

MUNICIPALLY CONTROLLED CORPORATIONS

CHBA – Alberta Response to Discussion Guide Questionnaire

The following provides CHBA – Alberta's response (red text) to the questions outline in the Municipally Controlled Corporations Discussion Guide.

1. Ministry Approval Notification

The proposals in Bill 21 eliminate the need for Ministerial approval prior to forming a new MCC. Should the Minister still be informed of the formation of a new MCC? Why or why not?

Yes. Ultimately the potential impact of a for-profit MCC on industry and residents will depend on its scale and the specific business area it is venturing into. Transparency and accountability will be paramount in ensuring MCC's are acting in the best interest of the municipality, its residents and not negatively impacting private industry and investment. The Minister needs to be informed of the various roles of the MCCs so the government can respond quickly and efficiently should it begin to operate outside of the intent of guidelines established by the government.

2. Purpose of Municipally Controlled Corporations

MCCs are only permitted to provide a service or benefit to residents of the municipality or group of municipalities that controls it, and to carry on business solely for one or more of the purposes described in section 3 of the MGA, as follows:

- *to provide good government;*
- *to provide services, facilities or other things that, in the opinion of council, are necessary or desirable for all or a part of the municipality; and*
- *to develop and maintain safe and viable communities.*

Are the purposes set out in section 3 appropriate or should more specific restrictions be placed on the purpose of MCCs? If so, what do you suggest?

We would suggest the following change to the second bullet:

- *to provide services, facilities or other things that, in the opinion of council, are necessary or desirable for all or a part of the municipality **while not competing with the private sector**; and*

Without the above limitation there will be risks that an MCC could compete directly with private sector industry which has substantial implications on investment within our communities. If a specific industry

or service is already being provided efficiently by the private sector, there is no need for a municipality to risk public dollars in providing it.

3. Profit-Making Purpose

There have been suggestions that municipalities should be allowed to establish an MCC for the sole purpose of making profit no matter what, if any, service is being provided. Since that profit would flow back to the municipality in the form of dividends, this might be considered a “benefit” to the residents. Is the sole purpose of making a profit an acceptable purpose for an MCC? Do you have any concerns? If so, what would be an appropriate alternative?

Profit is never a sure thing and municipalities should not be risking public money on business ventures where they lack the experience or expertise. There is substantial risk associated with for-profit ventures and that financial risk is best left to the private sector, not taxpayers. Further to this, should a municipality begin operating in a field they risk undermining existing industries and business who provide jobs to many of its citizens. Municipalities exist to establish the rules and to govern – not to be a player in the game.

4. Prohibited Services or Sectors

The MGA authorizes the Minister to make regulations providing that certain types of corporations may not be controlled by a municipality or a group of municipalities without the Minister’s approval. What types, if any, of industries or services should still require Ministerial approval before a municipality can establish an MCC?

Municipalities should refrain from providing for-profit services in industries where demand / need is already being met by the private sector. Specific to our industry, municipalities operating as developers has presented a number of issues in specific markets of the province. There is an inherent conflict of interest present when a municipality, who determines where and how growth will occur, is also a significant developer within the community. Private industry is expected to compete with the municipality who not only controls approvals, but also does the development. This does not create a fair and competitive market that encourages investment from the private sector.

5. Municipal Assistance to MCCs

MCCs may sometimes receive financial assistance at start-up and preferential access to municipal assets in order to provide services to residents. Concerns have been raised that this creates a competitive imbalance with private sector businesses. Should there be any limits put on this type of municipal assistance received by an MCC? Why or why not? What level of municipal assistance is appropriate?

We do not support taxpayer’s money being spent on private sector endeavours due to the inherent risk and potential impact on economic competitiveness. If this is to be permitted, the amount of taxpayer’s money should be minimal and disclosed to the public prior to approving the bylaw / resolution that enables the MCC. The municipality should also be responsible disclose any additional funds provided to the MCC along with detailed financial statements outlining how money has been spent and the overall financial health of the MCC on an annual basis.

6. Council Resolution Authorizing MCC

Council must pass a resolution to authorize a new MCC. Should this require more than a majority of councillors to vote in the affirmative? If so, what percentage? What other details should the council resolution include? Potential options include the expected rate structure and municipal membership.

Prior to voting on either a resolution or bylaw to enable a new MCC, a municipality should undertake the following process:

- Prepare and provide public access to the proposed business plan, due diligence assessments and any other studies prepared as part of the background assessment on the proposed MCC.
- Conduct stakeholder consultations with representatives from any impacted industries.
- Conduct at least one public open house following sufficient review period of the above studies.
- Hold a public hearing prior to approving any MCC.

Once the above engagement has occurred a standard majority vote should suffice.

7. Information to be Considered by Council

Council will have to review a business plan and a due diligence study prior to authorizing an MCC.

Proposed contents of the business plan include:

- Any liabilities associated with the MCC;
- Proposed debt or borrowing requirements/expectations;
- Forecasted operating or capital budgets;
- Control/involvement of shareholders.

A due diligence study must include disclosure of potential risks including:

- Environmental;
- Financial;
- Labour;
- Other liability;
- Other risks, as prescribed by regulation.

Do you agree with these requirements and should there be others? What kind of information do you think is important for elected councillors to consider before passing an authorizing resolution?

The above provides a good baseline for Council, the public and impacted businesses / industries to review and respond to a proposed MCC. It is important that stakeholders and the public have ample time to review this information in advance of any public open houses and public hearings. We also believe any assessment should include the following:

- An analysis of existing businesses within the same sector and potential impact of the MCC on competition.
- Potential conflicts of interest and measures required to mitigate them.
- A financial pro forma indicating the projected revenues, expenses and financial returns based on the initial investment at fair market value and on borrowing costs at market rates.

8. Public Hearings

It is proposed that a public hearing will be required before a new MCC can be established. Bearing in mind that some information may need to be withheld for commercial reasons, what kind of information do you think residents should know in order to make meaningful representations to council? What parameters should be placed around the form and nature of public input opportunities?

It is unclear to us why any information would be withheld to the public. If taxpayer funds are being used to enter into inherently risky private sector ventures, everyone deserves to have all the information so they can respond accordingly. Specifically, residents and stakeholders need to understand:

- What businesses currently operate in this area and why there is a need for a MCC?
- Will the MCC be operating on a level playing field with the private sector?
- What are the potential financial risks and liability for the municipality? What happens if the MCC is unsuccessful?
- What are the potential conflicts of interest and what will the municipality do to mitigate them?

9. Annual Reporting

In addition to annual financial statements, what other information should the MCC provide to council and what information should be made available to residents? Should the information be provided upon request or proactively published?

MCCs should be responsible for following accepted accounting standards and publishing financial information on an annual basis. Additionally, the municipality should detail any known impacts the MCC has had on private sector businesses who operate in the same industry.

MCCs should be subject to the same financial scrutiny as any publicly held corporation. Quarterly reporting of financial results and financial guidance for the remainder of the year should also be published.

10. Material Change in Operations

If there is a proposed significant change in the operations of an MCC, council is required to notify residents and give them opportunity to make representations. What kind of change do you think should trigger this requirement, and how do you think council should be required to obtain public input on such changes?

Any material change to the operating structure or mission of the MCC should be required to have public input including additional public hearings.

Providing financial guidance updates on a quarterly basis and the reason that an MCC is not on target with its financial projections should be required.

11. Employee Pension Benefits

An MCC is not defined as a “local authority” under the Local Authorities Pension Plan Regulation. Therefore, when an MCC is established, municipal employees who become employees of the MCC lose eligibility in the pension plan. What measures, if any, should be in place to address this? As an example, a Regional Service Commission is considered a “local authority” under the Local Authority Pension Plan – should MCCs be added to this definition? Why or why not?

MCCs should not be a Local Authority. By definition MCCs need to be independent and autonomous. LAPP is a very expensive pension plan. The MCC should be able to determine its own structure and compensation model. If it looks and acts like a municipality then it might as well be a municipal department and not an MCC.

12. Unanimous Shareholders Agreements

A unanimous shareholder agreement (USA) is an agreement among all the shareholders of a corporation that can provide a measure of flexibility in shaping the internal organization and affairs of the corporation. A thorough USA can:

- *set out certain baseline entitlements and obligations of the parties in relation to the corporation’s governance and share allocation;*
- *anticipate and address reasonably likely future events, such as changes in ownership, the need for injections of capital, or the resolution of disputes between shareholders; or*
- *establish provisions for unforeseen events such as where one shareholder desires to terminate the relationship.*

Should a USA be mandatory when 2 or more municipalities act together to establish an MCC? Should the contents of the USA be prescribed by regulation or should they be left up to municipalities to establish? What components should be included?

No comment.

13. Utility Services

When an MCC is chosen as the method of providing utility services, some MGA provisions that apply to municipally-provided utility services no longer apply. These include the ability to add utility arrears to property tax rolls and the power to expropriate land. MCCs that provide utility services do not have these powers. Is this balance appropriate? Should it be reconsidered? If so, what oversight and restrictions might be appropriate?

No comment.

14. Application of Public Utilities Provisions of the MGA

When a municipality establishes an MCC for the purpose of providing utilities services to its residents, they are treated differently under the MGA than if the services were provided by the utilities department of the municipality. This includes rules regarding:

- *council’s authority to grant exclusive utilities rights;*
- *prohibiting other utilities providers from operating in municipal boundaries; and*

- *the renewal of franchise agreements.*

Utility MCCs are subject to sections of the MGA which set out rules regarding utility services (sections 43-47), except for the requirement for Alberta Utilities Commission approval for utility service agreements (section 45(3)(b)). Is this the appropriate legislative framework to apply to these kinds of MCCs, or are there other provisions that should or should not apply?

No comment.

15. Existing Municipally Controlled Corporations

With the changes proposed in Bill 21, new MCCs have several new requirements before they can begin operations, as well as several new requirements for ongoing reporting and transparency.

- *Should existing MCCs be exempted from some or all of the new requirements?*
- *If so, should existing MCCs also be exempted from the requirements when creating a subsidiary?*
- *Should municipalities be prevented from potentially avoiding these new requirements by becoming investors in existing MCCs that are exempted? If so, how?*

The new requirements for MCCs need to apply to any existing operations. Residents deserve a transparent assessment of all existing corporations to determine whether they would like their local government to continue to support them. If they cannot succeed / exist based on the new requirements, they should not be in operation.

16. Other

Provide any other comments or suggestions about the MCC provisions proposed in Bill 21 or any other matters that should form part of the policy on MCCs.