



City of Regina and Carry the Kettle Nakoda Nation - Municipal Services and Compatibility Agreement

Date	March 23, 2022
To	Executive Committee
From	City Planning & Community Development
Service Area	Planning & Development Services
Item No.	EX22-34

RECOMMENDATION

The Executive Committee recommends that City Council:

1. Approve the Municipal Servicing and Compatibility Agreement between the City of Regina and Carry the Kettle Nakoda Nation, attached to this report as Schedule A.
2. Instruct the City Solicitor to prepare the necessary execution bylaw authorizing the City Clerk to execute the Municipal Services and Compatibility Agreement.
3. Upon the Municipal Services and Compatibility Agreement becoming effective, delegate authority to the Executive Director, City Planning & Community Development or their designate to approve subsequent servicing agreements with Carry the Kettle Nakoda Nation, in its own capacity or through its development corporation, with respect to the servicing required to support each phase of development of the reserve, provided that the terms and conditions of such agreements are consistent with the City's Servicing Agreement Standard Conditions 2011 and Development Charges Policy applicable to City lands.
4. Approve these recommendations at its meeting on March 30, 2022.

ISSUE

Carry the Kettle Nakoda Nation (CTK), through its holding company, Nakoda Developments

Corporation, acquired land located in the northwest part of Regina, Saskatchewan (NW Sec10-Twp18-Rge20-W2 Extension 136 and BLK/Par B Plan No 101229005 Extension 138). CTK intends to have the land set apart as reserve land pursuant to the terms of the Carry the Kettle Nakoda Treaty Land Entitlement Settlement Agreement.

In February 2021, the City of Regina (City) and CTK signed a Memorandum of Understanding (MOU) formalizing their mutual commitment to work together as CTK pursues an urban reserve and the subsequent development of its lands that are currently within the City's boundaries. Further to the Saskatchewan Treaty Land Entitlement Framework Agreement and Canada's Additions to Reserve Policy, a First Nation seeking reserve status on land located within or adjacent to an urban centre is required to negotiate and execute an agreement with the affected municipality.

The development of the Municipal Services and Compatibility Agreement (MSCA) is the next step to guide the provision of services to the land as well as ensure development and application of bylaws is compatible with (though not necessarily the same as) the City's. More specifically, in accordance with the Treaty Land Entitlement (TLE) Framework and CTK's band-specific agreement, the MSCA is required to address the provision of municipal services, including compensation for loss of taxes, bylaw compatibility, application and enforcement and an appropriate dispute resolution mechanism for resolving matters of mutual concern.

The City and CTK have negotiated the MSCA on terms acceptable to both parties. As well, CTK will be required to enter into a separate agreement with the Regina Police Service with respect to policing services specifically which will be prepared and presented to the Board of Police Commissioners. The Government of Canada's review and approval is required prior to the land being designated as a reserve and is a condition of the MSCA coming into effect.

IMPACTS

Financial Impact

Upon obtaining urban reserve status, CTK will have jurisdiction to control and implement its own tax system on the lands. However, consistent with other MSCAs the City has entered into, CTK agrees to pay, in consideration for the services, an annual amount which equals the municipal and library portion of the property tax and special tax levy that would be assessed if the land were not reserve land. These costs are considered cost recovery.

The proposed MSCA does allow for the review and refinement of these terms as CTK builds its capacity and determines if there are services it prefers to provide directly instead of receiving from the City. If this occurs, the MSCA would be amended accordingly, with both parties agreeing to and approving changes to reflect how services are provided and paid.

Future infrastructure costs, agreements for servicing of specific development phases, and associated development implications will be identified in subsequent discussions as the lands are built out over time. While specific financial implications are not yet defined, the MSCA seeks to mitigate risks for both parties by identifying the need for these future agreements and establishing the process and activities that will prompt them to be negotiated. The proposed MSCA contemplates the application of existing policies (e.g., Administration of Servicing Agreement Fees and Development Levies Policy) as a basis for determining the allocation of costs for services. The report recommends delegating authority for approval of subsequent agreements to the Executive Director, so servicing requirements can be dealt in a similar fashion to the process that exists for lands within City jurisdiction. If, at any time, servicing requests are made outside of existing policy, Council approval would be required.

Policy/Strategic Impact

The following impacts are identified according to *Design Regina, the Official Community Plan Bylaw No. 2013-48* (OCP).

- Section C, Goal 1 (Long-Term Growth), Policy 2.1: Endeavour to ensure that lands contained within the LONG-TERM GROWTH AREA (500K) are protected over the long term to accommodate a city population of 500,000 as conceptually shown on Map 1 – Growth Plan.
- Section C, Goal 2 (Efficient Servicing), Policy 2.6: Phase and stage development in accordance with the phasing and financing policies adopted in Section E, Goal 5 of this Bylaw (OCP) and Map 1B – Phasing of New Neighbourhoods and New Mixed-Use Neighbourhoods.

The area identified for development by CTK is in the northwest part of the city and is mostly within the future long-term growth area (~500K population) as per the OCP, Map 1: Growth Plan. However, there is a strip of land along the southern boundary of the proposed area (north of Maple Ridge) that is within the current 300K growth horizon. It is identified as Phase 1 and is a carry forward from the City's previous OCP that identified this area for development within the 235K growth horizon.

Once designated as urban reserve, the Lands would no longer be within the City's jurisdiction. The MSCA will guide how the development of those lands are coordinated with the City. The implications for the City's growth plan and OCP policy will be considered as part of the 10-year OCP Review, with scoping of that project commencing in the near future.

If the area does not receive urban reserve designation, the development status of these lands would not change and would continue to be considered the same as other long-term development areas outside of the current growth plan. The exception would be the land along the southern boundary of the proposed area, north of Maple Ridge; being within the current growth plan, this area could proceed with residential development once servicing is established.

- Section D10, Goal 2 (Economic Growth), Policy 12.6: Collaborate with community economic development stakeholders across the region to leverage shared economic advantages and tourism opportunities, including but not limited to:

12.6.3 Collaborating with surrounding First Nations, Metis and Inuit communities to promote shared prosperity; and

12.6.5 Support urban reserves that are in keeping with overall land use and growth policies.

Working to build this partnership with CTK and supporting development of the proposed reserve lands furthers the City's commitment to strengthening partnerships with First Nations and creating economic development opportunities that support growth in our city and surrounding region. Furthermore, the City acknowledges its place in helping the Treaty commitments, between First Nations, Government of Canada and the Government of Saskatchewan, to be met.

OTHER OPTIONS

If Council has specific concerns with the proposed MSCA, it may refer it back to Administration to consider further recommendations or to endeavour to negotiate specific changes to the MSCA with CTK. The report may be reconsidered by Executive Committee at a future date or brought back directly to City Council after such further review. Referral of the report back to Administration will delay approval of the MSCA with CTK until the requested information has been gathered, or changes to the MSCA have been made.

COMMUNICATIONS

Administration has been actively working with CTK over the last year to prepare the recommended MSCA. CTK received a copy of this report and was made aware of when it was on the agenda to proceed to Executive Committee and City Council.

DISCUSSION

The legal description of the land proposed to be set apart as urban reserve and referenced as the subject of this MSCA is:

Surface Parcel #112644132

Reference Land Description: NW Sec 10 Twp 18 Rge 20 W2 Extension 136; and

Surface Parcel #111695126

Reference Land Description: Blk/Par B Plan No 101229005 Extension 138

(the Lands)

The Lands do not have an assigned civic address but are generally located in the City's northwest corner, as shown on Schedule A-1 of the attached MSCA.

As defined by the federal government, an urban reserve is a reserve within or adjacent to an urban centre. Pursuant to the Federal *Addition of Lands to Reserves and Reserve Creation Act* and through the Policy on Additions to Reserve/Reserve Creation, CTK will work through a process with the federal government to pursue urban reserve designation of the Lands. In these circumstances, lands are often acquired through the Treaty Land Entitlement process (which was the case for CTK) that recognizes that some First Nations did not receive the amount of land they were promised under the Treaties. As well, historically designated reserve lands were often located in remote or rural areas that were not conducive to supporting economic development and opportunity. Many First Nations are now looking to acquire land that is within or adjacent to urban centres that can better meet their community needs. These locations may be separate from the main reserve, but within their treaty territory.

Once the Lands are set apart as urban reserve by the federal government, the Lands transition from being under the jurisdiction of the City to that of CTK. The MSCA is the tool that provides the framework for how the City and CTK will work together to ensure compatibility of land use, growth policies, bylaws, and procedures, as well as the means by which CTK will acquire and develop the services it needs for the Lands.

While the City has entered into MSCAs with other First Nations, specific provisions were included in this MSCA to take into account and reflect the significant size, condition (i.e. raw land) and location of the Lands that make this agreement unique. In particular, the CTK lands:

- Cover a large area (approximately 268 acres/108 hectares),
- Are located outside of the City's current growth plan,
- Include residential development within its plans, and
- Have lands in a raw and unserviced state.

The other five MSCAs that the City has entered into to date have been site-specific and within existing established areas, and used for commercial or institutional purposes.

Accordingly, this MSCA takes a different approach. Rather than confirming servicing and land use, the Agreement sets out an overall framework for working out the detail amongst the parties as partners. To support this approach, the MSCA sets out provisions for annual meetings of councils (at a minimum) and establishing a Joint Land Use and Bylaw Committee to manage regular activities and ensure compatibility as development occurs.

As well, the proposed MSCA has provisions to clarify that no development can occur until the area is designated as an urban reserve and contemplates that reserve status might also be attained in phases. Initially, once the Lands or relevant portion thereof are set apart as reserve, only the first phase of development – the travel centre/truck stop – may proceed (when servicing is established) prior to completion of thorough servicing studies and a formal concept plan for the broader area. Consultation with the public is also identified to be included as the plan is finalized and as amendments occur over time.

To help address the servicing challenges, the MSCA sets out allowances for interim servicing solutions as well as long-term requirements that City services be connected to, when they are available. The MSCA also sets out provisions for developing the subsequent agreements to address servicing requirements, payment of development charges and infrastructure construction costs, and concept plan refinements as conditions for the connection to and supply of services (including water, wastewater, parks and roads) based the requirements and demands as each phase proceeds. As previously identified, the general requirements are that these matters will be addressed between the parties consistent with the way the City imposes payments, construction obligations, assurances, etc. in relation to similarly zoned developed non-reserve lands within the City.

The MSCA seeks to mitigate risk for both parties by clearly defining payments for services, enabling amendments as agreed to by both parties, requiring renewal of the agreement every five years, and having provisions that outline how disagreements will be resolved. As was initiated through the MOU, the City is committed to working collaboratively with CTK, with mutual respect and trust, to promote prosperity in a compatible and coordinated way.

An important part of the City and CTK's commitment to both work and resolve disputes that may arise between them on a collaborative basis, particularly in relation to land use and bylaw compatibility, is reflected in the MSCA by the establishment of a Joint Land Use and Bylaw Committee. The Committee and the review process connected to it provides for:

- specific notification at the administrative level of proposed bylaws or development proposals that may impact the use and development of the City or CTK lands, as the case may be;
- an opportunity for joint review and more direct discussion between the parties and determination of whether the intended bylaw or development is compatible and/or how potential concerns regarding compatibility can be addressed before the matter proceeds; and
- an escalation of issues that the Committee can't come to agreement on to the respective councils to consider matters before more formal arbitration or other legal process is resorted to.

This is in addition to the generally contemplated annual meeting of the respective councils “to discuss such matters as may have arisen between them, and to keep open the lines of communication” that is also provided for in the MSCA.

Once the MSCA is jointly signed by both councils, the City expects that CTK will apply to the federal government for urban reserve designation of the lands. While the timing of this process is unknown, Administration’s efforts will in the meantime focus on supporting preparation for Phase 1 (the travel centre/truck stop), establishing subdivision requirements to address road dedication and servicing easements, and CTK’s servicing and concept planning efforts. Following the designation of the lands as reserve, the MSCA will formally come into effect with a first expected task being the establishment of an agreement for servicing the first phase.

Within the City, Administration has been delegated authority to enter into servicing and development levy agreements that comply with City policies, and it is proposed that the same authority be extended to continue to these Lands, following reserve designation. However, if something should be sought that is outside of standard City policies, further City Council approvals will be needed as the build-out occurs.

In summary, the significant provisions of the MSCA are as follows:

- The City shall provide all normal City services to the Land. The type and level of services supplied shall be the same as the City provides to similarly zoned lands within Regina, which are in a similar state of development, and subject to any interim servicing arrangements agreed to by both Parties. This includes fire protection and policing services, regardless of the state of land development.
- CTK agrees to pay the City in consideration for the municipal services, an annual amount which equals the municipal and library portion of the property tax levy for any given year that would have been levied on the land if the land were not reserve land. As noted, this is subject to future renegotiation should service delivery preferences change.
- CTK agrees to annually pay any local improvements, any Business Improvement District levies and any special charges levied against the land.
- Annual amounts to be paid by CTK shall not cover those services which are normally provided by the City in consideration for a direct charge or user fee payable by the party to whom such services are provided. Such services include the supply of water and the provision of sanitary and storm sewer systems; CTK will be responsible for paying these charges similar to other users of these services.

- Prior to reserve creation, CTK will apply for subdivision approval to address roadway dedication and other servicing issues; amended legal land descriptions will be attached to the MSCA following this subdivision.
- CTK agrees that it will take all necessary steps, including passing and enforcing compatible bylaws to ensure that, at all times, the occupation, use, development and improvement of the land is compatible with City land, particularly in regard to land use, building and fire standards, public health and safety, and business regulation. The City may adopt technical construction and site drainage standards for new developments, and CTK agrees that compatible standards shall apply to all new developments on the land.
- All parties acknowledge that the Land is currently raw and unserviced, and a separate servicing agreement for each phase of development shall be entered into between CTK and the City prior to any development proceeding on the land. Use of interim services may be agreed to, provided CTK connection will be made to the municipal services when they become available.
- CTK agrees that the Land will be developed in a manner compatible with the City development standards for similarly zoned non-reserve land in the City and in a manner compatible with the requirements of any legislation or regulations of any other jurisdiction that may apply to the Land, or any particular development proposed on the Land.
- CTK agrees that all buildings will be constructed in a manner compatible with City building standards and will be responsible for processing and administration of all building and development permit applications.
- CTK agrees that prior to issuing any development or building permit, a copy of the full application will be provided to the City for its review and comment within 21 days to enable identification of any specific technical requirements that need to be met to access water and wastewater services and the applicable servicing connection fees, if any, that must be paid prior to connection.
- CTK agrees that the first phase of development, the truck stop/travel centre, shall be the only phase that proceeds in a form consistent with City standard requirements prior to the establishment of a formal concept plan for all remaining portions of Land.
- CTK agrees to undertake public consultation to inform, engage and solicit feedback on the planned development from the general public as part of the preparation of the formal concept plan; the City will provide support as may be needed.
- CTK agrees that no development would occur until the land is designated as an urban reserve.

- The parties agree to provide notice to each other of proposed bylaws or developments that will affect the others' lands, and on request, a Joint Land Use and Bylaw Committee comprised of representatives from the City and CTK shall be used to resolve any concerns with the same. If a dispute remains as to bylaw compatibility, land use or another matter not subject to the joint committee process, the parties agree to refer such matters to binding arbitration, unless the dispute relates to levies or charges which can be addressed through a joint meeting of councils. If no agreement is reached, the matter will move to arbitration.
- CTK and the City agree that their respective councils, and/or their representatives, will meet at least once in each calendar year to discuss such matters as may have arisen between them and to keep open the lines of communication.
- CTK and the City agree that this MSCA will continue for an initial term of five years and will automatically renew for another five years until one party serves the other notice of its intention not to renew the Agreement. At the same time, if either the City or CTK deem it necessary to make an alteration or addition to the Agreement, they may do so by means of a written agreement between them and form part of this Agreement.

DECISION HISTORY

The City of Regina and Carry the Kettle – Memorandum of Understanding was considered and approved by City Council at its meeting on February 10, 2021 (CR21-17).

City Council approval is required to advance to the next step, signing the MSCA between the two parties.

Respectfully submitted,

Respectfully submitted,


Autumn Lawson, Director, Planning & Development Services

2/8/2022


Deborah Bryden, Acting Executive Director

3/10/2022

Prepared by: Kim Sare, Senior City Planner

ATTACHMENTS

Municipal Services and Compatibility Agreement