

# Understanding Urban Reserves: Special reference to Kapyong

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# History and context



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# Overview of Aboriginal demographics: Manitoba

| Aboriginal identity   | Number    | (%)   |
|---|-----------|-------|
| Total – Population by Aboriginal identity                         | 1,240,695 | 100.0 |
| Aboriginal identity   | 223,310   | 18.0  |
| Single Aboriginal response  | 220,470   | 17.8  |
| First Nations (North American Indian) single identity             | 130,505   | 10.5  |
| First Nations single identity (Registered or Treaty Indian)       | 121,180   | 9.8   |
| First Nations single identity (not a Registered or Treaty Indian) | 9,325     | 0.8   |
| Métis single identity   | 89,360    | 7.2   |
| Inuk (Inuit) single identity                                      | 610       | 0.0   |
| Multiple Aboriginal identities                                    | 2,020     | 0.2   |
| Aboriginal identities not included elsewhere                      | 815       | 0.1   |
| Non-Aboriginal identity   | 1,017,390 | 82.0  |

1/5 of Manitobans report an Aboriginal identity

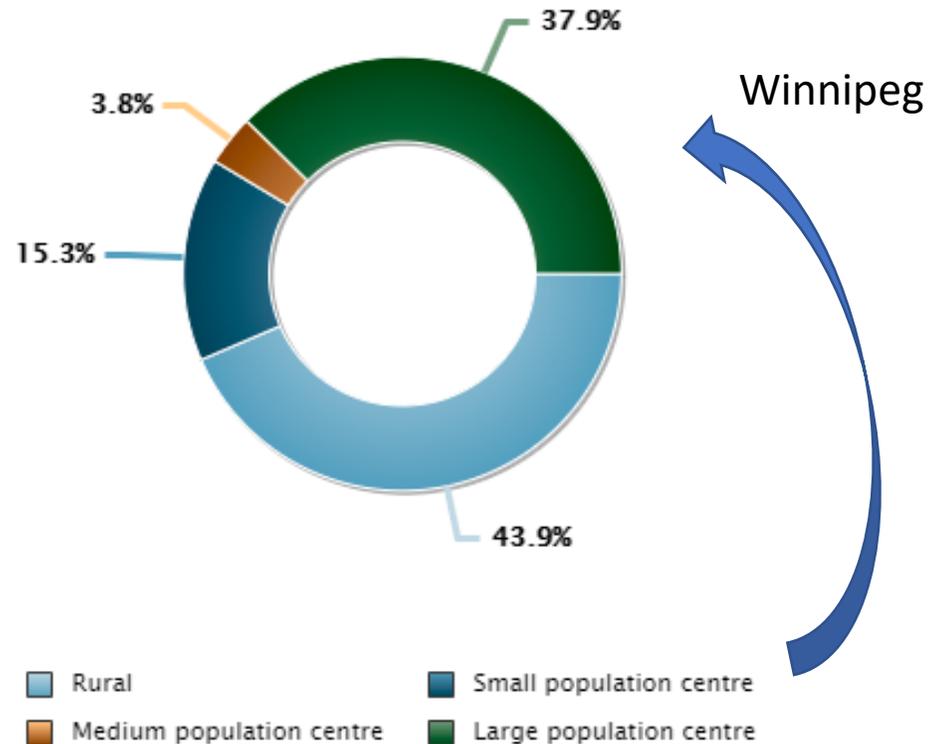
1/10 of Manitobans report being a registered or Treaty Indian

1/14 of Manitobans report being Métis

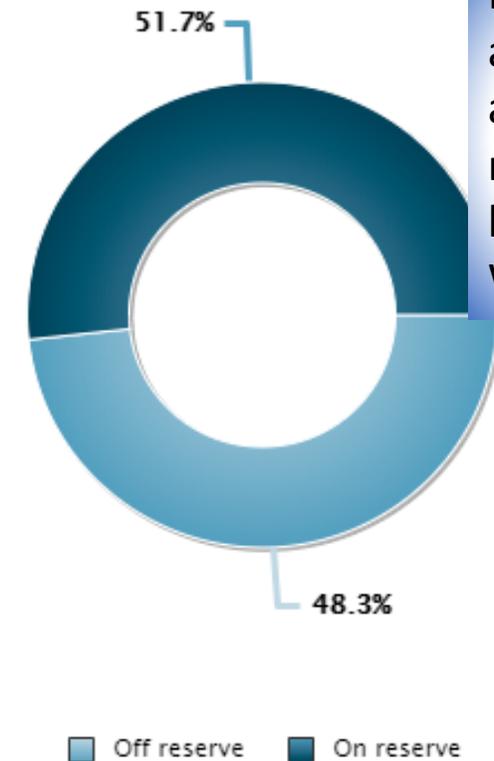
**Winnipeg has the highest proportion Aboriginal population of major cities in Canada**

# The Aboriginal population is becoming urbanized

Distribution of the Aboriginal population by population centre size, Manitoba, 2016



Distribution of the First Nations population with registered Indian status by residence on or off reserve, Manitoba, 2016



Most reserves are non-urban and many are more than 1 hour from Winnipeg.

# A quick tour of government Indigenous policy: 1763 - 1960

# It all started with King George (III)

- **1763** Royal Proclamation defined the relationship between settlers and the Indigenous population in North America as ***nation-to-nation***.
  - It limited westward settlement.
- **1776** The American Revolution saw the separation of treatment of the Indigenous populations of North America
  - The subjugation of Indigenous populations was faster in the US due to aggressive military expansion in the west.
- Early years witnessed a decline in Indigenous population in Canada through war, disease, and famine.
  - The principles of ***Doctrine of Discovery*** and ***terra nullius*** governed the expansion of European settlement in Canada



The strategy of Britain in early Canada (pre-1812) was to seek cooperation with the indigenous population due to the difficulty in maintaining supply lines, the need to increased military capacity to repel US expansion, and to maintain the fur trade.

# Canada and the Indian Act – 100 years of decline

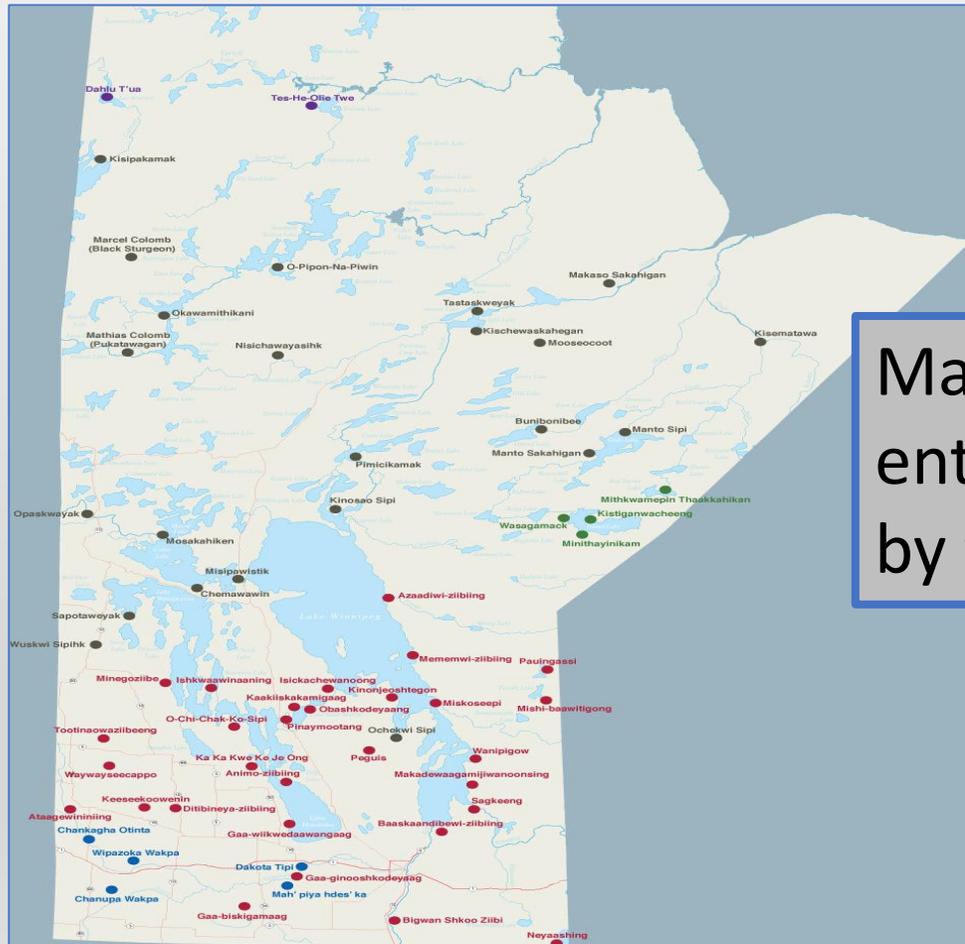
- **1867** the British North America Act made the Indigenous population of Canada wards of the Federal government and set the framework for negotiating treaties .
- **1876** the Indian Act eliminated the rights of Indigenous persons entirely
  - Population decline, isolation not assimilation, loss of rights, creation of reserves
  - Treaty violations over the next decades resulted in most of the land initially granted to First Nations effectively falling under the control of non-Aboriginal persons and governments.
- **1900 - 1950** Aboriginals excluded from Canadian society (no vote, wards of the state, limited capacity to gain private wealth, and “confined” to reserves)



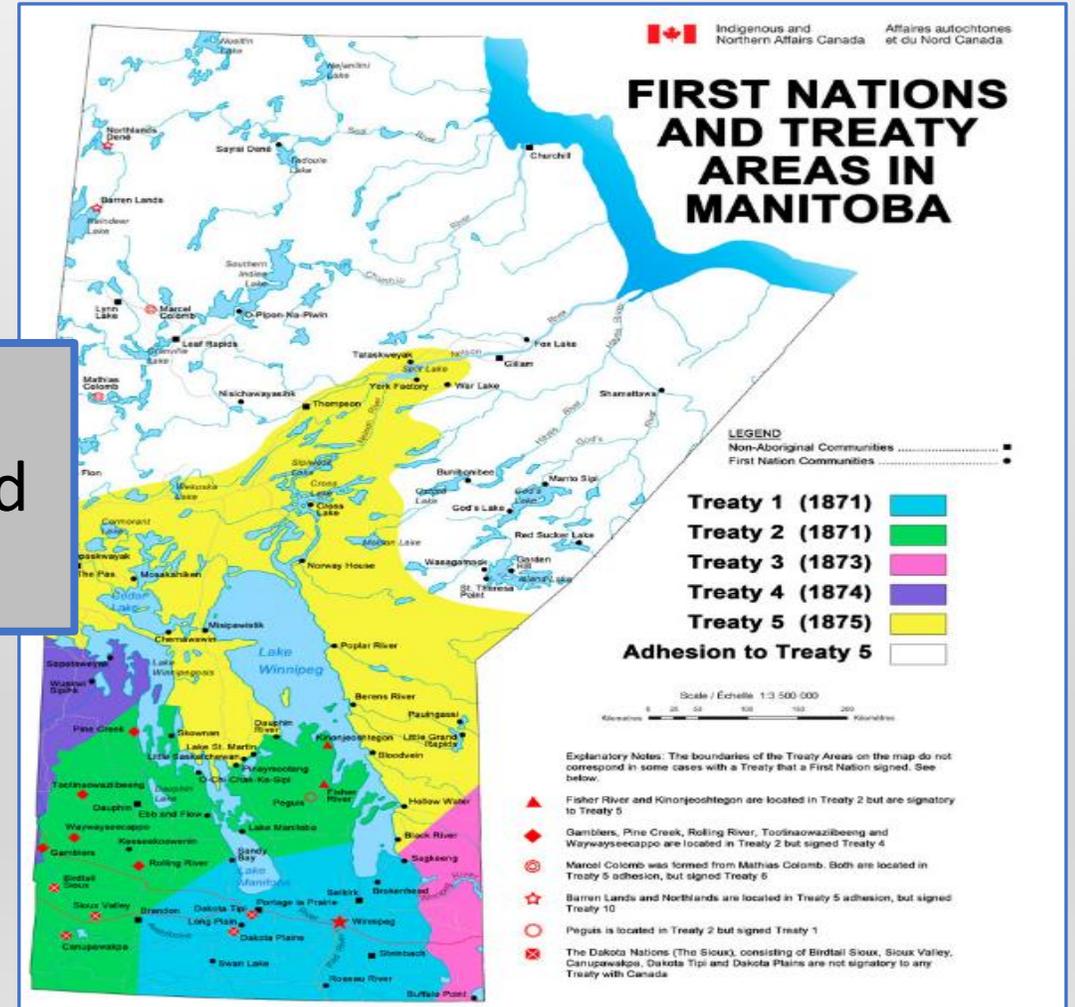
Chief Peguis

The five treaties that established the relationship between Canada and First Nations in Manitoba were negotiated between 1871 and 1875

# Manitoba's Aboriginal population is either dispersed in rural areas or concentrated in Winnipeg and other urban centres



Manitoba is entirely covered by treaties.



# A Quick Tour of Indigenous Rights: 1950 - 1970

- **1920 – 1960** Residential schools reflected a deeply misguided attempt to support indigenous students to “leave” the reservation by education. The result backfired spectacularly.
- **1940 – 1960** The expansion of the social welfare state increased dependency, without increasing opportunities for self reliance.
- **1967 Hawthorne Report** advocated increased on-reserve spending to upgrade quality of life/health, promote training and employment, encourage Aboriginal persons to leave the reserve. Also advocated for greater provincial responsibility in funding social and health services for Aboriginal persons.
- **1970 White Paper** issued by the Liberal government was an attempt to fundamentally redraw the nature of Aboriginal government:
  - Remove all bases for discrimination
  - Recognition of Indian culture
  - All services to be unified across Canada
  - Those most remote be helped the most
  - All laws be observed
  - Control of Indian lands be transferred to Indian Peoples

Many Aboriginal leaders opposed the plan.

The White Paper assumed that individual Aboriginal persons wanted individual rights, which was (is) a deep mistake.

Pierre Trudeau lost interest and was more consumed by broader constitutional issues.



# Reconciliation

- **2009 – 2015 Truth and Reconciliation Commission** – appointed in response to court decisions on litigation brought by various Aboriginal groups against churches and governments involved in residential schools
- Issued a range of recommendations, most relevant for urban reserves are:

Reconciliation must inspire Aboriginal and non-Aboriginal peoples to transform Canadian society so that our children and grandchildren can live together in dignity, peace, and prosperity on these lands we now share.

We call upon federal, provincial, territorial, and municipal governments to repudiate concepts used to justify European sovereignty over Indigenous peoples and lands, such as the *Doctrine of Discovery* and *terra nullius*, and to reform those laws, government policies, and litigation strategies that continue to rely on such concepts.



# Four critical ideas

1. **Aboriginal governance is communal.** An Aboriginal person has individual rights as a Canadian under the Charter, but as a member of a First Nation, his/her property rights and even voting in band elections reflects historical band practice.
2. First Nations have a **government-to-government** (nation-to-nation) relationship with the federal and provincial governments.
3. It is the **Supreme Court** that has enabled the extension of Aboriginal lands and it is the courts that have final say in any relationship between Aboriginal and settler society.
4. **Land is fundamental** to First Nations' identity.

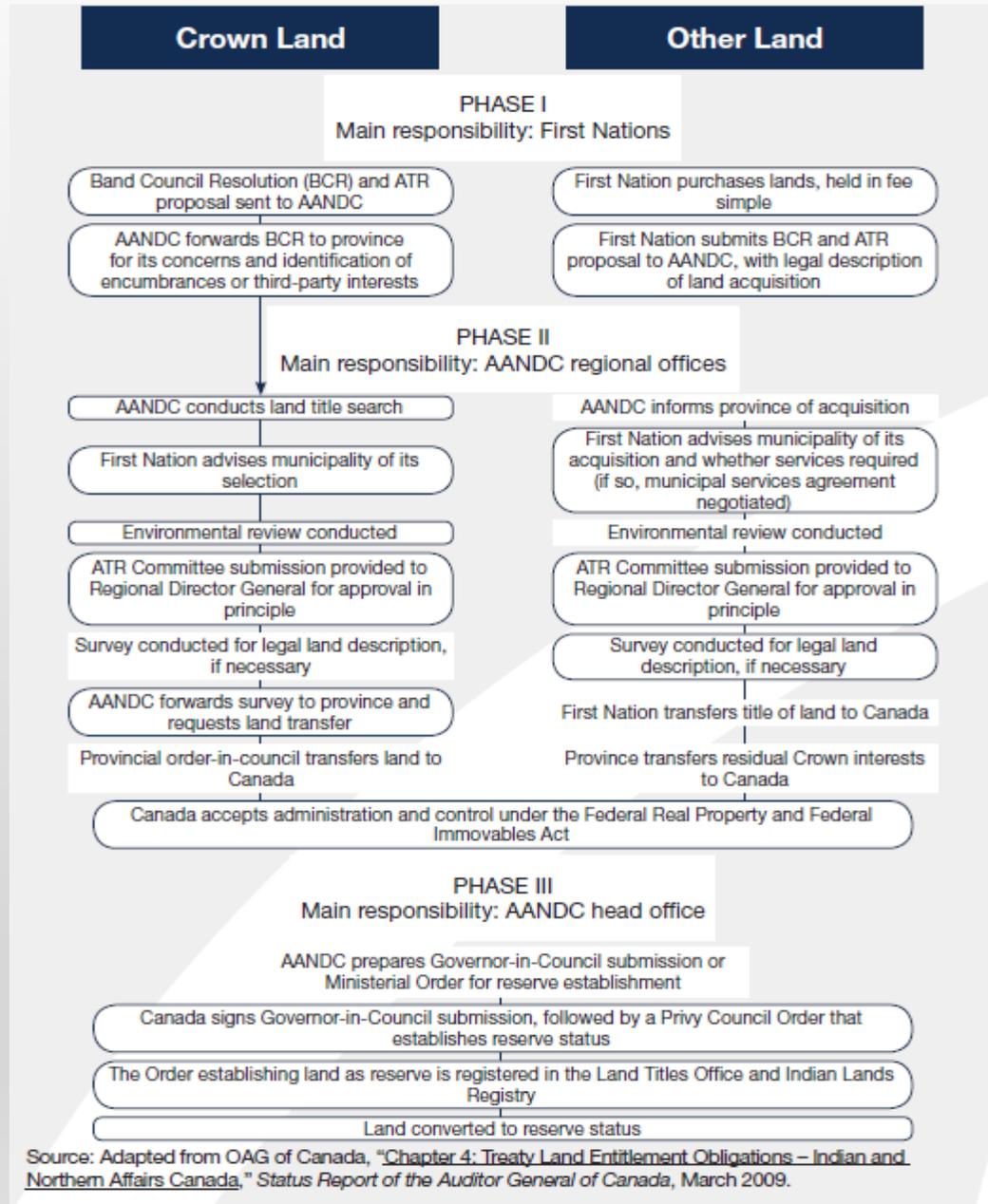
This brings us to urban reserves

# Additions to Reserve Lands

- A process where a First Nation acquires land and seeks to have it designated as a “reserve” under the Indian Act.
- Many scholars and the courts agreed that First Nations were deprived of lawful lands when original reserve boundaries were developed.
- 1992-97 ***Treaty Land Entitlement First Nations*** and the Federal/Provincial governments signed an agreement to resolve outstanding land claims.
- FNs received funding to acquire lands, or in some cases Crown lands were transferred directly (e.g. Kapyong)
- Most of the land transferred thus far has been agricultural with some (increasing) urban areas.

“Under these agreements, Canada and Manitoba committed to adding up to 1.4 million acres to reserve and to pay \$190 million for land purchases and processing costs. Manitoba's primary obligation is to provide over 1.2 million acres from unoccupied Crown land. The balance will be acquired from private land owners who are willing to sell.” *Source: Treaty Land Entitlements in Manitoba*

# The Additions to Reserve Lands process



Source: Adapted from OAG of Canada, "Chapter 4: Treaty Land Entitlement Obligations – Indian and Northern Affairs Canada," Status Report of the Auditor General of Canada, March 2009.

# What is an urban reserve?

“An urban reserve is land within a city which has been purchased on the open market by a First Nation and granted reserve status by the Federal Government. Land does not become a reserve just because it is owned by a First Nation. Reserve status is obtained by going through a process which results in a Federal designation of the land as reserve.”

Source: City of Bridges: First Nations and Metis Economic Development in Saskatoon. (See Handout)

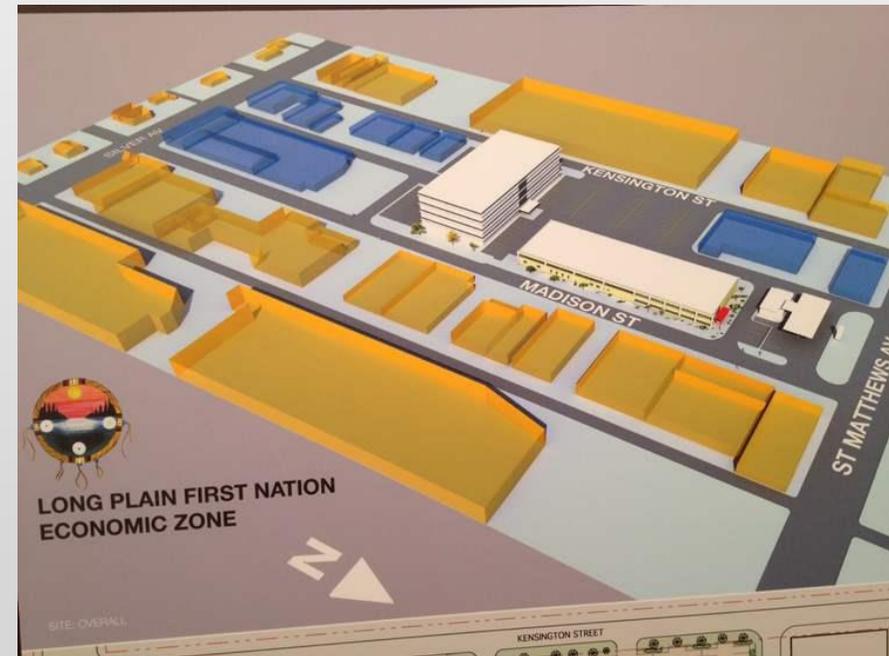
# Currently Manitoba has eleven urban reserves

1. Opaskwayak Cree Nation (adjacent to the **Town of The Pas**)
2. Swan Lake First Nation's urban reserve land (within the **Rural Municipality of Headingley** and adjacent to the City of Winnipeg)
3. Roseau River Anishinabe First Nation's urban reserve land (**adjacent to the City of Winnipeg**)
4. Sapotaweyak Cree Nation's two parcels of urban reserve land (both located within the **Town of Swan River**)
5. Nisichawaysihk Cree Nation's urban reserve land (**within the City of Thompson**)
6. Birdtail Sioux First Nation's urban reserve land (located within Foxwarren in **Prairie View Municipality**)
7. War Lake First Nation's 40 parcels of urban reserve land (**located in Ilford**)
8. Peguis (**1075 Portage**)
9. Long Plain First Nation (adjacent to the **City of Portage la Prairie**)
10. Long Plain First Nation (**Madison Ave.**)
11. Seven First Nations (**Kapyong**)

# Urban Reserves in Winnipeg – Long Plain



Long Plain's Madison site near Polo Park has a gas station, education (Yellowquill College), and local businesses (not necessarily First Nations owned).



# Urban Reserves in Winnipeg – Peguis



Plans include a strip mall, Cannabis cultivation, office leasing, and a restaurant.

# Kapyong

- First opened in WWII.
- Downsizing the military in the 1990's resulted in eventual closure in June 2004, but was used for limited training for local militia.
- In 2007 the 160 acre area was to revert to Canada Lands Corporation, but the Treaty 1 bands asked the courts to block this transfer.
- The federal government appealed, but in 2015 the Harper government decided not to continue its appeal.
- The taxpayer spent \$15 - \$20 million between 2004 and 2015 to maintain the vacant barracks.
- The City of Winnipeg lost tax equivalent payments.



In April 2018, Treaty 1 Bands (Long Plain First Nation, Brokenhead Ojibway, Peguis First Nation, Roseau River Anishinabe First Nation, Sagkeeng First Nation, Sandy Bay First Nation, and Swan Lake First Nation) signed and intent to use the ATR process to transfer the Kapyong Barracks land to an urban reserve, jointly managed by the seven bands.

# Kapyong: Current plans

Current plans call for low density housing, offices, sports facilities, retail, and cultural.

The goal is to generate net revenue for the seven bands.

This can only occur when land is used and its “highest and best use”.

Therefore, low income housing will not be included unless construction and operations are subsidized by government.

Residential, commercial and retail activities must be at current market prices.

Since the land cannot be owned by private individuals (including Status Indians), use will be under various forms of lease arrangements.



# Kapyong: Municipal Development and Services Agreement (MDSA)

- Bands with urban reserves enter into time limited agreements (5 – 10 years) with the urban government.
- These agreements outline the services to be delivered by the city (water, sewer, animal control, building permits, police, fire, emergency response, transit, etc.).
- The Bands that have the urban reserve do not pay property or school taxes, but remit an annual amount equivalent to the services received from the city.
- The MDSA acknowledges the zoning of the City and the Band(s) undertakes to pursue compatible development.
- The urban reserve will tax activity on its land to generate revenues back to the band(s) and to compensate the city for services.

# Kapyong: FAQ

| Question  | Answer  |
|---|---|
| <p><i>1. Will the management of Kapyong reserve be free to develop their land in any way?</i></p> | <p>Development will be constrained by the MDSA and the agreement to ensure compatibility with adjacent use.</p> <p>Most urban reserves have made a commitment to pursue compatible land use with the surrounding municipality.</p> <p>The owners will seek to maximize revenue, which will mean that Kapyong needs to develop commercial/residential opportunities to attract non-FN clients/residents.</p> |

| Question   | Answer  |
|--|---|
| <p>2. <i>What is the time horizon for development?</i></p> | <p>110 acres in a high land value area of Winnipeg may take take time to develop, but ....</p> <p>Canada Lands owns 50 acres and remains committed to working jointly with Treaty One Economic Development Corp; this may accelerate development.</p> <p>Given the dense retail develop and very active residential development in the area, competition may be intense. At the same time increased residential density in the area, may offer an expanding market for business located on the reserve.</p> |

| Question                              | Answer  |
|---------------------------------------|---|
| <i>3. What tax regime will apply?</i> | <p>Status Indians who work in Band owned businesses on the reserve will not be liable for income tax. It remains unclear whether status Indians working in a non-Aboriginal business on the reserve will pay income tax.</p> <p>Kapyong will not pay property/school tax, but make payments in lieu of taxes and pay fees for services (fire, protection, water...)</p> |

| Question  | Answer   |
|---|--|
| <i>4. Will the City's power of eminent domain apply? Can the city expropriate urban reserve land?</i> | No... For example, widening of Kenaston will require a separate negotiation and clauses in MDSA. |

| Question  | Answer   |
|---|--|
| <i>5. What if the management of the urban reserve wishes to undertake development that residents in the area find incompatible?</i> | This will be the real test for the MDSA. If negotiation fails, then the courts will be asked to decide. This should be avoided by all parties. |

# Conclusion

- The development of Kapyong Barracks as an urban reserve should be welcomed.
- It develops prime real estate and increases cash flow to the city.
- Provided land use is compatible with zoning and development is not competitive with other uses (e.g. retail will be tough given the outlet mall and the proximate strip mall.), this can be a win-win.
- Strategic partnerships with non-Aboriginal business will hasten economic development.
- Key dangers are for local residents to imagine the worst and First Nations to imagine they have complete freedom to use the land in any way.
- The potential for Kapyong becomes complicated the moment the courts become involved in resolving tax and land use disputes, creating a lose-lose scenario