

County of Northumberland

May 20, 2022

Business Case:

Northumberland County Community Development Initiatives Corporation as a Municipal Services Corporation

Introduction

Located on the traditional territory of the Mississauga, Northumberland County is a thriving community just one hour east of Toronto along Highway 401, with easy access to urban centres to the north, east and west. As an upper tier level of municipal government for the region, Northumberland County's vision is to bring together people, partnerships and possibilities for a strong and vibrant Northumberland. Our community includes seven distinct yet complementary municipalities as well as Alderville First Nation, with County Council comprised of the Mayors of each of these member municipalities:

- Township of Alnwick/Haldimand
- Municipality of Brighton
- Town of Cobourg
- Township of Cramahe
- Township of Hamilton
- Municipality of Port Hope
- Municipality of Trent Hills

Background

Northumberland County is a rural-urban mix whose economic well-being has been tied to the following four key sectors:

- Agriculture
- Tourism
- Manufacturing
- Small Business Entrepreneurship

All four of these key sectors receive on-going support from the County's Economic Development Planning and Strategic Initiatives Department in order to ensure growth and economic renewal opportunities are made available. To date this support has resulted in significant gains within each of the sectors by initiating strategies and operational action plans which increased capacity by overcoming the challenges related to human resource attraction, infrastructure investment and financial assistance through the public and private sector collaborations.

In order to continue to increase growth within these four key sectors the need to embrace technology was essential and as with most rural constituencies in order to achieve that goal **connectivity is critical and essential**.

Background

In July of 2019 County Council approved a Digital Strategy which outlined the requirements for the creation of an Intelligent Community.

SMARTnorthumberland represents a planned, coordinated effort to shape the introduction and use of new technologies in County workplaces and the community by focusing on specific indicators i.e., broadband, knowledge workforce, innovation, digital equality, sustainability and advocacy. It is through this alignment that Northumberland County can move towards a more “intelligent community”.

Our staff, businesses and residents informed us of their opinions and ideas. These included:

- broadband availability and capacity was their number one concern
- internal and community readiness was as important for success as was collaboration between the County and its member municipalities
- concerns about security and privacy were raised
- the importance around communication and engagement between all vested parties
- acknowledgement of the potential economic development opportunities and benefits

Our vision is **SMARTnorthumberland: an intelligent community**. Our mission is to **use information and communications technology to create inclusive prosperity, tackle social and governance challenges and enrich quality of life**.

This can be achieved through the following actions:

- Building digital infrastructure
- Modernizing the workplace
- Transforming lines of business
- Expanding community engagement
- Enhancing digital service delivery
- Establishing an Open Data initiative
- Addressing broadband challenges
- Establishing a digital governance framework
- Pursuing innovative opportunities
- Facilitating digital literacy

Extensive research followed the approval of the Digital Strategy culminating in participation in Canada's first Rural Broadband Conference in late 2019 and the need to undertake a complete analysis and determination of the current state of connectivity in Northumberland. Over the course of 2020 it was determined that of the approximate 40,000 households in Northumberland 13,500 households were either unserved or underserved. With this determination of underserved/unserved households also came a series of recommendations in the form of a business case to assess cost and structure for the creation of a model to overcome this challenge. The result was the creation of a Broadband as a Utility model, whereby Northumberland would create a public-private partnership to bring fiber to the home to all unserved or underserved households. The private sector partner would be responsible for the design, construction and operational management/administration of the project.

Objectives

A public-private sector partnership is best served through the creation of a municipal services corporation (MSC). Operating Northumberland County Community Development Initiatives Corporation as an MSC enables partnership activities to be conducted directly by the corporation and with the associated covenants and liabilities separate and shielded from Northumberland County. The risk profile associated with the project would be contained in the MSC, again separate from Northumberland County.

The corporate structure will enable a governance framework whereby the Directors of the MSC will hold an unequivocal fiduciary duty to the MSC, allowing Directors to make decisions that are not based on political factors which may contradict the interests of the corporation.

The success of a public-private partnership rests in part with the ability to gain the confidence of the private sector partner by conducting business in a manner which meets the private sector requirements for timely, efficient and effective decision making.

Mandate

Operating Northumberland County Community Development Initiatives Corporation as a MSC will facilitate the goal of insuring proper stewardship of public funds within a private sector framework supplemented by Board appointments consistent with the MSC being a separate entity.

Guiding Principles

Directors and Officers of a corporation have a fiduciary duty to act in the best interests of the corporation. The MSC will be owned by Northumberland which results in an interrelationship between corporate and municipal laws. There will be an expectation that the objectives of the MSC will be supportive of Northumberland County's objectives.

Given this context the operations of the MSC and Northumberland will be governed by the following principles:

- The MSC Board of Directors will follow reporting and approval requirements set out in a shareholder agreement declaration issued by Northumberland County.
- Independent and experience/skills-based board made up solely of independent directors with no elected official representation.
- Comprehensive measurement of returns – shareholder measurement and returns will be based on profit levels and market share growth.

MSC Structure

Under an MSC structure, the MSC could raise financing without municipal guarantee and separate from the municipality. As a separate body corporate, the MSC's liabilities would be isolated from Northumberland. The MSC would be the entity that enters into loan or other financing agreements, and the entity responsible for the associated borrower covenants.

In addition, the MSC structure would enable equity contribution by a minority investor or a joint venture partner which would facilitate hedging risk, increasing scale and scope economies as well as other potential strategic benefits to support growth and renewal.

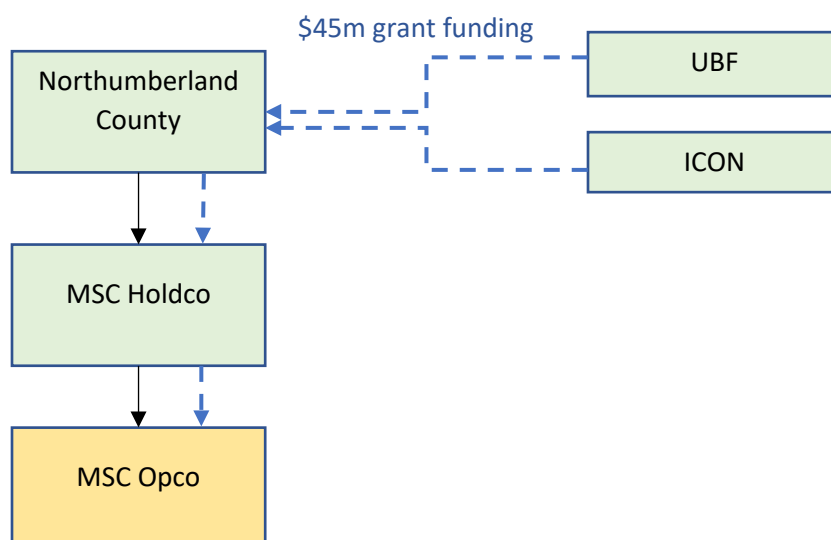
Governance

The proposed structure involves establishing the MSC with a HOLDCO and an OPCO.

The HOLDCO will be wholly owned by Northumberland County. All the common voting shares in the MSC would be held by the HOLDCO. The creation of a HOLDCO allows for and enables future business growth.

The OPCO will be the operating structure for Broadband as a Utility. The OPCO is wholly owned by the HOLDCO.

The chart below illustrates the proposed structure.



As a corporation, a board (“**Board**”) of directors would need to be appointed for the MSC. Northumberland, as sole shareholder, would set the size of the Board and appoint directors.

Under this corporate structure, the Board would be charged with oversight over management of the business but would be required to seek shareholder approval over fundamental matters, as required under corporate statute and as may be set out in a shareholder declaration. Management would be charged with the day-to-day operations of the business but would be required to obtain board approval for major decisions.

1. Shareholder Rights

- a. As sole voting shareholder, Northumberland would determine what matters it considers to be so fundamental that the Board **must** obtain its approval before undertaking such actions. Such matters, particularly if not already found in the applicable corporate statute, would be set out in a shareholder declaration.
- b. At its sole option and discretion, Northumberland **may** direct the MSC (Northumberland County Community Development Initiatives Corporation) to carry out certain actions in relation to its Business, subject to applicable Laws.

2. Independence of the Board

- a. A key advantage to the MSC structure is the ability to appoint directors who are independent from the municipality. The MSC structure enables a focus on industry business experiences as qualifications for Board members. The Board’s fiduciary responsibility would be to the MSC and as such the directors would be guided by what is in the best interest of the corporation, free from the pressures of immediate political issues.

Public Accountability

Corporate structures require that corporations conduct an annual general meeting (“**AGM**”). At the AGM, the voting shareholders will appoint the slate of directors and receive the financial statements.

Operating as an MSC, Northumberland would expect that the HOLDCO report to council on major business developments or events. The expected reporting obligations would be set out in a shareholder declaration issued by Northumberland to the MSC.

Reporting and communications between the MSC and its sole voting shareholder, Northumberland, would be shareholder communications as provided under corporate statute, and thus, subject to confidentiality and not conducted in public council meetings. Northumberland may also receive such information in the context of municipal council proceedings as appropriate, including in camera but subject to the requirements of the Municipal Act.

Financial

The OPCO will be the recipient of financial returns subject to the completion of the project and operation of the utility model based upon final negotiation(s) within the public -private sector partnership.

Conclusion

With the creation of a MSC it enables the financing and risk profile associated with economic prosperity to be contained in a corporation, separate from Northumberland, and allowing for a more fulsome public-private relationship within a business context.