

Update on Land Transfers to Edmonton Community Development Company

Recommendation

That the terms and conditions, as outlined in Attachment 4 of the July 10, 2018, Financial and Corporate Services report CR_6131, be approved, and that the agreements be in form and content acceptable to the City Manager.

Executive Summary

Following approval of the sale of lands to the Edmonton Community Development Company (ECDC) for \$1.00 (Report CR_4295), Administration and ECDC have pursued ongoing, collaborative negotiations to finalize the sale agreements. ECDC has identified that the buy-back option (forming part of the previous Council approval that outlined the requirement for ECDC (or a third party) to begin construction within a 10 year time period) creates difficulties for ECDC as described within this report.

Upon approval of the ECDC business case report CR_3802, Council advanced one of the key actions of the *EndPovertyEdmonton* Road Map (2017-2021), which was to establish a Community Development Corporation to invest in affordable housing and community economic development. Transfer of lands to ECDC was the next vital step to provide the assets that ECDC requires to act upon their mandate and start making tangible progress on the ground and within the community. The ECDC has been established as an independent entity, with no formal accountabilities to City Council or the City of Edmonton outside of the terms of individual operating or land transfer agreements. Based on recent discussion between the parties, additional direction from Council is required on the amount of control it wishes to exert considering all factors. As such, three options have been provided to address concerns related to the buy-back option.

Report

Background

On December 8, 2016, (CR_3802) City Council approved the business case for the Community Development Corporation, now known as the Edmonton Community Development Company (ECDC). The establishment of the CDC was a key initiative identified as part of the EndPoverty Edmonton strategy.

The business case stated that the City would transfer approximately \$10 million (+/- 10 percent) worth of City land to ECDC based on nine Principles of Land Transfer (Attachment 1). The principles provided clarification on roles, duties and responsibilities related to land transfers and were intended to set ECDC up for success. Additionally, City Council directed that the City's involvement be limited to an ex-officio advisor, which would allow ECDC to act nimbly and remain community led.

Subsequently, on September 12, 2017, City Council approved the terms and conditions of the sale agreements to transfer the lands shown in Attachment 2 to ECDC for \$1.00. The approved terms and conditions (Attachment 3) were based on principles of land transfer and general terms and conditions applied to any sale of surplus City land.

Progress to date

Through ongoing efforts over the last year and a half, five of the seven previously approved sites are now considered to be clean, serviced and ready for transfer. The remaining two parcels, A5 Stadium and A7 Coliseum, require further environmental work which is scheduled to be completed in August 2018.

To date, Administration has spent \$136,867 in consulting fees and work to clean the parcels, and it is anticipated that there will be additional costs of at least \$101,436. These costs are currently being absorbed within the Real Estate Branch budget. At this time, it is unknown if additional remediation work will be required and what the cost to remediate may be. In the event that the cost of remediating the parcels is significant, Administration, in consultation with the ECDC, may bring back a report identifying the funds required for remediation and/or options to replace a site with an alternate parcel. Additionally, Administration has provided ECDC with summaries of the location of services (water, sanitary, stormwater) within the road right of way surrounding the approved sites.

After City Council's approval of the terms and conditions on September 12, 2017, Administration and ECDC began to negotiate the sale agreements to transfer land to the ECDC. As negotiations progressed, ECDC and Administration mutually agreed to focus the sale agreement discussions to one site (Alberta Avenue), which could serve as a template for the remaining agreements.

ECDC continues to make progress on the development of the Alberta Avenue site and is now actively seeking financing for its proposed development plan. ECDC had requested that Administration agree to postpone the buy-back option on the certificate of title, which helps ECDC obtain financing for their development. Given that ECDC has received additional funding from the City for this specific development, have completed a financial feasibility study and have indicated that they are at risk of losing

funding from other sources, Administration has agreed to the postponement of the buy-back for this particular property only. At the time of writing this report, it is expected that an agreement will be executed in advance of the July 10th, 2018 Council date.

Although the buy-back option is included within the Alberta Avenue sale agreement, ECDC has indicated that the inclusion of the buy-back in the remaining sale agreements would create significant problems for them to be successful. Previous discussions at Council surrounding the buy-back option and associated risks leads Administration to believe that it is prudent for Council to provide direction on the treatment of the buy-back and postponement on the remainder of the agreements.

Buy-back Option Issue

ECDC has identified that the inclusion of the buy-back option conflicts with the intent of the previously-approved Principles of Land Transfer. Some of the major challenges that the buy-back option creates for ECDC are as follows:

- It limits their ability to sell the land to another buyer as the City would maintain an option on title wherein the land could be purchased for \$1.00
- It encumbers the land meaning that the City would have a caveat/interest registered on title.
- Financing may be more difficult to obtain which ultimately impacts the financial feasibility of their projects.

Council's most recent direction indicated that land sale agreements to ECDC must include a buy-back option. A buy-back option is an agreement that the City would enter into with the buyer concurrent with the sale agreement that gives the City the ability to purchase the land back (in this case, for \$1.00), should the buyer fail to begin construction within 10 years. Administration routinely uses a buy-back option as a mechanism to:

- encourage developers to construct within specific timelines;
- ensure development occurs in accordance with various initiatives and policies; and
- prevent land speculation.

Since the buy-back option creates an interest in land, the City can protect its interest by registering a caveat against title to the lands. If ECDC sells the land to a third party, the third party would also be bound by the terms of the buy-back option unless Council approved the removal of the buy-back option from the certificate of title.

Next Steps

Through ongoing dialogue, Administration and ECDC have mutually agreed to return to Council for direction on what, if any, changes should be made to the previously-approved terms and conditions for sale agreements. This is in line with the discussion at the September 12, 2017, Council meeting for Report CR_4295, where Council requested that Administration bring back a report if the approved terms and conditions created obstacles.

The following options are presented to Council for consideration:

Option 1: Remove the Buy-back Option and Associated Development Requirements

In this option, Administration would adhere to the revised terms and conditions shown in Attachment 4 for all sale agreements with ECDC.

Benefits:

- This aligns with the Business Case Report CR_4295 which provided more independence to ECDC and the ability to act nimbly
- This may expedite transfers of land to ECDC to allow them to move forward with their business plan.
- Provides ECDC ability to utilize the lands in accordance with the Objects of the Memorandum of Association, which is more broad than seeking development within 10 years.
- ECDC's founders consist of key groups such as the Edmonton Community Foundation, Homeward Trust and the United Way which will continue to oversee ECDC towards achieving their mandate.

Risks:

- City has no control over when construction of any of the parcels will occur.
- City has no ability to purchase land back, or control whom land is sold to

Option 2: Keep the Buy-back Option

For all sale agreements to ECDC, Administration would continue to adhere to the terms and conditions shown in Attachment 3. This means that a buy-back option would be required, and would be registered as a caveat on title. The buy-back option would give the City the right to buy the land back for \$1.00, should the buyer fail to construct the footings and foundation within 10 years from the date of execution of the sale agreement. Administration would not postpone or discharge the buy-back option caveat in advance of the terms being fulfilled without first obtaining Council approval.

Benefits:

- Council has full control over any decisions which affect the buy-back option
- City maintains ability to purchase land back if construction does not start within 10 years

Risks:

- Increased timelines for critical decisions as reports need to be brought to Council
- Limits ECDC's ability to act nimbly and sell land to fund other projects (leverage assets)
- May impact ECDC's ability to achieve their business plan due to additional barriers
- May limit ECDC's ability to receive funding from external sources.

Option 3: Clarify roles/responsibilities regarding the Buy-back Option

For all sale agreements to ECDC, Administration will continue to abide by the terms and conditions shown in Attachment 3. However, the interpretation below will be followed:

- Administration will postpone the buy-back option to first mortgage construction financing where sufficient information and justification is available to support this

This means that a buy-back option would be required, and would be registered as a caveat on title. The buy-back option would also give the City the right to buy the land back for \$1.00, should the buyer fail to construct the footings and foundation within 10 years of the date of execution of the sale agreement. However, Administration may use discretion regarding postponement of the buy-back option caveat without first obtaining Council approval. Administration would only remove the buy-back option caveat from the certificate of title after obtaining Council approval.

Benefits:

- Faster decision-making process regarding postponements
- City maintains ability to purchase land back if construction does not start within 10 years

Risks:

- Increased timelines for critical decisions such as removing the buy-back option from title still requires a report be brought to Council for approval
- City loses its right to purchase the land back for \$1.00 and to control when construction occurs if it postpones and ECDC's lender forecloses
- The primary challenge (the buy-back option) is still in place, which may impact ECDC's ability to achieve their goals.

Recommendation

Of the above referenced Options, Administration is recommending Option 1 which would remove the buy-back option and the subsequent development requirement. This Option is being recommended as the inclusion of a buy-back option poses numerous challenges for ECDC to achieve their mandate as previously described. A key limitation is that ECDC may not be able to utilize the lands in creative ways such as leveraging some of the parcels to further invest in affordable housing and community economic development in others. Alternative terms and conditions have been drafted and are included in Attachment 4 for Council's approval.

Public Engagement

Public engagement was not undertaken for this report, as the objective of the report is to seek clarity and direction on what terms and conditions Council desires to incorporate in ongoing and future sale agreements with the ECDC.

Corporate Outcomes and Performance Management

Edmonton is attractive and compact.			
Outcome(s)	Measure(s)	Result(s)	Target(s)
Investment within the targeted neighbourhoods leads to social and economic benefits for the citizens in the area.	# of parcels aligning with the first Principle of Land Transfer, where the parcels are used in accordance with the Principle	1 parcel	7 parcels
City of Edmonton has sustainable and accessible infrastructure.			
Cooperation and alignment with the ECDC promotes future affordable housing projects	# of projects contributing to the affordable housing stock in Edmonton.	TBD	Increase

Risk Assessment

Risk Element	Risk Description	Likelihood	Impact	Risk Score (with current mitigations)	Current Mitigations	Potential Future Mitigations
Commercial	City has no ability to control when land it is developed.	5 - almost certain	2 - moderate	10 - medium	No current mitigations, as this would align with previous Council direction for ECDC to act independently.	City may request that a covenant be included in the sale agreements which means that ECDC promises to develop within 10 years.

Public Perception	If ECDC fails to perform the City's reputation could be impacted.	3- possible	2- moderate	6 - low	Continue to support ECDC related in accordance with the Principles of Land Transfer to set them up for success.	City may continually review Principles of Land Transfer to adjust the terms of agreements with ECDC
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Attachments

1. Principles of Land Transfer
2. List of Lands to be Transferred
3. Original Terms and Conditions of the Sale Agreement for each Site
4. Revised Terms and Conditions of the Sale Agreement for each Site

Others Reviewing this Report

- K. Block, Acting Deputy City Manager, Citizen Services