ATTACHMENT A

City of Nanaimo
Municipal Development Corporations
October 2023

DISCUSSION PAPER

INTRODUCTION

At its meeting of May 15, 2023, Nanaimo City Council passed a two-part resolution (Figure 1) on the topic of municipal development corporations (MDCs). Neilson Strategies Inc., a local government consultancy with experience in creating arm's-length municipal agencies, was asked to respond to Council's request for information. This *Discussion Paper* presents the consultant's work.

> **Figure 1**
> **Council Resolution — May 15, 2023**
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> *THAT an information report be prepared [to] provide background on municipally-owned development corporations, their purpose and governance structures, the steps required to establish a development corporation in British Columbia, and high-level costs and considerations associated with establishing a municipally-owned development corporation in Nanaimo.*
>
> *THAT the report on development corporations be brought to a Governance & Priorities Committee Meeting for discussion prior to 2024 budget deliberations, and that topic matter experts be identified and invited to provide information at the meeting.*

The *Paper* is divided into six sections, each of which explores a specific question on MDCs:

- What are MDCs and what do they do?
- Why do municipalities choose to create MDCs?
- Where have MDCs been established?
- How are MCDs governed, and what is their relationship to their host municipalities?
- What is the process to establish an MDC?
- What costs and other factors should Nanaimo consider in assessing the MDC option?

The *Discussion Paper* will be presented for review with Council's Governance & Priorities Committee on October 23, 2023.

WHAT ARE MDCs AND WHAT DO THEY DO?

Land Development

A municipal development corporation is a company established by a local government to acquire, assemble, develop, market, sell, lease, exchange and/or otherwise leverage lands within a municipality, on behalf of the local government, and in pursuit of a specific purpose or set of goals identified by the local government.

As municipal entities, MDCs are owned by the local governments that create them. In many cases MCDs are wholly-owned by one municipality — in these corporations the establishing local government is the sole shareholder. Municipalities may choose, however, to co-create MDCs with other agencies, or to invite other agencies to take ownership positions post-incorporation. In these cases establishing local governments and their partner agencies each hold a portion of the corporations' shares.

In British Columbia, the authority for municipalities to establish corporations is rooted in the natural person powers, granted to municipalities under section 8(1) of the *Community Charter*. Additional provisions found in section 185 of the *Charter*, however, are also important. This section empowers municipalities to incorporate corporations and acquire shares in corporations, but only with the approval of the Inspector of Municipalities. MDCs themselves are incorporated under British Columbia's *Business Corporations Act* as companies with formal share structures. This feature helps to distinguish MDCs from societies that municipalities may create under the *Societies Act* to deliver services and pursue specific public purposes.

Mandate

The development of land on behalf of a municipality, and in pursuit of a specific purpose identified by the municipality, is common to all MDCs. Within this broad mandate, however, MDCs are assigned additional objectives based on local needs and circumstances, the council's vision for the community, and the degree to which council wishes (or feels compelled) to take an active role in community building through its own development company.

In most cases, MDCs are established to promote and participate in the development or revitalization of a defined area in a city — typically, an area with prevailing market conditions that are not attractive to private sector investment. MDCs may also be established with a focus on developing specific projects or types of land use, including significant public facilities and their surrounding areas, light industrial parks and affordable housing.

MDCs are designed to work in collaboration with other development entities, primarily private development companies. Assembling and developing lands as part of larger joint venture projects or innovative partnership arrangements is central to the work of MDCs, and is key to bringing private investment to target areas.

Similar Municipal Entities

MDCs are similar to local government economic development corporations (EDCs) in some respects. Both types of companies, for example, seek to draw investment to the community and build prosperity. Both also reflect a belief on the part of their establishing municipalities in the need for local governments to play an active role in community development, in addition to their roles as policy makers, facilitators and regulators. Where MDCs differ from EDCs is in their specific focus on the development of land. EDCs may be involved in some aspects of land development in some situations; on the whole, however, EDCs are concerned primarily with promoting and attracting investment in key sectors of a local economy, pursuant to economic development strategies created by the EDCs for their host cities.

MDCs also have similarities to municipal housing corporations (MHCs). Both types of companies acquire, develop, leverage, dispose of and manage lands within a municipality. Housing corporations, however, are focused almost entirely on increasing the number and diversity of non-market, affordable housing units in a municipality. MDCs may create housing supply, but usually only as part of broader, multi-faceted developments or re-developments.

WHY DO MUNICIPALITIES CHOOSE MDCs?

Municipalities have the ability to acquire, assemble, develop, market, leverage, sell, lease and/or exchange lands without establishing a development corporation. Indeed, many municipalities, including the City of Nanaimo, have their own property agents to advise on and execute land transactions in support of municipal objectives. Why do some municipalities choose to move beyond the in-house service model to embrace the MDC option? In plain terms, municipalities that take this route believe that MDCs will be more successful than in-house alternatives in achieving revitalization aims, attracting investment to key areas, and pursuing other local government objectives. Reasons that inform this belief include the following points:

- *Appeal to Private Partners* — MDCs are owned by municipalities and are not private sector companies. MDCs are structured, however, to operate with considerable autonomy from their municipal shareholders, outside of local government decision-making processes and procedures. This autonomy, combined with MDCs' ability to contribute land and capital to development projects, enables MDCs to enter into joint ventures and other innovative arrangements with private partners.

MDCs' success is dependent on partnerships. It is chiefly, if not solely, through partnerships that private investment flows into areas targeted for revitalization and renewal.

- *Expertise and Experience* — MDC boards of directors are structured to bring into decision-making the private sector perspectives, skill sets and experiences that differ from those of municipal decision-makers, and that are critical to land development. MDC staff, while typically few in number, are also hired for their expertise and experience in land development and business matters.

- *Nimble and Fast* — As autonomous, arm's-length entities, MDCs operate outside of city hall, and largely outside of the rules, regulations and procedures that municipal departments must follow in their approaches to service delivery. As a result, development corporations can be nimble and quick in responding to opportunities and challenges that arise.

- *Allocation of Risk* — Municipalities may establish MDCs in part to limit financial, political and other types of risk that may be incurred by parties to a land development initiative. As separate legal entities with their own autonomous boards of directors, MDCs assume some risk that would otherwise flow to the municipalities.

WHERE HAVE THEY BEEN ESTABLISHED?

British Columbia

Taken together, local governments in British Columbia have established many corporations to deliver services, hold and develop assets, and pursue other purposes. To date, however, only a modest number of these entities have been structured as municipal development corporations.

The Surrey City Development Corporation (SCDC) may be the best example in British Columbia of an MDC. It was established in 2007 with a broad mandate to advance the commercial, industrial, institutional and residential development in partnership with private developers and other entities. Among other objectives, the SCDC was created at the time to:

- acquire, market and develop lands, including City-owned lands transferred to the corporation and other lands acquired by the corporation
- create market interest, through its own development activities, in business areas of Surrey
- maximize returns on surplus City-owned lands
- generate an annual profit (paid as dividends) for the City that meets or exceeds "target private sector rates of return"

In 2020 Surrey City Council disbanded the corporation, only to start it again in 2022 with a new Board of Directors and President. In its new incarnation, the corporation is focused less on generating annual profits, and more on creating interest and investment in three areas of the City that have struggled to attract private sector interest: City Centre, Newton and Campbell Heights.

The Resort Municipality of Whistler (RMOW) has in place three MDCs: the Whistler Village Land Co. Ltd. (WVL), the Whistler 2020 Development Corporation (WDC), and the Cheakamus Leasing Corporation (CLC). The WVL is responsible for the design and development of Whistler Village, all of which is situated on Crown land. The WDC was created to facilitate the development of the Whistler Athlete Village for the 2010 Olympic Winter Games, and the transition of the Athlete Village to its current state as a residential neighbourhood. The CLC was incorporated to develop, hold, manage and lease commercial lands and building space on six commercial strata lots, owned by RMOW, in an area known as The Falls.

Relatively few other municipalities in British Columbia, outside of Surrey and RMOW, have established MDCs. The City of Chilliwack, however, has a long-standing municipally-owned economic development corporation — the Chilliwack Economic Partners Corporation (CEPCO) — that, in addition to more conventional economic development activities, has played an active role in acquiring and assembling development lands, and in partnering with the private sector.

It is worth noting, as well, that both Simon Fraser University (SFU) the University of British Columbia

(UBC) have created university-owned development corpora-tions, which are similar to MDCs in legal structure and function. The SFU Community Corporation was created to oversee the planning and development of UniverCity, a large development area adjacent to SFU’s Burnaby campus. Two goals drive the Corporation: the development of a complete community on Burnaby Mountain, and the establishment of an Endowment Fund using proceeds from development to support SFU broader mandate. UBC's development corporation — the UBC Properties Trust — oversees the development of the University Neighbourhoods adjacent to the Point Grey campus in Vancouver, and lands in the City of Kelowna associated with UBC Okanagan. UBC Properties Trust, similar to its counterpart at SFU, pursues financial returns to benefit the University.

Outside of British Columbia

A number of cities outside of British Columbia have established development corporations to oversee, and to directly participate in, the revitalization of defined urban areas. Two examples are particularly noteworthy: the Centre Venture Development Corporation (Centre Venture), incorporated and owned by the City of Winnipeg; and the Calgary Municipal Land Corporation (CMLC), wholly-owned by the City of Calgary.

Centre Venture was established in 1999 to promote and facilitate the revitalization of Winnipeg’s central business district. Since its inception, Centre Venture has directly developed some projects in the downtown core. The Corporation is more active, however, in assembling lands for development by private partners, receiving and leveraging surplus City-owned lands for private-sector development, and designing innovative agreements for development projects that meet the City's revitalization objectives. Project financing, assistance with developer-led housing construction programs, and working with private sector developers to preserve and re-purpose heritage buildings, are additional functions of Centre Venture.

The Calgary Municipal Land Corporation is the wholly-owned MDC of the City of Calgary. It was incorporated in 2007 to implement the *Rivers District Community Revitalization Plan*, a program developed by the City, and supported by the Province of Alberta, to renew a section of Downtown Calgary — the Rivers District — in need of investment. CLMC builds public infrastructure and community amenities, markets the Rivers District to private sector developers, and partners with private companies to optimize the value of former City-owned lands transferred to the Corporation at the time of its incorporation. CLMC is also involved in constructing and owning certain public buildings, providing community programming and services, and navigating the City's permit approval processes for private development partners.

Municipal Housing Corporations

Some municipalities in British Columbia and other parts of Canada have established wholly-owned municipal housing corporations to build affordable housing units on lands acquired by the corporations, including lands acquired from the municipalities themselves. The Whistler Housing Authority, wholly-owned by the RMOW, was incorporated in 1997 to provide affordable employee housing to Whistler's workforce. The District of Tofino created the Tofino Housing Corporation in 2005 as a company, owned solely by the municipality, to provide attainable housing to employees and residents of Tofino. Metro Vancouver Regional District owns the Metro Vancouver Housing Corporation, which has developed — and now manages — non-market, rent-geared-to-income rentals for 10,000 residents of Greater Vancouver. The City of Burnaby is in the process of establishing the Burnaby Housing Corporation to provide non-market housing lower-income Burnaby residents.

Outside of British Columbia are a number of other examples, including:[1]

- Toronto Community Housing Corporation
- Calgary Housing Corporation
- Banff Housing Corporation
- Ottawa Community Housing

[1] There are also a number of housing authorities — agencies created by municipalities to develop affordable housing, but not incorporated as separate companies with share structures.

- Ajax Municipal Housing Corporation
- Halton Community Housing Corporation
- CityHousing Hamilton Corporation
- London & Middlesex Community Housing
- Winnipeg Housing Rehabilitation Corporation

HOW ARE MDCs GOVERNED?

Board of Directors

Every MDC is governed by its own board of directors, identified in and empowered under the corporation's articles of incorporation. The board is responsible for:

- setting the MDC's strategic direction, within the mandate set by the shareholder (i.e., the municipality)
- setting and approving the MDC's annual operating and capital budgets
- appointing an auditor to produce annual financial statements
- hiring, reviewing the performance of, and providing guidance to, the chief executive officer
- overseeing the activities of the corporation and the decisions of the chief executive officer
- approving policies of the corporation
- approving land acquisitions and — subject to constraints imposed by the shareholder — dispositions
- entering into and/or approving joint ventures and other partnership agreements with development partners
- liaising with the MDC shareholder(s) in accordance with agreed protocols
- performing other duties as set out in the articles of incorporation and agreements with the establishing municipality

Directors of the MDC have a fiduciary duty to the corporation, as does the board as a whole.

The municipality, as the shareholder of the corporation, determines the size and composition of the board. The size may vary slightly across jurisdictions based on MDC mandate, geographic focus, the degree to which the board is structured to represent the community's diversity, the availability of qualified directors, and other factors. In general, MDC boards range from nine to fifteen members.

Board composition typically reflects the nature of MDCs as special-purpose entities that are created to kick-start the revitalization of a defined part of the municipality. To that end, individuals with expertise in private sector development, real estate law, finance and accounting, and other related activities are typically appointed to MDC boards. These individuals are qualified to help set corporate strategy, provide guidance to the CEO and exercise oversight of the corporation's activities and finances. Most municipalities choose to also appoint one or more member of council and/or senior municipal staff member to board. These appointments provide for a direct connection between the corporation and the shareholder, and help to ensure that council's objectives inform board decisions. The appointments may also speak to a perceived need for enhanced oversight of the MDC's use of municipal assets transferred to the corporation.

In some places, municipalities may reserve a portion of board appointments for individuals who represent views or constituencies perceived as important and in need for representation.[2] These types of appointments, however, tend to be more common on housing corporation boards than on boards of development corporations.

Relationship to the Municipality

As identified earlier, the municipality that establishes and incorporates the MDC is the corporation's shareholder. The MDC's board of directors is accountable to the municipality-as-shareholder for the performance of the corporation. The board must also provide to the shareholder key information on the corporation, including its annual financial statements and reports of the auditor. As the shareholder, the municipality has the power to appoint the board of directors, and to remove the board as a whole, or individual directors on the board.

As shareholder, the municipality has certain other rights and responsibilities under the *Business*

[2] Indigenous communities, community associations, demographic groups and others may be considered in these appointments.

Corporations Act. As well, some municipalities will structure the MDC's articles of incorporation to assign specific rights to the shareholder. In some cases, for example, the articles will require the corporation to seek shareholder approval to:

- create additional shares, or classes of shares, and to issue shares to other parties
- borrow in excess of a particular level, or to use city assets as collateral
- carry out business outside of its mandate
- dispose of certain types of corporate assets

Legal agreements entered into by the municipality and the MDC, post-incorporation, will give to the municipal council additional rights. Consider the case of partnering agreements, which are required under the *Community Charter* to enable a municipality to provide assistance (e.g., land, funding) to a corporation. A partnering agreement may award council the right to approval the MDC's strategic plan prior to receiving any assistance. Shareholder agreements are another tool used by municipalities to hold and exercise shareholder powers such as the right to approve the MDC's business plan, annual budget, and/or transactions above a certain level.

In all, a municipality may choose to assign various rights and powers to itself as shareholder, or to council as the municipality's governing body. Municipalities must be careful, however, to avoid assuming too much control over MDCs and their activities. Development corporations succeed when their boards of directors, acting within broad parameters and appropriate safeguards, are empowered with a high degree of autonomy.

WHAT IS THE PROCESS TO ESTABLISH AN MDC?

In British Columbia, the process to establish an MDC can be broken into the following five stages:

- *Defining the Problem* — The first stage is to define the problem facing the community. In some cases the problem may be one of urban decline in a part of the municipality, and the related inability to attract private investment. In other cases, city-owned lands may be — or may be perceived to be — under-performing as community assets, not taking advantage of opportunities for improvement. Alternatively, a need for public infrastructure and community amenities, within a broader development project, may be the issue to solve. Whatever the problem, clear definition will set the stage for the identification of options which may include an MDC.

- *Identifying Options* — Municipal governments have available to them a variety of tools to address problems and achieve public goals. Some of the tools are policy in nature, others are regulatory. Both are used to allow or disallow certain types of development; both may provide a mix of incentives and disincentives to shape actions. MDCs represent a third type of tool that may appeal to municipalities that seek, and are comfortable in pursuing, a more active role in effecting urban change.

  All potential tools are assessed against goals and criteria, set out by the municipality, to determine which one(s) may best address the problem facing the community.

- *Creating the Structure* — If an MDC is selected as the preferred option the municipality must create a structure for the corporation. Structural elements to consider and address include:

  - specific mandate and scope of activities
  - number of shares, types of shares and ownership of shares
  - board of directors' roles and responsibili-ties, size, composition, term of office, key positions
  - reporting requirements
  - limitations on board authority
  - shareholder powers and decisions
  - corporation funding model, including start-up costs, capitalization needs, and other forms of assistance to be provided
  - staffing model, including roles and respon-sibilities of key positions

  Most of these elements are addressed by the municipality in the formal business plan for the corporation, and in the company's articles of incorporation.

- *Seeking Approval* — In British Columbia, MDCs are incorporated under the *Business Corporations Act*. Once incorporated, the company's articles of incorporation and a set of other legal documents must be filed with BC Registry. Prior to incorporation and filing, however, the municipality must seek approval from the Inspector of Municipalities to establish the company. Materials to submit to the Inspector include:

  – council resolutions related to the MDC
  – business plan for the corporation, along with other background reports to show how and why the MDC model was chosen
  – draft articles of incorporation
  – outline of the composition of the board
  – description of the municipality's degree of control over the corporation, and the mechanisms through which control will be exercised
  – outline of the municipality's financial exposure, including its level and form of capitalization, the terms of any ongoing financial assistance, and the imposition of borrowing restrictions
  – review of public engagement on the MDC option, with an account of how public input is reflected in the MDC's structure
  – additional items outlined in materials issued by the Inspector and/or Ministry of Municipal Affairs

- *Empowering and Implementing* — Following approval the municipality must appoint the interim board, negotiate a partnership agreement with the new corporation, provide agreed start-up funds, and transfer lands and other assets required for the MDC to begin its operations.

WHAT COSTS AND OTHER FACTORS SHOULD NANAIMO CONSIDER?

Costs to Consider

MDCs depend on financial assistance from their establishing municipalities during start-up and, in some cases, to support ongoing operations. Other forms of assistance are also required in the form of lands and/or capital.

- *Start-up and Operating* — Every MDC requires start-up capital from its establishing municipality to fund early costs incurred to hire staff, develop strategic plans, secure office space, obtain legal assistance to review agreements (e.g., partnering agreement), create a website and brand presence, set up accounting and financial records, establish the necessary IT, obtain insurance, and attend to other needs. Some of the costs will be one-time; many, including staffing costs, will be ongoing operating expenses.

  As an MDC begins operations, it will be possible for the corporation to generate sufficient revenue from its land development operations to cover its expenses, as well as to build funds for different initiatives, and/or return dividends to the municipality. For the initial three-to-five years, however, the MDC may require assistance from the municipality to perform its role.

  An MDC in Nanaimo would need an estimated $500,000 to $600,000 per year for up to five years to cover expected start-up and early operating costs. These funds could be provided as grants from general revenues to the corporation, as is the case in some cities (e.g., Chilliwack). Other municipalities, however, have taken different approaches.

  In the case of the SCDC, the City of Surrey loaned start-up and early-year operating funding to the corporation. Funds were repaid with interest once the corporation was generating revenue from its activities. Centre Venture in Winnipeg received start-up and operating capital for a short period of time. The corporation was able in relatively short order, however, to achieve sustainability as a self-funding entity. City lands optioned to the corporation for $1 produced considerable revenue for Centre Venture when sold by the corporation as part of development initiatives. This ongoing arrangement with the City provides regular revenues for investment by Centre Venture in new projects, and to cover all of the corporation's costs.

  CLMC in Calgary has a unique funding

arrangement with the City. In 2007, when CLMC was created, the City transferred lands in the Rivers District area to the corporation for development. The City then froze property tax rates on all lands in the area at 2007 levels. To this day, tax revenues over and above the amounts raised at the frozen 2007 rates are shared with CLMC to fund its activities and its costs.[3]

- *Other Assistance* — MDCs are public development companies focused ultimately on the development of lands. As they earn revenues, MDCs may acquire private lands through purchase or other means. At their inception and in their early years, however, MDCs typically acquire lands from the municipalities that create them.

  Lands may be transferred fee simple to MDCs, through long-term leases, or as bare trusts — all three options may be structured to provide MDCs the ability to leverage investment and generate revenue.

  If the City of Nanaimo chose to establish an MDC, the City should expect to transfer lands to the corporation for use in development. The City may also need to consider loan guarantees (depending on the initiatives pursued), grants of capital, lines of credit, and possible other forms of assistance. All land transfers and all types of assistance provided would be outlined in a partnering agreement.

Other Factors to Consider

There are several other factors the City of Nanaimo may wish to examine when considering the MDC model. The following points provide some examples:

- *Control* — With an MDC in place in Nanaimo, the City would retain sole control over its land use and development policy and regulatory roles. The City would need to cede a significant amount of control, however, over decisions on the development of City lands, transferred to the corporation, in the corporation's mandated geographic focus area. MDCs require considerable autonomy from municipal councils and staff to successfully fulfill their mandates. An unwillingness on the part of Council or staff to recognize and respect this autonomy would undermine the model and, in all likelihood, lead to its failure.

- *Clear Mandate* — As special-purpose bodies, MDCs require clear, focused mandates with specific objectives to pursue. MDCs, put simply, are development machines that do best when allowed to focus on development. Diluting their focus with additional goals and purposes impairs their efficacy.

- *Private Sector Interest* — MDCs are intended to be collaborative with the private sector in land development efforts. MDCs rely on private developers to enter into partnerships that generate private investment in exchange for opportunities and some mitigation of risk. Without private partners the impact of MDCs is limited.

  Despite best efforts and incentives to match, a Nanaimo MDC may have trouble generating the type and level of investment desired within the target time frame. Economic and other factors beyond the control of the MDC (and, indeed, the City) may be to blame.

- *Qualified Directors* — In keeping with approaches taken by other municipalities, it is assumed that the City of Nanaimo would wish to populate the board of a Nanaimo MDC with individuals who, taken together, had experience and skills in development, real estate law, accounting and finance, and other relevant areas of expertise. This intention, while appropriate, could be difficult in a community the size of Nanaimo. An already limited pool of candidates may be made more limited by the inability for some qualified individuals to participate because of possible conflicts of interest. Expected time

[3] Municipalities in British Columbia do not have the authority to charge different property taxes in different parts of a City.

commitments could further reduce the list of potential directors.

To overcome this limitation, the City may need to consider drawing individuals from a broader geographic area, beyond the City's boundaries.

- *Salary Expectations* — An MDC created by the City of Nanaimo would not likely have more than three staff members, including a chief executive officer. The few individuals needed, however, would be specialists with private sector experience and skills in private development. Based on experiences in other centres, the salary expectations of such individuals may be inconsistent with local government norms and may be difficult for some decision-makers to accept.

- *Potential Friction Points* — Leaders in more than one MDC interviewed for this *Discussion Paper* highlighted friction between MDC staff and their counterparts in the establishing municipalities. It was noted that the more successful the MDCs, the more attention they received from councils and the communities. And, the more attention they received, the more challenges they encountered in liaising with municipal staff.

- *Competition* — Finally, care would need to be taken to ensure that the MDC did not compete, and was not perceived to be in competition with, with private developers for development opportunities. Actual and perceived concerns around competition contributed to the dissolution of one MDC in British Columbia.