



STAFF REPORT

DEPARTMENT: Administration

CHAIR: Councilor Glen Canning

DATE: February 21, 2018

REPORT NO.: **CAO-2018-05, Municipal Services/Development Corporation In Support of the Future Development of Midland Bay Landing**

Note: This report is being considered at the Midland Bay Landing Steering Committee Meeting on February 21, 2018, prior to the General Committee Meeting on March 5, 2018.

RECOMMENDATION:

That Report CAO-2018-05, dated February 21, 2018, being an update on the incorporation of the Midland Bay Landing Development Corporation “MBLDC” be received; and

That Council receive the following documents for review and provide any further instructions to Administration:

1. The draft Articles of Incorporation for the MBLDC;
2. The draft Shareholder Direction & Operating Agreement;
3. The draft skills and competency matrix for the recruitment of the Board of Directors for MBLDC; and
4. The draft Asset Transfers to Corporations Policy for the MBLDC; and

That the Town Solicitor be authorized to finalize the Articles of Incorporation and register the MBLDC as a corporation; and

That Administration be directed to take all necessary steps and dedicate appropriate resources to finalize the draft documents and report back to Council.

BACKGROUND:

This report is further to the Report CAO-2017-25 dated October 10, 2017.

ANALYSIS:

Administration proposes that the following activities take place in finalizing the MBLDC:

- Finalize the Articles of Incorporation and Council authorize the registration of the corporation;
- Council, as the sole shareholder, to:
 - Finalize and approve the Shareholder Direction and Operating Agreement for the MBLDC;
 - Adopt an Asset Transfers to Corporations Policy for the Town;
 - Recruit and select a Board of Directors; and
 - Hold the Inaugural Shareholder's meeting and formalize the Directors, Officers and Auditor for the new corporation.

This report provides draft documents for Council's consideration. The draft documents are attached and the synopsis presented hereinafter:

1. Articles of Incorporation

The Articles of Incorporation are a legal document submitted to Provincial government which establishes a business within Ontario. Filing Articles of Incorporation separates you as an individual/organization from the business and its liability.

There are many words used to describe this document including incorporation, corporation, limited company, limited liability, Letters Patent, and Certificate of Incorporation.

With an Ontario incorporation, 25% of the individuals listed as directors are required to be a Canadian or Permanent Residents.

Incorporation will also ensure that, upon incorporation, the corporate name, Midland Bay Landing Development Corporation, will be protected against someone using the exact same name in Ontario.

It is recommended that the Town Solicitor receive any comments from Council, finalize the Articles of Incorporation and register the new corporation.

2. Shareholder Direction & Operating Agreement

As the **sole shareholder** of the MBLDC, the Town will adopt the Shareholder Direction. The Shareholder Direction will set out corporate governance principles with respect to MBLDC. The fundamental purpose of a Shareholder Direction is:

- A. Subject to the MBLDC Board's authority to manage or supervise the management of the business and affairs of the Corporation, to provide the Board with the Shareholder's fundamental objectives and principles regarding the Business;

- B. To inform the residents of the Town of Midland of the Shareholder's fundamental principles regarding the Business; and
- C. To set out the accountability, responsibility and relationship between the MBLDC Board and the Shareholder.

3. Skills and Competency Matrix

A skills and competency matrix is a tool used to document and compare the required competencies for a particular position. For our purposes, this document has been drafted by incorporating the 3 elements of building an effective not-for-profit board:

- A. Director Recruitment;
- B. Director Development; and
- C. Director Assessment.

4. Asset Transfers to Corporations Policy

Asset Transfer is the term used to describe the process of the transfer of the ownership (or leasehold) of property or land from one party to another. Asset transfer can help to secure community use of buildings and provide a development opportunity for the community. Further, the Asset Transfer Policy is a generic Town policy that would apply to the transfer of assets to any third party not just the MBLDC.

Ontario Regulation 599/06 (7) requires that municipalities adopt and maintain policies on any asset transfers to corporations. Prior to any asset exchange occurring, the Town would need to adopt an Asset Transfers Policy.

Administration has sought external and third party legal opinion to judge the efficacy and benefits of an asset transfer to the MBLDC. Upon receipt of:

- A. A favorable legal opinion, the attached draft policy is the document that will permit and facilitate the transfer of municipally owned and controlled assets (the 16.24 hectare, Midland Bay Landing waterfront redevelopment property) to the MBLDC (a corporation wholly owned by the Town in accordance with applicable legislation);
- B. In the alternative, if the legal opinion does not support a transfer of assets to the MBLDC, Administration will prepare documents as required by the recommendations of the said legal opinion.

Also, assets owned by the Town, may be transferred to the MBLDC at any time, and from time to time, as authorized by Town Council, on such terms, conditions, guidelines and/or restrictions as determined by Council.

COUNCIL'S STRATEGIC PLAN:

Council has established several Strategic Planning Priorities which fit with the objectives outlined in this report.

1. Council has, under the Economic Development Pillar, identified the desire to establish a policy for the reuse of municipal assets. The proposed documents outlined in the report will enable Council to meet that objective;
2. 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.

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.

FINANCIAL IMPACT:

The costs to register the new corporation are:

Item	Cost
External Legal	\$ 5000.00
Registration	\$ 750.00
Total	\$ 5750.00

The costs associated with the operation of the new MBLDC will be detailed in the Operating Agreement that will be brought to Council at a later date.

Prepared by: S. Turnbull, Director, Finance
A. Campbell, Director, Engineering, Water & Wastewater
A. Sidhu, Director, Corporate Services & Town Solicitor

Reviewed by: J. Skorobohacz, Chief Administrative Officer

Input and Information provided by: Members of the Town's Administration

Attachments:

1. Draft Articles of Incorporation
2. Draft Shareholder Direction and Operating Agreement
3. Draft Director Skills and Competency Matrix
4. Draft Asset Transfers to Corporations Policy

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XXXXXX

Ontario Corporation Number
Numéro de la compagnie en Ontario
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FORM 1

FORMULE NUMÉRO 1

BUSINESS CORPORATIONS ACT

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LOI SUR LES SOCIÉTÉS PAR ACTIONS

ARTICLES OF INCORPORATION
STATUTS CONSTITUTIFS

1. The name of the corporation is: *Dénomination sociale de la compagnie:*
XXXXXXXXXX ONTARIO CORPORATION
2. The address of the registered office is: *Adresse du siège social:*
C/O DIRECTOR OF CORPORATE SERVICES
575 DOMINION AVENUE
- (Street & Number, or R.R. Number & if Multi-Office Building give Room No.)
(Rue et numéro, ou numéro de la R.R. et, s'il s'agit édifice à bureau, numéro du bureau)
- MIDLAND ONTARIO
CANADA L4R1R2
- (Name of Municipality or Post Office) (Postal Code/Code postal)
(Nom de la municipalité ou du bureau de poste)
3. Number (or minimum and maximum number) of directors is: *Nombre (ou nombres minimal et maximal) d'administrateurs:*
Minimum 1 Maximum 10
4. The first director(s) is/are: *Premier(s) administrateur(s):*
- | | |
|--|--|
| First name, initials and surname
<i>Prénom, initiales et nom de famille</i> | Resident Canadian State Yes or No
<i>Résident Canadien Oui/Non</i> |
| Address for service, giving Street & No. or R.R. No., Municipality and Postal Code | <i>Domicile élu, y compris la rue et le numéro, le numéro de la R.R., ou le nom de la municipalité et le code postal</i> |
- * AMANPREET SINGH YES
SIDHU
575 DOMINION AVENUE

MIDLAND ONTARIO
CANADA L4R1R2

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5. Restrictions, if any, on business the corporation may carry on or on powers the corporation may exercise.
Limites, s'il y a lieu, imposées aux activités commerciales ou aux pouvoirs de la compagnie.

The Corporation shall not carry on any activities or take any actions that are prohibited by Ontario Regulation 599/06 or its successor regulations without the consent of the Minister of Municipal Affairs and Housing or such Minister's successor.

6. The classes and any maximum number of shares that the corporation is authorized to issue:
Catégories et nombre maximal, s'il y a lieu, d'actions que la compagnie est autorisée à émettre:

The Corporation is authorized to issue:

- (a) an unlimited number of shares without nominal or par value of a class designated as Common shares (hereinafter called the "Common Shares");
- (b) an unlimited number of shares without nominal or par value of a class designated as Class A Special shares (hereinafter called the "Class A Special Shares"); and
- (c) an unlimited number of shares without nominal or par value of a class designated as Class B Special shares (hereinafter called the "Class B Special Shares").

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7. Rights, privileges, restrictions and conditions (if any) attaching to each class of shares and directors authority with respect to any class of shares which may be issued in series: *Droits, privilèges, restrictions et conditions, s'il y a lieu, rattachés à chaque catégorie d'actions et pouvoirs des administrateurs relatifs à chaque catégorie d'actions que peut être émise en série:*

1.0 COMMON SHARES

1.1 Voting Rights

The holders of Common Shares shall be entitled to receive notice of and to attend all meetings of shareholders of the Corporation, except class meetings of other classes of shareholders, and at all such meetings shall be entitled to one vote in respect of each Common Share held by such holder.

1.2 Dividends

Subject to applicable law, the holders of Common Shares shall be entitled to receive dividends if and when declared by the directors. At any time and from time to time dividends may be declared on the Common Shares without dividends being declared at that or any other times on the Class A Special Shares or the Class B Special Shares.

1.3 Liquidation, Dissolution or Winding-up

In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, or other distribution of the assets of the Corporation among its shareholders for the purpose of winding-up its affairs, the holders of Common Shares shall be entitled to receive the property or assets of the Corporation on a share-for-share basis with the holders of the Class A Special Shares and the Class B Special Shares without preference or distinction.

2.0 CLASS A SPECIAL SHARES

2.1 Voting Rights

The holders of Class A Special Shares shall not be entitled as such (except as hereinafter specifically provided and as provided by applicable law) to receive notice of and to attend at any meeting of the shareholders of the Corporation and shall not be entitled to vote at such meetings.

2.2 Dividends

Subject to applicable law, the holders of Class A Special Shares shall be entitled to receive dividends if and when declared by the directors. At any time and from time to time dividends may be declared on the Class A Special Shares without dividends being declared at that or any other times on the Common Shares or the Class B Special Shares.

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7. Rights, privileges, restrictions and conditions (if any) attaching to each class of shares and directors authority with respect to any class of shares which may be issued in series: *Droits, privilèges, restrictions et conditions, s'il y a lieu, rattachés à chaque catégorie d'actions et pouvoirs des administrateurs relatifs à chaque catégorie d'actions que peut être émise en série:*

2.3 Liquidation, Dissolution or Winding-Up

In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, or other distribution of the assets of the Corporation among its shareholders for the purpose of winding-up its affairs, the holders of Class A Special Shares shall be entitled to receive the property or assets of the Corporation on a share-for-share basis with the holders of the Common Shares and the Class B Special Shares without preference or distinction.

3.0 CLASS B SPECIAL SHARES

3.1 Voting Rights

The holders of Class B Special Shares shall not be entitled as such (except as hereinafter specifically provided and as provided by applicable law) to receive notice of and to attend at any meeting of the shareholders of the Corporation and shall not be entitled to vote at such meetings.

3.2 Dividends

Subject to applicable law, the holders of Class B Special Shares shall be entitled to receive dividends if and when declared by the directors. At any time and from time to time dividends may be declared on the Class B Special Shares without dividends being declared at that or any other times on the Common Shares or the Class A Special Shares.

3.3 Liquidation, Dissolution or Winding-Up

In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, or other distribution of the assets of the Corporation among its shareholders for the purpose of winding-up its affairs, the holders of Class B Special Shares shall be entitled to receive the property or assets of the Corporation on a share-for-share basis with the holders of the Common Shares and the Class A Special Shares without preference or distinction.

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8. The issue, transfer or ownership of shares is/is not restricted and the restrictions (if any) are as follows:

L'émission, le transfert ou la propriété d'actions est/n'est pas restreinte. Les restrictions, s'il y a lieu, sont les suivantes:

No security holder of the Corporation shall be entitled to transfer registered or beneficial ownership of any security or securities of the Corporation without either:

(a) the consent of the holders of more than fifty per cent of the voting shares for the time being outstanding expressed by a resolution passed by the votes of the holders of more than fifty per cent of the Common Shares for the time being outstanding at a meeting of the holders of the Common Shares or by a resolution in writing signed by all the holders of the voting shares for the time being outstanding; or

(b) the consent of the directors of the Corporation expressed by a resolution passed by the votes of a majority of the directors of the Corporation at a meeting of the board of directors of the Corporation or by a resolution in writing signed by all the directors of the Corporation.

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9. Other provisions, (if any, are):
Autres dispositions, s'il y a lieu:

The following provisions apply to the Corporation:

- (a) The directors of the Corporation may, without authorization of the shareholders of the Corporation,
- i. borrow money upon the credit of the Corporation;
 - ii. issue, reissue, sell or pledge debt obligations of the Corporation;
 - iii. give a guarantee on behalf of the Corporation to secure performance of an obligation of any person; and
 - iv. mortgage, hypothecate, pledge or otherwise create a security interest in all or any property of the Corporation, owned or subsequently acquired, to secure any obligation of the Corporation.

The directors may by resolution delegate any one or all of the powers referred to in this clause to a director, a committee of directors or an officer of the Corporation.

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10. The names and addresses of the incorporators are
Nom et adresse des fondateurs

First name, initials and last name
or corporate name

*Prénom, initiale et nom de
famille ou dénomination sociale*

Full address for service or address of registered office or of principal place of business
giving street & No. or R.R. No., municipality and postal code
*Domicile élu, adresse du siège social au adresse de l'établissement principal, y compris
la rue et le numéro, le numéro de la R.R., le nom de la municipalité et le code postal*

* AMANPREET SINGH SIDHU

575 DOMINION AVENUE

MIDLAND ONTARIO
CANADA L4R1R2

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Institution :
Name and Title : Signature

Midland Bay Landing Development Corporation

Board of Directors Skills and Competency Matrix

Midland Town Council has approved the creation of a Municipal Services/Development Corporation for the Midland Bay Landing development. Midland Bay Landing (formerly the Unimin Lands) is a 16.24 hectare waterfront redevelopment property - our most significant land holding within the Town.

The Town of Midland is seeking applications for candidates to be considered as Directors on the new Midland Bay Landing Development Corporation (MBLDC) Board of Directors in 2018. The MBLDC Board consists of _____ independent Board members and two Town of Midland Council members. Appointment to the MBLDC Board is approved through Council.

The Company will assist the Town of Midland in the transformation of lands known as the Midland Bay Landing into a modern, vibrant and complete community. The Province approved the incorporation of MBLDC in 2018 under the *Ontario Business Corporations Act*, with broad powers to advance the economic development of the Town, either on its own or in public or private partnerships. The Town of Midland exercises control as sole Shareholder through a Shareholder Direction Agreement which outlines the Company's directives and authorities and the Shareholder's involvement in the on-going operation and governance of the Company.

The objectives of MBLDC are to optimize the use and value of Town-owned lands; recommend strategic real estate development and land acquisitions in support of the Town's vision f; leverage and encourage private sector development, thus producing long-term financial returns to the Town.

The mandate of MBLDC includes the development of projects which provide financial returns to the Town of Midland, while also addressing the Town's economic, urban, social and community interests. MBLDC is proud to be a catalyst and facilitator in helping to accelerate beneficial development in the waterfront lands in the Town of Midland, and unlocking the Town's potential in becoming a thriving and sustainable community .

Eligible Candidates should have a range of experience in real estate, property management, law, land development and financial management and each should have demonstrated general business acumen, personal integrity and independence of judgment. Candidates who have previous Board experience are preferable. It is also important that members be chosen so as to minimize circumstances where individual members would be required to withdraw from discussions at the Board due to conflict of interest.

The Town is particularly interested in individuals with experience in:

- **Real Estate Development** - Significant experience in successfully developing land and buildings to increase value.
- **Real Estate Financing, Treasury** - Significant experience with financial real estate development and treasury management.
- **Market Knowledge** - Knowledge of real estate markets within the County of Simcoe.
- **Local and Ontario Real Estate Market** - Board level knowledge of the immediate/local real estate market (industrial, commercial and residential).
- **Construction and Project Management** - Experience at a senior executive level, successfully leading and completing construction projects of a size similar to, or greater than, those contemplated by MBLDC.
- **Risk Management**
 - Experience and expertise in a leadership role or providing professional advice with respect to risk management, including the establishment of risk tolerance, and modern-day risk management processes.
 - Understanding of Enterprise Risk Management, a comprehensive process of identifying and responding to risks that threaten an organization's ability to achieve its objectives.
- **Financial Expertise and Investment Experience**
 - Significant financial or investment acumen. Experience or expertise to include:
 - Executive officer responsibility for financial reporting and analysis in a business organization;
 - Position held as an advisory of executive officer in the financial industry; or

- Professional designation in finance or accounting industries (eg. Chartered Professional Accountant or Chartered Financial Analyst).
- **Corporate Social Responsibility/Environment** - Experience and expertise in a leadership role and providing professional advice with respect to environmental stewardship at an organization and broader community level.
- **Board Experience** - Significant experience and expertise serving on a Board of Directors for a similar business/undertaking.
- **Government Relations** - Demonstrated experience within government at a senior leadership or consulting capacity in an institutional environment. Track record developing and implementing a strategic approach to government relations at various levels of government. In-depth knowledge of the land development approval process.
- **Public Relations and Communications** - Experience at a senior executive level developing and implementing a strategic approach to the public relations and communications functions of a significant business enterprise. Has a track record of success in building strong external relationships with government and public stakeholders.
- **Financial/Management Information Systems** - Significant experience with financial/management information systems. Able to assess and provide guidance on the way the corporation evaluates, designs, implements, manages and utilizes systems to generate information used to improve the efficiency and effectiveness of decision making.

Real Estate Law - Experience in municipal and development law, including such areas as land use, and partnership agreements.

Applications are available on-line or at the Municipal Office. Prior to applying applicants are encouraged to obtain information regarding the MBLDC by contacting the undersigned or by visiting the [Midland Bay Landing](#) Web Page.

Please submit your application by _____, **2018**.

DATED: _____, 2018

Karen Desroches, Clerk
kdesroches@midland.ca



CORPORATE POLICY MANUAL

Policy Number: XXXX

Section	
Policy	Asset Transfers to Corporations Policy
Adopted	
Resolution/By-Law #	
Amended	

1. Policy Statement

The Town may, from time to time, transfer assets to corporations, in accordance with the provisions of Provincial Regulation 599. The Town shall comply with the requirements of the Municipal Act regarding the granting of bonuses or assistance.

The Town may attach conditions to the Transfer of an Asset to a corporation, including what the corporation may do with the Asset, under what conditions the corporation may further Transfer the Asset, and how the Asset should be disposed of upon the winding-up, bankruptcy or dissolution of the corporation.

If the Town proposes to transfer an asset, other than a grant, to a corporation that is wholly owned by the Town, the asset shall be transferred to the corporation at audited net book value and the Town Treasurer shall provide Council with an estimate of the audited net book value, prior to the transfer taking place.

If the Town proposes to Transfer any grant to a corporation, the Town Treasurer shall prepare a statement of the value of such grant.

If the Town proposes to Transfer an Asset to a Town Corporation and the Province of Ontario has contributed funds for the purchase or improvement of the Asset, then the Town shall comply with the notice and other requirements of the Regulation.

If the Town proposes to Transfer a right granted to the Town in an agreement with the Province of Ontario, then the Town shall obtain prior consent in compliance with the requirements of the Regulation.

2. Objectives

To enable the effective transfer of assets by the Town to municipal corporations, consistent with Provincial legislation.

3. Scope/Application

Assets may be transferred to a Corporation at any time, and from time to time, as authorized by Council, on such terms and conditions as Council may determine.

4. Exceptions

This policy is not applicable to transfers within departments of the municipality.

5. Responsibility

The Treasurer shall record the disposition or transfer of the Town's assets in accordance with Public Sector Accounting Board (PSAB) and the Town's accounting policies.

6. Definitions

For purposes of this policy:

ASSET includes land, property, equipment, goods, capital shares in corporations, rights and grants of money;

AUDITED NET BOOK VALUE means the net difference between the assets and liabilities on the audited financial statements, without adjustment for goodwill or premiums that might be paid for the asset if it were to be exposed to the full market for sale.

TOWN CORPORATION includes a corporation established by the Town pursuant to the Municipal Act;

MUNICIPAL ACT means the Municipal Act, 2001, S.O. 2001, c. 25, as amended or replaced from time to time;

REGULATION means Ontario Regulation 599/06, made pursuant to the Municipal Act, as amended or replaced from time to time;

TOWN means the Corporation of the Town of Midland; and

TRANSFER means assign or convey.