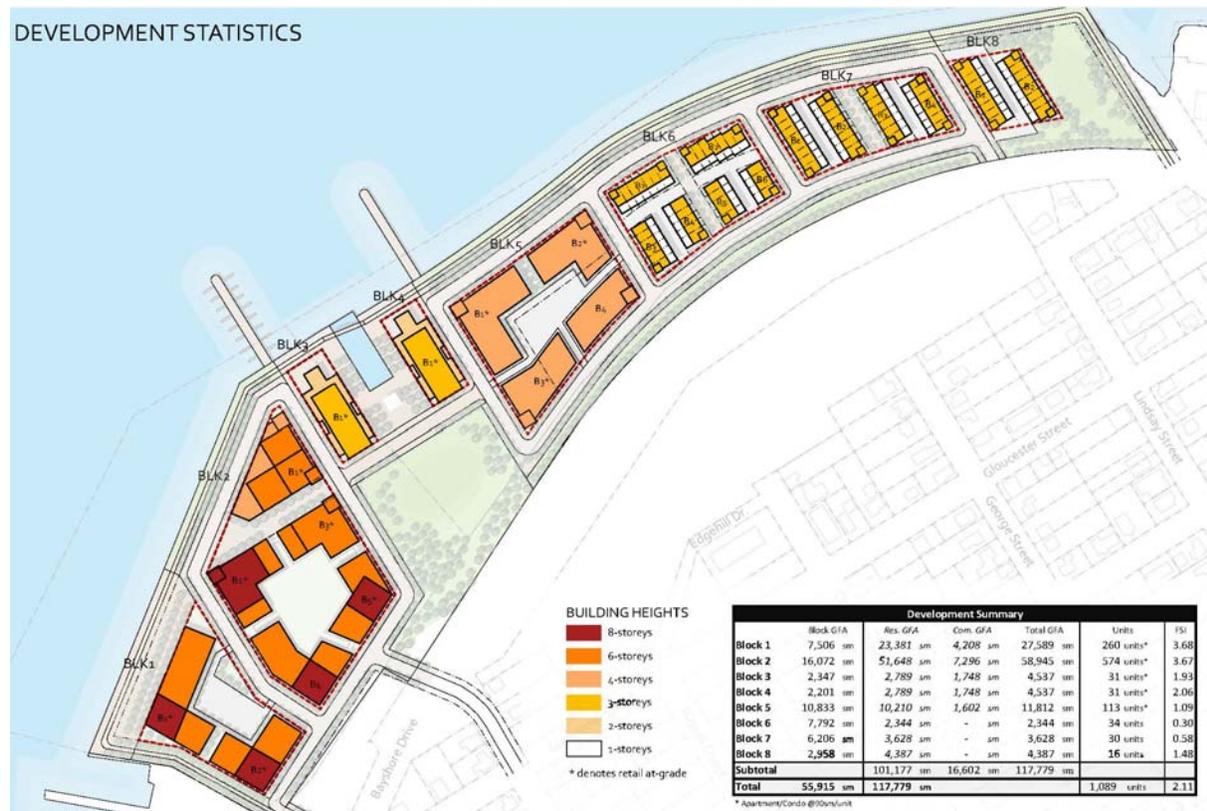
7.3 Council Reporting

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
Topographical Survey	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.
Geotechnical Study	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.
Shoreline Engineering Study	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.
Risk Assessment Study	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		
Absolute Title	Survey and legal work to convert lands to Land Titles System. Dearden & Stanton Surveying Ltd. & HGR Graham Partners LLP	Completed.
Phase I and Phase II ESAs	Pinchin & Associates. Required studies enumerating environmental soil conditions and full contaminants of concern.	Completed (prior to acquisition).
Supplemental Phase II ESA	Stantec Inc. Additional site characterization work to enumerate and estimate quantities of contaminants of concern.	Completed (prior to acquisition).

Addendum – November 16, 2017

This is further to the meetings of the Midland Bay Landing Steering Committee and a Public Open House to discuss the MDC Business Case on October 30, 2017. There is a brief synopsis of the comments and questions in the CAO report accompanying this Business Case for consideration by Council on November 27th, 2017.

In particular the key issues are the need for specialized project management and the governance structure necessary to utilize both the specialized management expertise as well as the benefit of a Board of Directors which would bring additional expertise to the successful development of the property. With respect to section 9.7 - the skill sets for the Directors would include the following:

1. Real estate development experience
2. Business experience (risk management and cash flow)
3. Engineering / Marketing / Legal

The other consideration for Council is the need for separation of normal municipal functions and responsibilities for the development requirements for the Midland Bay Landing property. Council would retain overall control of the project through approval of the Work Plan and the Budget.

Development partners from the private sector require a more streamlined and responsive process for day to day management requirements to implement an agreement of purchase and sale. Phasing may become a necessary element to achieve the municipal goals for this project. Specific objectives and guidelines can be incorporated into the shareholders directions of the MDC to provide the appropriate relationship between the Municipal Corporation and the MDC.