Will urban reserves spur Indigenous prosperity?[1]

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Abstract

The "ownership" of urban land by Indigenous communities in the form of urban reserves has prompted both optimism that they could prove an important element of promoting First Nations' economic well-being and that such ownership offers concrete reconciliation.

But is this positive reception warranted? Will ownership of urban land be a boon for First Nations? ? What essential steps appear to increase the chances this form of economic reconciliation will succeed in raising incomes and wealth for Indigenous Canadians? What impediments and challenges lie ahead, both for the First Nations governing urban reserves and the surrounding cities?

The paper uses two case studies to illustrate two approaches to First Nations economic development using land within urban Canada. Tsawwassen First Nation has developed its urban economic strategy within the context of a Comprehensive Land and Self Government Agreement. In contrast, Kapyong Lands in Winnipeg is a new urban reserve that will emerge under the Additions to Reserve process. The paper focuses on the latter instance contending that urban reserves offers important opportunities for remote First Nations to participate in Canada's urban economy, but important challenges of municipal planning and taxation require resolution.

Key words: Indigenous Economics, First Nations Reserves, Treaties, Aboriginal Property Rights, Property Taxation

1. Introduction

As one of the traditional factors of production, land remains an essential element of economic well-being. De-Soto(2000) and (North, 1990), among others, argue that individual not group property rights support the path to economic prosperity. This contention has encountered substantial rebuttal, but this is not the subject here. Rather, the issue under consideration is whether recent transformations in Indigenous land rights in Canada supports increased prosperity. Specifically, will the creation of urban reserves support improved economic well-being for First Nations?

The subject of how treaties and land ownership forms have affected First Nations income has received some recent empirical attention(Aragón, 2015; Aragon & Kessler, 2017). In first study, the author finds that modern treaties (which we define below) are associated with increased incomes in location economies, close to the First Nations' reserve communities. In the second study, the

authors exploit the fact that treaties allow different regimes of property rights. The question is whether these varying levels of property rights support increased prosperity in the local area around the First Nation. On some dimensions such as homeownership rates and housing condition the answer appears be affirmative, but on average incomes for the First Nation, the conclusion remains qualified.

This study adopts a different tack, investigating the potential for urban reserves to promote prosperity for the participating First Nations. Urban reserves have emerged as part of important policies including the Additions to Reserve process, Treaty Land Entitlement Agreements, and the First Nations Land Management Act. This analysis uses two case studies to identify institutional and process factors that condition the success of urban reserves. Specifically, can urban reserves located in medium growth centres generate revenues and economic well-being for First Nations whose primary locations are in rural and remote northern communities?

First Nations persons receive economic benefits from land in three ways. First, individual Indigenous persons, households, and businesses may own non-reserve land in freehold, just as any Canadian. They enjoy all the economic benefits associated with owning urban and rural land that has appreciated for the last 50 years. Second, some First Nations urban communities, defined either as reserves under the Indian Act or by comprehensive land and self-government agreements, have benefited economically by being situated within or close to rapidly growing urban areas or to natural resource endowments. Third, some non-urban First Nations may have added urban areas to their reserves as defined under the Indian Act. This paper considers these two latter instances of Indigenous urban land ownership, with emphasis on the economic potential for new First Nations controlled urban land created by the additions to reserve process.[2]

The response to the creation of urban reserves has been generally positive. Popular accounts (Fontaine, 2015; Quesnel, 2016) and more technical studies (Deloitte, 2016) argue for their potential to boost the economic opportunities for both First Nations and surrounding city residents alike (NAEDB, 2015, 2017). Most recently, the OECD (2020) has prepared a detailed report on Indigenous Communities' economic development writing "Secure rights to land can increase autonomy, generate revenues and create economic opportunities". The process of creating new reserves, particularly urban reserves is one process of securing Aboriginal land rights.

The paper begins with a general discussion of the legal basis for creating new urban reserves set within the evolving nature of land law in Canada. Then, two case studies illustrate two possibilities for First Nations urban communities.[3]

- Tsawwassen First Nation (TFN) is an Indigenous community that has become enveloped by the growth of the Greater Vancouver area. TFN represents an example of an urban First Nation that has entered into a Comprehensive Land and Self Government Agreement, a process that started with the James Bay Agreement of 1975. In the case of TFN, their agreement dates from 2009 (Canada, 2008b)
- Kapyong Lands (KL) is the former site of the Princess Patricia Light Infantry in Winnipeg, and will become an urban reserve under the auspices of a consortium of seven First Nations. However, since the final agreement remains pending, development remains a work in progress. This new urban reserve is one of many emerging under the additions to reserve (ATR) process (Canada, 2012).

Next, the paper identifies a range of issues that shape and condition the evolution of First Nations urban communities including the need for transparency in the treaty making process within urban areas, the development of land law legislation to support the extraction of maximum value from urban reserves, the creation of the institutional infrastructure to support economic development and the transfer of wealth to community members, and establishing processes that enhance the mutual benefit of Indigenous and settler communities alike.

In this paper, Indigenous economic well-being refers to the growth in individual or personal income for registered Indians living within an urban community[4] covered by a comprehensive agreement or as a reserve under the Indian Act. (see Section 2.2). It does not address the economic well-being of registered Indians residing in urban areas. Other measures of economic well-being such as wealth, employment, and investment/business incomes are important indicators of prosperity, but since the census offers personal income data for all Canadians and for most Indigenous communities, it is convenient to use this metric as the indicator of economic well-being.

Although the paper focuses on material measures of economic well-being, it is important to acknowledge Indigenous perspectives that do not separate increases in income and wealth from the concept of leading a good life. Using the four quadrant medicine wheel concept, "leading a good life" comprises spiritual, emotional, mental, and physical dimensions that some argue are at the core of Indigenous concepts of well-being. (Denis et al., 2017). Those operating within this perspective argue that material well-being has little value without the other three quadrants. In the absence of measures for other the other dimensions of well-being and, this paper retains personal income as the measure of economic well-being.

Finally, the paper focuses on First Nations, but not to discount any class claims Metis and Inuit may have on urban lands other than in freehold. However, the nature of Metis rights to the creation of urban communities remains before the courts and the comprehensive agreement that created Nunavut does represent a significant gesture of reconciliation for the Inuit in Canada.

2. Land law evolves.

Treaties and agreements dating to the mid 18th century guided the parallel paths for how Europeans and Indigenous peoples would use the land. These agreements shifted in tone and intent after 1812 war with the United States. Very roughly one can identify four phases of treaty agreements between successive settler governments and First Nations: 1) commercial and military agreements from 1701 to 1812; 2) land and services treaties between 1812 and 1921); 3) 1922-75 a hiatus in treaty making; and 4) post 1975 comprehensive agreement and modern treaties(Jones, 2019; Mason et al., 2020; Miller, 2009). Before summarizing treaty history, it is useful to explore Indigenous property rights.

2.1. Indigenous property rights reflected the economic base of the community

In Canada, any business and individual may hold land in freehold. Since 1950, with the amendments to the Indian Act that allowed First Nations persons to live off-reserve, Indigenous entities (persons, households, and businesses) have been able to own land in fee simple anywhere in Canada except on Crown land and reserves defined under the Indian Act.

About 89% of Canada is split approximately evenly between federal and provincial governments as crown lands (Neimanis, 2013). Of the remaining 11%, most is fee simple ownership by private

individuals and businesses. Crown lands are typically set aside as national and provincial parks, wilderness, and First Nations reserves.

Many, if not all First Nations, hold the view that European settlement never extinguished Aboriginal title. Even where treaties and other agreements created accommodations between Aboriginal and European concepts of land title, a common view among First Nations is that these agreements never abrogated Indigenous land rights. In this view, traditional Indigenous title supersedes both the concept of fee simple and crown land.

A common view is that Indigenous perspective on land presents a fundamentally different vision of the "ownership" of land than European law. Very generally it remains correct to say "Aboriginal people's rights to land as defined by the Indian Act are communal in nature, belonging to the group rather than the individual member, and cannot be bargained away except by the group to the crown in right of Canada"(Henderson, 2016). Under the Indian Act, no individual Indigenous person can own property on the reserve where land is communal for the benefit of all members. The concept that all lands are inherently communal aligns with core philosophy of many First Nations. (Liidlii Kue First Nation, 2013).

However, it is incorrect to believe that prior to European settlement Indigenous lands were entirely communal with no private property. As Flanagan et al. (2010) and (Manuel & Derrickson, 2015) argue, Indigenous peoples developed complex and varied systems of individual and collective property rights that aligned with the specific economic base of the community. This idea reflects the economic theory of property rights (Demsetz (1967), Alchian and Demsetz(1973), and Bailey(1992)) that contends all societies align property between individual and community to maximize their chances of survival and then refine the legal systems to enhance economic well-being, balancing collective and individual ownership.

This perspective suggests that societies that survived through agriculture, aquaculture, and hunting within defined areas tended to remain in fixed settlements, where individuals and families often had claims to specific properties and locations recognized by the community and that were heritable. In these contexts, the economic theory of property rights indicates that the material well-being of the community increases when ownership remains stable and individual households reap the benefits from caring for the land and associated infrastructure such as traplines or fishing weirs. The

recognition of individual or family property rights created a basis for land improvement that benefitted the community in the long-term.

In contrast, First Nations that optimised well-being by following herds, land-based property ownership vested in individuals, households, or smaller groups than the community offered no economic advantage and were generally a nuisance. Improving the land upon which vast bison herds grazed and where humans followed the herds, had little value to the individual or the community.

While elements of individual property rights did exist within all First Nations, the written formalization of property rights in European law and the many commercial and land exchange treaties represented a fundamentally different way of "doing business" for Indigenous communities. Over time, the First Nations' view of treaties has evolved and they now represent fundamental agreements from which modern property rights emerge.

2.2. Treaty history offers context for Indigenous urban communities in Canada.

Treaties with Indigenous peoples date back to early 1700's when France and England signed land military, and trade agreements to support economic and military relations(Canada, 2013b; Promislow, 2014; Todd, 2008). For example, the Maritime Peace and Friendship Treaties (1725 – 1779) applied to present day New Brunswick, Prince Edward Island, and Nova Scotia, while the Upper Canada Land Surrenders covering southern Ontario accommodated the loyalists that fled north after the American Revolution. In British Columbia, the Douglas Treaties signed between 1850 and 1853 covered a few small parts of Vancouver.

After Confederation, the so-called numbered treaties(Canada, 2013a) signed between 1971 and 1921 defined land and chattel rights for the Prairies, parts of British Columbia, the Northwest Territories, and northwestern Ontario. Finally, the Williams Treaties (1923) added small pockets in Vancouver and Vancouver Island. In principle, these treaties defined land "reserved" for the exclusive use of the signatory First Nations and simultaneously created "space" for settler expansion based on European conception of land law. The term *historic treaty* applies to agreements between the Crown and First Nations, negotiated to 1921, with the numbered treaties between 1871 and 1921 being particularly relevant for this paper.

Two points are important. First, the entirety of Quebec, Newfoundland/Labrador, Nunavut and until recently, most of BC, have no treaty arrangements. These are the "unceded territories" of Canada where Indigenous groups had, until recently no land defined by any agreement or in Canadian law. Second, treaties have not guaranteed the rights of First Nation signatories which have experienced sustained violations in both the letter and spirit of the terms of these agreements (Carlson, 1997). As an exercise in concrete reconciliation, this paper examines how urban reserves can restore, at least in part, some of those lost rights.

The late twentieth century witnessed Indigenous peoples engaging in legal battles to enforce treaty provisions and to defend traditional territories. Most significant was the 1973 Calder Supreme Court decision(Cruikshank, 2017) that resulted in the James Bay and Northern Quebec Agreement in 1975. Since then Canada and First Nations have concluded 24 comprehensive land claims agreements that cover 40% of Canada's area. Many of the comprehensive agreements pertain to large areas of British Columbia, and resulted in the creation of Nunavut.

Most comprehensive agreements contain self-government provisions that encompass land codes, control of land, water and natural resources, and support for a wide range of cultural, economic, and fiscal activities that are tantamount to self-government.(Land Claims Agreement Coalition, 2019).

The point of this cursory background is not to settle any of the complex issues of Indigenous land rights, but just to note that land law in Canada, especially as it pertains to Aboriginal peoples continues to evolve. Most important is that First Nations reserves exist in context of historic legal agreements between a specific First Nation and the federal government.

2.3. The origins of Canada's First Nations urban communities

Indigenous urban communities (comprising both urban reserves within the Indian Act and land under a comprehensive agreement) have two origins.

- Communities that were once remote from a city a hundred years ago, may have become engulfed by urban development. These communities may have an existing historic treaty within the Indian Act, a comprehensive land claim and self-government agreement, or neither a treaty nor comprehensive agreement. Note that, comprehensive land and self-government agreements do not fall under the Indian Act.

- Second, First Nations may add an urban area to their reserve using the through the additions to reserve (ATR) process (Canada, 2012). These First Nations may elect to retain the framework of an historic treaty or negotiate elements of a modern treaty through the First Nations Land Management Act (Canada, 2011b) thereby gaining some control over land use and economic development. Both these reserve land use forms remain within the Indian Act.

First Nations using the ATR process stemming from Treaty Land Entitlement Agreements (TLEA) (AMM, 2017; Canada, 2017; Canada, 2016; Iwama, 2018) have added rural lands to their reserves for resource extraction and agricultural purposes. Relatively little new reserve lands have resulted in urban reserves (See Appendix A). The TLEAs recognize that historical injustices have occurred over the last century as governments failed to honour provisions of the eleven numbered Treaties signed between Canada and First Nations. For example, in Saskatchewan and Manitoba (Canada, 2009, 2011a), the federal and provincial governments accepted the arguments advanced by First Nations that at the time of Treaty 1 and 2, both the population and traditional area reflected a substantial underestimation.

- In Manitoba, the federal and provincial governments committed to allocate 1.1 million acres (about .6% of Manitoba's land area) to additional to reserves and $76 million to support acquisition of land and other rights (mineral), tax loss compensation for municipalities etc. (Implementation Monitoring Committee, 2020).
- In Saskatchewan, the federal and provincial governments committed almost $600 million to acquire rights to 2.28 million acres of land or about 1.4% of Saskatchewan's land area (Public Legal Education Association of Saskatchewan, 2011).

The ATR process applies throughout Canada, and as a right of first refusal, First Nations may apply to have surplus Crown Lands transferred to their reserves. First Nations may also apply to the federal government to use funds assigned in the TLEA to include in their reserves land acquired by purchase through the willing-buyer/willing seller provision.

First Nations apply to have eligible lands transferred to a reserve a process that can take several years. Since 2011, the federal government has transferred almost 400,000 acres (about ¼ the area of Prince Edward Island) under the ATR process, in 500 agreements of which urban reserves comprise

17% of the agreements and 12% of the area. Most the ATR lands are in Manitoba and Saskatchewan. (Appendix A).

Land transfers to reserve status only involve Crown lands only (Federal or Provincial) or lands purchased by the federal government on behalf of a First Nation. First Nations may also apply to have any land to which it holds freehold title added to its reserves. Government cannot expropriate land held in fee simple for the purpose of adding to reserves. Additions to reserves also always occur in the context of the Indian Act, and apply both to bands with both historic and modern treaties.

Table 1summarizes the legal bases for First Nations landownership.[5]

Table 1: The legal bases for First Nations land ownership

Historic treaties(Canada, 2008b) created most of the reserves in Canada at least until 1921. Historic treaty lands governed under the Indian Act have restrictive features in that title resides with the Crown, only members of the First Nations have the "exclusive and inalienable and communal interest" (Canada, 2008a), non-members cannot acquire an interest in the land, and the Minister approves most land use and disposition.

Modern treaties (Canada, 2008b) are historic treaties modified by provisions under the First Nations Land Management Act (FNMLA). Some 153 (January 2019) First Nations have signed such agreements, which remove some 40 sections of the Indian Act. While provisions vary these agreements include land codes, comprehensive planning processes, and revenue generating mechanisms in the form of taxation and fees. Both historic and modern treaty are reserve lands as defined by the Indian Act and if relinquished by a band, revert to the Crown.

Comprehensive land/self government agreements (herein after referred to as "comprehensive agreements") became a reality after the Calder decision by the Supreme Court in 1973. Used on unceded areas, these agreements provide control over land use, mineral and surface rights, and other activities that are the features of modern government. These are not reserves as defined under the Indian Act.

What makes these growing number of First Nations urban reserves so important? Quite simply, despite the continuing value of resources to Canada's economy, cities are the locus of present and future economic activity. The mantra for fortune seekers of the 19th century – "go west" – has now become "go urban." The global rural-urban migration towards prosperity applies equally to Indigenous peoples of Canada. Many First Nations are located on remote lands with little economic potential; the compelling rationale behind the creation of urban reserves is the toehold they offer to Indigenous persons to participate in the urban economy.

2.4. First Nations urban communities show a wide spectrum of prosperity

Census information offers context on the economic well-being of the two case study communities, but two qualifications are important. First, not all First Nations participated in the census and second, and more importantly, census information may include the incomes of non-Indigenous residents. This is particularly so for First Nations that offer residential leases as a component of their economic development plan. This means that the Census data could misstate the incomes of First Nations persons.

Table 2 shows that that Tsawwassen is part of the "top eight" of First Nations in Canada. These include five that lie within or immediately adjacent to a rapidly growing city (shown with an *). The divergence of median and average income reflects the presence of a fewer number of high earners, most markedly Fort McMurray First Nation. The divergence of average and median incomes fir some First Nations indicates income inequality arising from a few high earners.

Table 2: Canada's top eight reserves (2016) Each of the place names links to band websites

Name	Pop	% reg Indian	Average Income*	Median Income**	Sources of Income (%)		
					Market Income	Gov't transfers	Other
Fort McKay First Nation Fort McKay, AB	742	86%	$78,916	$34,048	84	10	5
Tsleil-Waututh Nation* North Vancouver, BC	1855	18%	$73,220	$41,264	86	6	8
Tsawwassen First Nation* Delta (Vancouver), BC	750	27%	$64,670	$38,647	39	10	51
Liidlii Kue First Nation Fort Simpson, NWT	1180	67%	$59,659	$47,552	86	8	6
Tsuut'ina Nation* Calgary, AB	1645	33%	$56,185	$36,621	77	6	17
Tk'emlups te Secwepemc* Kamloops, BC	3025	10%	$55,676	$40,288	62	10	28
Fort McMurray First Nation Fort McMurray, AB	320	89%	$54,675	$19,584	84	10	5
Musqueam * Vancouver, BC	1660	47%	$47,492	$31,560	60	10	30

* Persons 15 and older. PT reference average income = $62,778; B.C. = $45,616; NWT = $64,586

Source: https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/abpopprof/search-recherche/lst/results-resultats.cfm?Lang=E&GeoCode=61&Letter=T&G=1&Geo1=&Code1=&SEX_ID=1&AGE_ID=1&RESGEO_ID=1

Among the top eight, the percentage of income derived from market sources (mostly employment) is generally high with low dependency on government transfers – 10% or less. "Other income" usually means revenues from commercial/residential leasing, an important feature of the economic base for Tsawwassen, Tsuut'ina, Tk'emlups te Secwepemc, and Musqueam. Resource revenues form an important component of personal income for Fort McKay, Liidlii, and Fort McMurray First Nations.

One feature of some these First Nations, especially those located close to or within urban area, is that the "not-a-registered Indian" population exceeds that of the registered Indian population, sometimes by a factor of 5:1. This reflects the effect of residential/commercial leasing that has attracted many non-Indigenous individuals and businesses either to purchase long-term residential leaseholds or become sorter-term tenants. The category "not a registered Indian" includes those persons on the census survey who report either an Aboriginal identity or non-Aboriginal identity. Aboriginal identify includes registered Indians, but many who report an Aboriginal identity are not registered Indians. Most of the residents in the top-eight classified as "not a registered Indian" are probably non-Indigenous. This distortion the census data does not affect the analysis and conclusions of this paper, and in fact reinforces the argument in Section 4.1 on the process urban reserves will use in extracting value from the land.

It is tempting to think that the higher the number of "not a registered Indian" resident on the reserve, the higher the income, but the story is more complex. Tsawwassen and Musqueam have a majority of "not a registered Indian" residing on the reserve. But most (81%) Fort McKay's residents, the community with highest individual incomes, are registered Indians as is the case for Fort McMurray. Proximity to natural resources is the dominant feature of the economy of these two communities. Of course, the waning fortunes of the oil and gas economy could affect this economic status.

Table 2 reveals how economic development and incomes benefit from proximity to large dynamic urban areas. Consider the Musqueam Band, which lies entirely within the City of Vancouver and has always been an urban community becoming an urban reserve recently within the B.C Treaty Process. Consequently, Musqueam is situated on prime Vancouver real estate. Similarly, as shown below, Tsawwassen also enjoys favourable location, partly in terms of upscale residential opportunity, plus strategic location with respect to logistics opportunities as demonstrated by the recently announced Amazon warehouse. Finally, Tk'emlups te Secwepemc near Kamloops B.C. has forestry businesses,

a large industrial park, and significant residential leasing in the heart of one of Canada's fastest growing retirement areas.

In contrast, as **Table 3** shows, the First Nations involved in the Kapyong Lands have much lower incomes than the top eight in Canada. The most affluent of the seven, Peguis First Nation has an income that is less than average of First Nations in Canada. Market (employment) incomes are lower for this group than that of the top eight, with higher dependency on government, and negligible income from other sources. This results in a much smaller divergence of average and median incomes. Note also that the residents of all these First Nations are predominantly registered Indians.

Table 3: Kapyong Lands reserves (2016) Each of the place names links to band websites

Name	Pop	% reg Indian	Average Income*	Median Income*	Sources of income (%)		
					Market Income	Gov't transfers	Other
Peguis First Nation	2685	97%	$22,355	$15,616	68	29	3
Brokenhead Ojibway Nation	515	92%	$19,106	$15,424	68	28	4
Swan Lake First Nation	345	100%	$18,147	$11,584	68	29	3
Fort Alexander (Sagkeeng) First Nation	1905	97%	$17,408	$12,624	60	36	4
Long Plain First Nation	1235	98%	$15,351	$9,632	58	39	3
Sandy Bay First Nation	2515	99%	$14,123	$5,972	55	43	2
Roseau River Anishinabe First Nation	670	100%	9,700	$5,188	51	45	4
* Persons 15 and older. Provincial average income = $43,767							
Source: https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/abpopprof/search-recherche/lst/results-resultats.cfm?Lang=E&GeoCode=61&Letter=T&G=1&Geo1=&Code1=&SEX_ID=1&AGE_ID=1&RESGEO_ID=1							

With this context, the paper considers the two case studies that anchor the analysis.

3. Two case studies illustrate the scope of economic development of urban First Nations.

Two cases offer insights into the range and nature of economic opportunity offered by First Nations urban lands in Canada – Tsawwassen First Nation just south of Vancouver and the former land occupied by Kapyong Barracks (now referred to as the Kapyong Lands) in the heart of Winnipeg. It is important to note that Tsawwassen First Nation operations within the auspices of a comprehensive land and self-government agreement, outside the Indian Act, while the still developing Kapyong Lands is an urban reserve within the Indian Act and an example of a modern treaty.

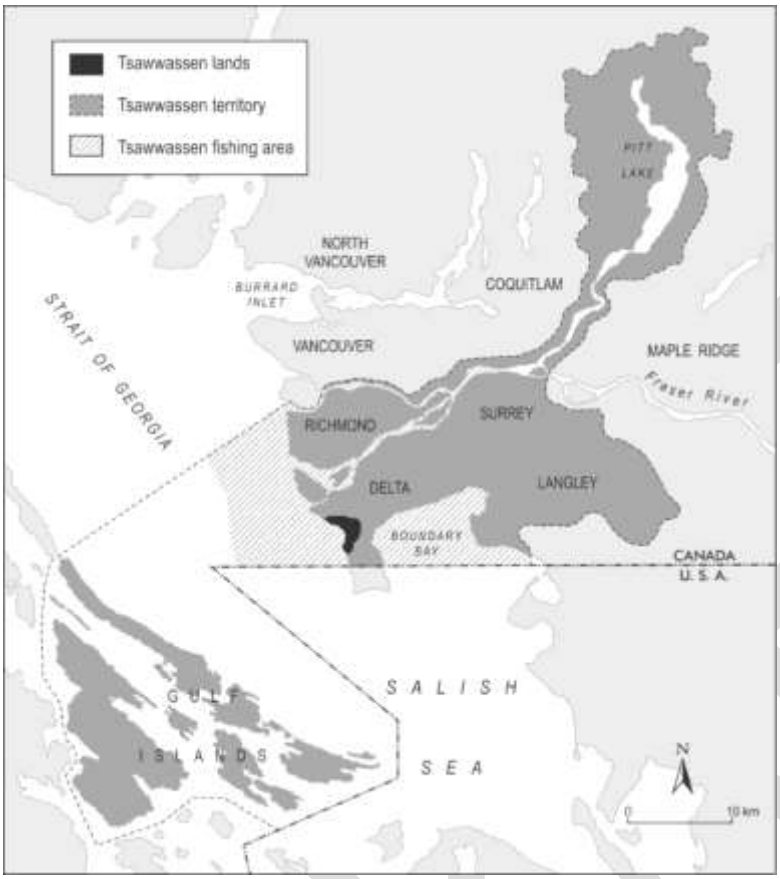
3.1. Tsawwassen First Nation (TFN):

The traditional territory of the Tsawwassen First Nation (TFN) stretches north from beyond the USA border south of Vancouver, to include Vancouver, across the Straight of Juan de Fuca to Victoria and some Gulf Islands. Importantly, it also includes the waterways, which formed an integral part of the entity for coastal Indigenous populations(Tsawwassen First Nation, 2019c) . Currently TFN has 493 members, with 215 living in the community near Vancouver and the remaining split between the interior of BC and northern Washington state.

In 1871 with the entry of British Columbia into Confederation, the Tsawwassen community did not exist within a formal treaty. For many years after the establishment of Vancouver TFN existed as an isolated small coastal fishing village with no proximate urban development. The province had no system of treaties addressing Indigenous rights until 1992 with the creation of the BC Treaty Commission.

Figure 1 shows the traditional territories (land and fishing) and the current community boundaries for TFN. The Comprehensive Land Claims and Self Government Agreement signed in 2009, pertains only to the present-day Tsawwassen Lands.

Figure 1: Traditional and Current Lands of Tsawwassen First Nation



The first important change for this community was the construction of the ferry terminal linking Vancouver to Victoria in 1958. Next came the Roberts Bank Superport in 1968 that eventually created a 113-hectare island shipping coal overseas primarily to China. As was typical of the time, neither the federal nor provincial consulted TFN, despite the potential for environmental harms and destruction of cultural and religious infrastructure. However, these developments were harbingers for a brighter economic future for the TFN.(Tsawwassen First Nation, 2019b).

Since the signing of Tsawwassen First Nation Final Agreement in 2009, key developments for TFN have included:

- Creation of 110 hectares of commercial and residential development
- Creation of residential subdivisions

- 25-year agricultural leaseholds with local farms
- Warehouse, cardlock truck fueling, warehouse, etc.
- Major sewage treatment plant
- Opening of Tsawwassen Mills, a 1.2 million sq. ft. shopping mall
- Logistics facilities and container inspection facilities.
- A new Amazon warehouse facility.(Tsawwassen First Nation, 2019c).

From one perspective one may see TFN as a unique hybrid of real-estate development corporation and municipal government. TFN has created a modern planning and land use regulation system as well as invested in substantial municipal upgrades – water, sewer, animal control, etc., deriving significant rental/lease revenues from governments, industry, and individual households. However, it is probably more accurate to view the economic development of TFN as reflecting the inherent potential when a First Nation gains rights through a comprehensive land claims and self-government approach.

3.2. Kapyong Lands:

In contrast to TFN, which is a single community with a common tradition and governance style, seven First Nations most within Treaty 1 have received approval to add Kapyong Lands as an urban reserve. None of these First Nations have a specific historical claim to the Kapyong Lands and gained access to these federal lands under the Treaty Land Entitlement Agreement process that gives rights of first refusal to First Nations when federal/provincial lands become surplus. The decision by the Department of Defence to close Kapyong Barracks and move the Princess Patricia Light Infantry to Shilo, Manitoba in 2004, triggered the creation of the Kapyong Lands as an urban reserve. Currently, this new urban reserve comprises a large (110+ acres) area within the heart of an affluent area of Winnipeg (Figure 2**Figure 2**), It is a large open space and so is a "blank slate" ripe for development with favourable locational advantages within a modern metropolis.

Figure 2: Kapyong Lands

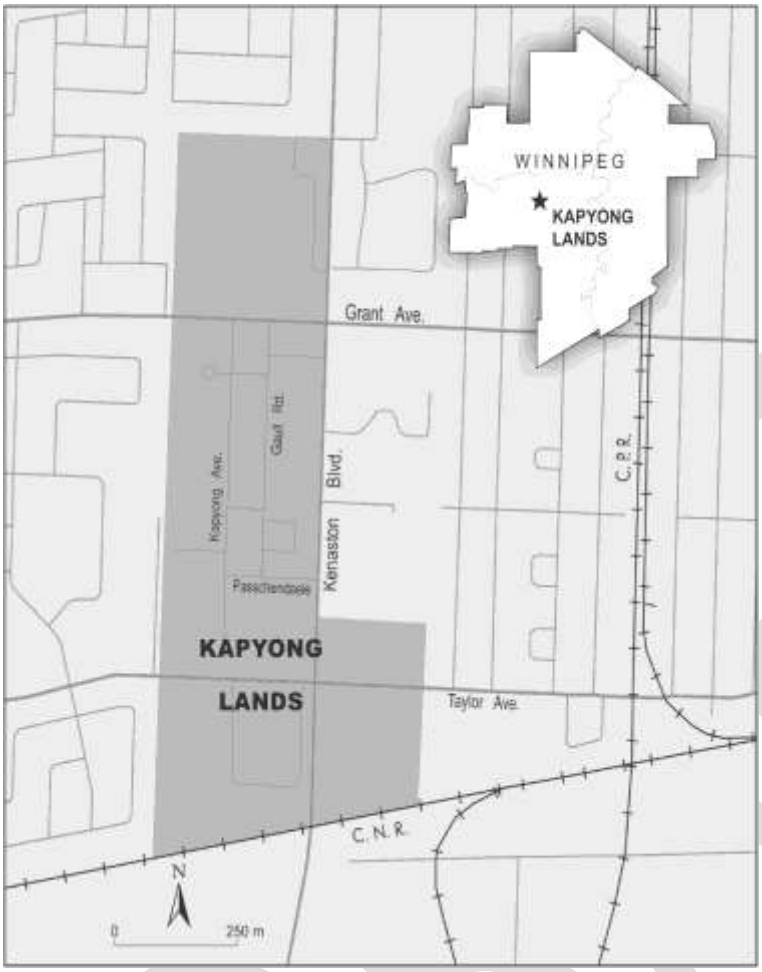
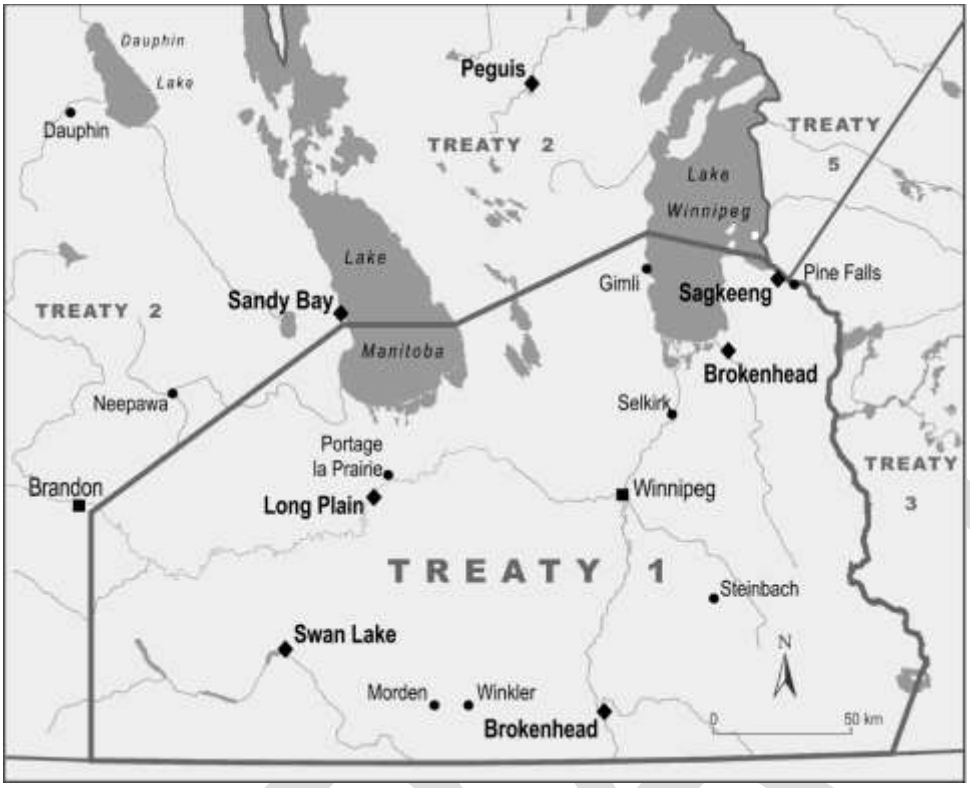


Figure 2 here Kapyong Lands - Winnipeg

Figure 3 shows Kapyong Lands the consortium of First Nations (Peguis, Sandy Bay, Long Plan, Swan Lake, Roseau River, Broken Head, and Sagkeeng) that has entered into the agreement with the federal government to create this new urban reserve.

Figure 3: Treaty One First Nations (♦)



As a first step, these seven First Nations have created the Treaty One Development Corporation with a mission to advance the economic and social well-being of the Citizens of Treaty One. The corporation has staffed with professionals, initiated an on-line presence, and developed an initial master plan, shared with the surrounding community. The previous military infrastructure removed, environmental remediation started, and development of the lands will begin in several years pending finalization of all relevant agreements discussed in Section 4.

4. Optimising the economic potential of First Nations' urban lands

The review of the First Nations within the "top eight" above, suggests that economic success, measured as incomes, correlates with proximity to resources and/or lying either within or immediately adjacent to dynamic urban centres. Two key issues require navigation before an urban reserve can develop. First, important institutional arrangements must also exist to support economic

development of urban reserves. Second, land use planning and taxation agreements with the surrounding municipalities require careful and transparent negotiation.

4.1. Institutional requirements that support the economic viability of urban reserves

Examination of the web sites of the top eight First Nations listed in **Table 2** suggests three institutional factors, internal to the reserve, contribute to the economic prosperity of these urban communities: 1) formal recognition within a modern treaty or comprehensive agreement that creates a land code and concomitant control; 2) developments in land law legislation that monetizes the value of land by offering non-community members limited interest in land; and, 3) development of the "legal and planning infrastructure" that manages risk, both political and financial, for the First nation and its clients and investors.

1. *Modern treaties and comprehensive agreements stabilize land rights*. Modern treaty and comprehensive agreements stabilize and clarify the boundaries for the First Nation lands and create the basis for legal relationships with surrounding municipalities and agencies. These new legal arrangements greatly expand the authority for a First Nation to enter into agreements without the oversight of the federal government. For example, the period of 1992 to 2007 mark the "treaty negotiation period" for the TFN(Tsawwassen First Nation, 2019b) , starting with the creation of the B.C. Treaty Commission(*BC Treaty Commission*, 2019).

   In 2004 the TFN signed an agreement in principle and by 2009 it became self-governing. Even though economic development projects had started well before final agreement with the construction of the Tsatsu Shores condominium development in 1994, surrounding municipalities and governments were initially reluctant to enter into agreements with unincorporated entities.

   However, while a modern treaty with land management rights or comprehensive agreements are necessary, they are not sufficient conditions for urban land development by First Nations. Also critical are the appropriate governance structure and creating effective agreements with the municipality as discussed in Section 4.2.

2. *Evolution and innovation in land management law creates value for "unsaleable" land*. Leaseholds, rental income, and Indigenous owned business anchor the incomes "top eight" for First

Nations situated within or close to large urban centres. Musqueam, Tsawwassen, and Tsuut'ina Nation in particular, draw major revenues from commercial and residential leasing to Indigenous and non-Indigenous individuals and businesses. How much business development and entrepreneurship contributes to the revenues a First Nation may generate in its urban reserve will vary among First Nation. For many, optimizing the value of the urban reserve through leasing, without yielding ownership becomes the central challenge for an urban reserve.

To review, the three forms of land title defined within the Canadian legal framework are freehold, strata (condominium), and leasehold. Freehold owners, have rights to the land and all improvements, and allows unlimited rights to use/dispose of their land capturing all capital gains, and constrained only by zoning regulations, legal judgements (liens) building codes, taxation, and when government or a crown corporation exercises eminent domain, expropriating property for public purposes such roads or energy transmission lines. Single detached homes are the common physical form of this form of land ownership.

Strata titles represent an innovation where the owners purchase a right to occupy a dwelling, without purchasing the land directly. Structures that use strata titles are typically apartments or townhouses, but sometimes may include single detached homes. The purchasers own from the "paint in", and have joint ownership of common areas (halls, elevators) and the land. To preserve the value of the property for all owners, condos typically feature restrictions on changes external to the dwelling unit. High density apartment dwellings have become an increasingly common "first home" for adult children leaving their parental dwelling. Their main attraction is their considerably lower purchase price and the fact that owners can recover the capital gain on sale.

Both freehold and strata titles have indefinite lengths of ownership, allowing the owners to resell immediately (flip the property), hold it for a prolonged period, or bequeath it. Leaseholds represent a different form of land ownership, where the purchase just buys the dwelling and leases the land from a second entity – corporation, non-profit, or First Nation – which owns and manages the land. The owner will also manage the common property area on leaseholds applied to multi-unit structures. Leaseholds are usually the least expensive way

to acquire an ownership stake in land, but it is usually use and time limited. From the lessor's view, leaseholds have two important disadvantages. First, since the ownership is finite, they appreciate more slowly than freehold properties, reducing the capital gain. Second, the purchase of a leasehold is harder to finance because the property cannot be offered as security and because the sale value declines through the life of the lease. Commercial leasing is usually 5 or 10 years and a common way business acquires the use of land, presenting an obvious and important revenue opportunity for urban reserves. Residential leasing often has longer terms and more difficult for the ultimate owner to extract value.

It is not possible for a First Nation to develop its reserve lands using conventional condominiums based on fee simple, since ownership in reserve lands can not transfer outside the band membership. Recent enabling policies have offered more support to residential leasing. An important change in the legal basis for strata titles was revision in provincial legislation that allows a condominium type title where "owners" can use mortgages to finance the purchase of a longer-term leasehold (Condominium Authority of Ontario, 2019).

Residential leasing arrangement may appear unattractive for those focused on the need to own in perpetuity and acquire the capital gain of fee simple ownership. Purchasing a home is a dominant saving method for lower and middle income households (Boehm & Schlottmann, 2008; Wainer & Zabel, 2019). Long-term leasing a home, reverses this strategy, and the leaseholder pays into an asset with a declining value, much like leasing a car. (Caesar et al., 2019).

Any restriction on the disposition of a lease prior to term, attenuates the market value and sometimes quite sharply (Riley, 2012; Rogers et al., 2018), making the design of residential leaseholds an challenge for First Nations urban lands. From the perspective of the owner (in this case a First Nation), finetuning the covenants on the leasehold, such as restricting the sale to specified persons, altering terms such as upkeep responsibilities and how purchasers may use the property may increase control over land use, but this can come at the expense of reduced revenues.

3. *Development of the institutional (planning, regulatory and fiscal) infrastructure to manage risk:* Institutional infrastructure refers to the regulations governing land use, building codes, environment, taxation etc. that frame and condition economic activity within a jurisdiction. Again, using the web sites of the top eight First Nations communities, it is apparent they are all "open for business." In many ways, their institutional infrastructure closely resembles that of progressive municipal governments seeking to attract businesses and residents.

    - Tsawwassen First Nation offers detailed planning and development guidance for business(Millette, 2014; Tsawwassen First Nation, 2019a) . The resource documents include regulation on environmental rules, waterway access, building codes, subdivision rules, rainwater management, and even animal control. The tax and user fee regulations are like those of any provincial/municipal government in Canada. The effect of this web of regulatory infrastructure is to reduce uncertainty for anyone, Indigenous or not, to acquire an interest in reserve lands.
    - Tk'emlups te Secwépemc First Nation manages a very large industrial park, and the focus of its institutional infrastructure is to ensure efficient and effective leasing agreements and taxation (Tk'emlups te Secwépemc, 2019)

    Some of the top eight appear focussed on band owned and member owned businesses. Their institutional infrastructure resembles that of a corporation intent on developing profitability among several lines of business.

    - Fort McKay First Nation operates much like as diversified corporation, seeking alliances with energy corporation (Suncor) and operating much as a real estate developer for its industrial park. Its annual reports closely resemble standard corporate reports. (First McKay First Nation, 2019)
    - Liidlii Kue First Nation in Fort Simpson orients its economic activity around Nogha Enterprises Inc(Nogha Enterprises Ltd, 2019). The Chief holds 100% of shares "in trust on behalf of its members." These shares automatically transfer to the next Chief upon election and so it is the "office of the Chief" that owns the shares. This corporation has a diverse set of business ranging from aviation refuelling to residential development. However, it is uncertain whether such a concentrated

"ownership" structure will attract investment, the confidence of banks, or joint ventures with other entities.

4.2. The relationship with the surrounding municipality conditions success for an urban reserve.

When Tsawwassen First Nation entered into is comprehensive agreement with the federal government, uncertainty about what, if any, municipal lands were to be transferred to TFN, worry about the fiscal consequences associated with the transfer of prime (and taxable farmland) from the municipality to TFN, and concern about the impact of TFN development on municipal services, created hesitancy by Delta municipality (Delta Municipality, 2004). With transparency and consultation, these issues have become resolved and TFN and Delta municipality are entering into joint ventures to develop a deep-water port at the mouth of the Fraser River.

Three "relationship" issues between an urban reserve and the surrounding municipality affect the success: 1) tax and services agreements between First Nation and municipal government; 2) land use harmonization between the First Nation and the municipality; and 3) location and competitive environment for the reserve;

1. *Tax and services agreements:* Municipal governments have three main revenue sources – property taxes, fees from services (parking, transit, traffic enforcement, water, etc.). and grants from provincial governments. Property owners can expect to pay taxes on the assessed value of their land/buildings and pay fees for services such as water and refuse collection.

   Urban reserves will always have a small fraction of the area and population in the associated municipality. This means they typically they will purchase services from the municipality such as water/sewer, transit, protection (police/fire) within municipal development service agreements (MDSA) (City of Winnipeg, 2010, 2018) . These and other agreements detail the services supplied by municipality in exchange for specified payments. Each MDSA represents unique circumstances and negotiations; the first urban reserves in Saskatchewan

created a template for common elements now appearing in many agreements, including the fees paid for municipal services, agreement life, and dispute resolution processes.

Much of the language surrounding the compensation for services is general reflecting the desirability of negotiation, inclusion of the broadest possible range of services, and ensuring compatibility of the services needed with the municipality's capacity to provide services (Winnipeg, 2016). The municipality and its taxpayers obviously have a stake in the level of payment by the First Nation for municipal services received. For example, depending on the intensity of land use (single family detached homes versus multiunit residential and commercial units) extending water services may have low marginal costs, or not. Services extended at marginal cost do not include contributions to fixed costs and under a marginal cost fee structure. In such a case, municipal residents in general would implicitly subsidize urban reserve, which given the widespread acknowledgement of an urban infrastructure deficit, could be large.

Property taxes are another area of concern. Under the Payment in Lieu of Taxes Act (L. S. Canada, 2019), the federal governments pays municipalities for land it uses for penitentiaries, museums, labs, military bases, etc. Currently, Winnipeg receives about $650,000 annually as payment in lieu of taxes for the Kapyong Lands(Shields, Kelly, personal communication, June 2020). Under this legislation, the payment must not exceed

- "the effective rate in the taxation year applicable to the federal property in respect of which the payment may be made, and
- the property value in the taxation year of that federal property."(L. S. Canada, 2019)

The challenge is that land used for public purpose (airports, prisons, defence, etc.) are challenging to assess and value; usually no comparable sales values can calibrate the assessment. Once set, the "assessed" value of these lands tends to remain static for extended periods. When Kapyong ceased to be a military base and became vacant land with derelict buildings, its value jumped immediately to reflect surrounding land uses … commercial, high density residential, and upper end single value residential. Had the land gone to private developers, the federal government would have received a large cash payment, and the City could have expected a significant boost to property tax revenues.

Property taxes fund the operations and physical, cultural, and social infrastructure contributing to the quality of urban life in all its dimensions. In turn property taxes supports the land values throughout the city including the urban reserve. All land owners have a mutual obligation to maintaining that quality if life while simultaneously enjoying the benefits of the investment through enhanced property values.

When certain classes of land of types of landowners (e.g., religious organizations) receive exemptions from the full property tax, a political judgment must support the case that non-monetary (social) benefits exist. Subsidising the operations of the urban reserve by changing less that full-service fees or property tax must also rest on a similar notion. As an example of concrete reconciliation, the creation and encouragement of urban reserves, has the potential of offering the benefit of restoring the balance intended in many treaties that sought to share the lands. Additionally, if the urban reserves offer culturally appropriate services to Indigenous persons, a case may exist for reduced fees/taxes.

Ideally the property taxes generated from Kapyong should replicate what the city would have received had the property developed to its highest and best use, usually by a private owner. In the absence of urban reserve status, using the typical assessments on developed land in the area for single family homes in the area, ($2.9 million per acre and four dwelling per acre) and if 100 acres of the Kapyong Lands could support taxable residential and commercial development, a very conservative estimate for the assessed value of the land is $290 million. At the current mill rate of $12 per thousand dollars of assessment, this represents annual property revenues of $3.5 million, or about 5 times that paid by the federal government for the land as a defence base. This does not include the school tax of an equal amount that flows to school divisions and not the city.

Important consequences flow from this analysis. Any MDSA that specifies less than payments 100% of the property tax and service fees implies that land owners in Winnipeg will subsidise the urban reserve. [6]

In addition to making the case that social benefits warrant a subsidy on property taxes, all aspects of the transfer from federal lands to urban reserve requires complete transparency. What is the "price" of the land being transferred from the Canada Lands Company[7] to the Treaty One Development Corporation. What are the terms of such a transfer? Is the federal

government using the funds set aside in Treaty Land Entitlement Agreements finance the purchase? Since these funds were intended to purchase land from private land owners, most likely Kapyong Lands will involve no payments since the federal government would effectively buy the land from itself. This represents a significant transfer of wealth from the federal government to the seven First Nations. Of course, Treaty One Development Corporation can never sell the lands and so the wealth will only be realized by residential and commercial leasing as described in Section 4.1 If service fees and property taxes are lower that experienced by land owners in comparable situations, will the federal and/or provincial government cover the revenue shortfall experienced by the Winnipeg?

Winnipeg taxpayers may accept paying more for services and taxes under the spirit of reconciliation and because of the social benefits, but the case must be explicit with the cost implications calculated accurately. As the size of the urban reserve located on highly valuable property, negotiating, and managing a municipal services agreement becomes complex and must balance two objectives:

- the need to support the urban reserve in the early development years to fulfill both the spirit and reality of reconciliation.
- ensuring a reasonable level of compensation for foregone revenue replacement to the municipality.

It is not hard to see why fiscal negotiations around urban reserves are so prolonged. They involve all levels of government and the First Nations, each of which can construct strong cases for their position.

2. *Land use harmonization between the First Nation and the municipality*. Municipal zoning regulation does not extend to the urban reserve, but as part of the Municipal Development Services Agreement (MDSA), the First Nation typically agrees to ensure land use compatibility, with a commitment to "future collaboration and the coordination of planning efforts, ensuring land use and development compatibility with adjacent City of Winnipeg lands".(Winnipeg, 2018). The agreement also calls for a "collaborative and joint planning approach to future land development on a government to government basis."

These agreements typically contain language that sets expectations for all parties to act "reasonably", however disputes between land owners and municipalities are common as citizens and businesses seek to ensure land use regulations do not impair returns on investment that render development unprofitable. At the same time, municipalities seek compatible land use to manage externalities and ensure overall highest and best use. See Preston & Lo (2000a, 2000b) and Lavasseur (2018) for descriptions of recent land use conflicts in urban areas. Meetings and engaging facilitators are the usual approach to resolving certain disputes relating to the adequacy, standard and frequency of services offered by the municipality, permitted use, setting assessed values and user fees. Dispute resolutions will be a test for any MDSA, especially for a large tract such as the Kapyong Lands, which could support a diverse range of land uses. Thus far, Treaty One Development Corporation has presented plans that are finding favour with Winnipeg residents (Robertson, 2020). However, negotiations on the MDSA are still in process and far from finalized.

3. *Location and competitive environment for the reserve.* Urban reserves face complex issues especially in centres with modest growth opportunities. Most importantly, uncertainty plays an important role in the valuation of urban land, especially for leaseholds and land markets discount new information very quickly into price and leases(Caesar et al., 2019; Monfared & Pavlov, 2019; Yao & Pretorius, 2014). Agreements creating the urban reserve must incorporate as many elements of a modern treaty as possible to offer the First Nation maximum flexibility to develop. However, an urban reserve also operates within an established urban area with many active land developers.

   For example, Kapyong Lands lies adjacent to residential development with the highest incomes and wealth in Winnipeg. To the east, is a strip mall and large grocery store, but more importantly immediately to the south is a major outlet mall, Ikea, and rapidly expanding retail and residential development. The initial plan by the Treaty One Development Corp. proposes low and medium density housing, with social and cultural facilities. The reserve's location offers fast access to Red River College, South Winnipeg Technical College, and the University of Manitoba, making it attractive for student housing. The well-developed local amenities reinforce the viability for rental accommodation. An

early proposal called for a Casino, a development that surrounding residents and the provincial government are likely to oppose quote vigorously.

Unlike urban communities such as TFN and others with a stake in the Greater Vancouver real estate market or reserves proximate to resource development such as Fort McKay, urban reserves in slower growth municipalities, face more modest growth prospects. The First Nations that elect to pursue urban reserves will join a host of existing developers all competing for clients.

5. Conclusion

The Calder Decision of the Supreme Court in 1973 marks the beginning of Indigenous peoples gaining rights to their lands through comprehensive land and self-government agreements that offered First Nations on unceded (non-treaty) lands dramatically increased scope for economic development. Subsequently, policy developed quickly with the Treaty Land Entitlement Agreements, the Additions to Reserve process, and the First Nations Land Management Act offering First Nations much expanded opportunity to use land rights as the basis for economic development.

This paper has examined the potential for urban reserves to support increased economic well being for Registered Indians who are members of bands who signatories to existing treaties. The paper demonstrates that creating an urban reserve offers First Nations an opportunity to advance their economic wellbeing by having a stake in the urban economy. Key institutional requirements include having a modern treaty allows First Nations to plan development without federal oversight, changed legal requirements to support long-term leaseholds, and the creation of modern planning and financial management capacity by the First Nation. Equally important are development effective working relationships with municipalities, where failure to negotiate mutually acceptable taxation and fee structures could sour and limit the development of the urban reserve.

Kapyong Lands offers remote First Nations a model for creating a consortium to acquire large swaths of surplus public lands in urban areas. Increased proactive involvement of municipal governments in Ontario, Manitoba, and Saskatchewan to mobilize surplus lands and willingness by the federal governments to finance their acquisition as urban reserves will extend the benefit of urban land ownership to remote Firsts Nations with limited economic development prospects.

Whether urban reserves will remain an enduring feature in the advancement of Indigenous well-being depends on extracting the maximum return using leaseholds. Nothing prevents a First nation individual or entity from purchasing land in fee simple – many have. This always presents an important pathway for First Nations to participate in urban economies. The Kapyong Lands represents a crucially important test case for urban reserves. If Winnipeg and Treaty One Development Corporation can negotiate mutually acceptable agreements, and development creates sufficient incomes, this could serve as an enduring model for concrete reconciliation.

References

Alchian, A. A., & Demsetz, H. (1973). The Property Right Paradigm. *The Journal of Economic History*, *33*(1), 12.

AMM. (2017). *TLE Information Toolkit*. Association of Mantoba Muncipalities. http://www.amm.mb.ca/download/guides/TLE-packageFINAL.pdf

Aragón, F. M. (2015). Do better property rights improve local income?: Evidence from First Nations' treaties. *Journal of Development Economics*, *116*, 43–56. https://doi.org/10.1016/j.jdeveco.2015.03.004

Aragon, F. M., & Kessler, A. (2017). *Property rights on First Nations' reserve land*. C.E.P.R. Discussion Papers, CEPR Discussion Papers: 12818. http://www.sfu.ca/econ-research/RePEc/sfu/sfudps/dp17-14.pdf

Bailey, M. J. (1992). Approximate Optimality of Aboriginal Property Rights. *Journal of Law & Economics*, *35*, 183–198.

BC Treaty Commission. (2019). http://www.bctreaty.ca/

Boehm, T. P., & Schlottmann, A. (2008). Wealth Accumulation and Homeownership: Evidence for Low-Income Households. *Cityscape*, *10*(2), 225–256.

Caesar, C., Donner, H., & Kopsch, F. (2019). The impact of leasehold status on apartment price. *Journal of Housing Economics*, 101629. https://doi.org/10.1016/j.jhe.2019.04.001

Canada. (2008a, November 3). *Land Management* [Promotional material]. https://www.aadnc-aandc.gc.ca/eng/1100100034737/1100100034738#ch9

Canada. (2008b, November 3). *Treaties and agreements* [Administrative page]. https://www.rcaanc-cirnac.gc.ca/eng/1100100028574/1529354437231

Canada. (2009, March 27). *Treaty Land Entitlement in Saskatchewan* [Fact sheet]. https://www.aadnc-aandc.gc.ca/eng/1100100034825/1100100034826

Canada. (2011a, May 13). *Treaty Land Entitlements in Manitoba* [Fact sheet]. https://www.aadnc-aandc.gc.ca/eng/1305306991615/1305307177471

Canada. (2011b, September 28). *First Nations Land Management Act* [Promotional material; reference material]. https://www.aadnc-aandc.gc.ca/eng/1317228777116/1317228814521

Canada. (2012, March 20). *Additions to Reserve* [Administrative page]. https://www.aadnc-aandc.gc.ca/eng/1332267668918/1332267748447

Canada. (2013a, February 15). *The Numbered Treaties (1871-1921)* [Reference material]. https://www.rcaanc-cirnac.gc.ca/eng/1360948213124/1544620003549

Canada. (2013b, September 26). *Historic Treaties and Treaty First Nations in Canada Infographic* [Reference material]. https://www.rcaanc-cirnac.gc.ca/eng/1380223988016/1544125243779

Canada. (2017). *Audit of the Additions to Reserve Process* (p. 28). Crown-Indigenous Relations and Northern Affairs Canada. https://www.rcaanc-cirnac.gc.ca/eng/1506686798147/1536849538309

Canada. (2019). *Approved Additions to Reserve Proposals*. https://www.aadnc-aandc.gc.ca/eng/1466532960405/1466533062058

Canada, G. of C. I. and N. A. (2016, June 13). *Land Management Manual, Chapter 10—Additions to Reserve/Reserve Creation—2016* [Guide; policy; resource list]. https://www.aadnc-aandc.gc.ca/eng/1465827292799/1465827347934#mm

Canada, L. S. (2019, July 15). *Consolidated federal laws of canada, Payments in Lieu of Taxes Act*. https://laws-lois.justice.gc.ca/eng/acts/m-13/page-2.html#h-355105

Carlson, K. (1997). A Legacy of Broken Promises. In *You are Asked to Witness: The Sto:lo in Canada's Pascific Coast History*. Sto:lo Heritage Trust.

City of Winnipeg. (2010). *Municipal Development and Services Agreement—Long Plain*. http://clkapps.winnipeg.ca/DMIS/ViewDoc.asp?DocId=10431&SectionId=260678&InitUrl=

City of Winnipeg. (2018). *Municipal Development and Services Agreement—Peguis First Nation (1075 Portage)*. http://clkapps.winnipeg.ca/DMIS/ViewDoc.asp?DocId=17258&SectionId=508527&InitUrl=

Condominium Authority of Ontario. (2019, September 18). *Condominium types*. https://www.condoauthorityontario.ca/en-US/condominium-living/condominium-types/

Cruikshank, D. A. (2017). Calder Case. *The Canadian Encyclopedia*. https://www.thecanadianencyclopedia.ca/en/article/calder-case

de Soto, H. (2000). *The Mystery of Capital*. Basic Books.

Deloitte. (2016). *BCTC Final Report: Socio-economic Benefits of Modern Treaties*. BC Treaty Commission. http://www.bctreaty.ca/sites/default/files/Deloitte-BCTC-FinalReport.pdf

Delta Municipality. (2004). *The Corporation of Delta—Delta Launches Legal Action*. https://delta.civicweb.net/filepro/documents/90809?preview=92672

Demsetz, H. (1967). Toward a Theory of Property Rights. *The American Economic Review*, *57*(2), 347–359.

Denis, J. S., Duhaime, G., & Newhouse, D. (2017). *Indigenous Conceptions of Well Being:Rejecting Poverty, Pursuing Mino-Bimaadiziwin*. *10*(2), 124–146.

First McKay First Nation. (2019). *Annual Reports—Fort McKay First Nation*. http://fortmckay.com/annual-reports/

Flanagan, T., Le Dressay, A., & Alcantara, C. (2010). *Beyond the Indian Act: Restoring Aboriginal Property Rights*. MQUP. http://uml.idm.oclc.org/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=nlebk&AN=403790&site=ehost-live

Fontaine, T. (2015, March 13). *Demystifying urban reserves | CBC News*. CBC. https://www.cbc.ca/news/canada/manitoba/demystifying-urban-reserves-1.2993051

Henderson, W. B. (2016, October). *Indigenous Peoples in Canadian Law*. The Canadian Encyclopedia. https://www.thecanadianencyclopedia.ca/en/article/aboriginal-people-law

Implementation Monitoring Committee. (2020). *The Manitoba Framework Agreement*. http://www.tleimc.ca/index.php/mfa/the-manitoba-framework-agreement-treaty-land-entitlement-mfa

Iwama, D. (2018). *On the Road to the New Reserve: Considering Canada's Preferred Path to Land Restitution* (p. 4). Yellowhead Institute.

Jones, S. (2019). *Let the People Speak: Oppression in a Time of Reconciliation*. J.Gordon Shillingford Publishing.

Land Claims Agreement Coalition. (2019). *What is a Modern Treaty?* https://landclaimscoalition.ca/modern-treaty/

Lavasseur, J. (2018, October 16). *Parker lands developer's $30M lawsuit alleges City of Winnipeg, 4 bureaucrats acted in bad faith | CBC News*. CBC. https://www.cbc.ca/news/canada/manitoba/parker-land-lawsuit-winnipeg-1.4865168

Liidlii Kue First Nation. (2013, April 2). *Liidlii Kue First Nation—Governance*. Liidlii Kue. https://www.liidliikue.ca/leadership/governance

Manuel, A., & Derrickson, R. (2015). *Unsettling Canada: A National Wakeup Call*. Between the Lines.

Mason, G., Jones, S., Helgason, W., & North, S. (2020). A Modern Annuity for Canada: Concrete Reconciliation. *Journal of Aboriginal Economic Development*, *12*(1).

Miller, J. R. (2009). *Compact, Contract, Covenant. Aboriginal Treaty-Making in Canada*. University of Toronto Press.

Millette, D. M. (2014). *Incremental Planning: The Tsawwassen First Nation Experience*. *9*(1), 29–43.

Monfared, S., & Pavlov, A. (2019). Political Risk Affects Real Estate Markets. *The Journal of Real Estate Finance and Economics*, *58*(1), 1–20. https://doi.org/10.1007/s11146-017-9619-y

NAEDB. (2015). *Improving the Economic Susccess of Urban Addtions to Reserves: Achieving Benefits for First Nations and Local Governments Stage 2*. National Aboriginal Economic Development Board. http://www.naedb-cndea.com/en/publications/

NAEDB. (2017). *Additions-to-Reserve: Lessons Learned From FirstNations*. National Aboriginal Economic Development Board. http://www.naedb-cndea.com/en/publications/

Neimanis, V. P. (2013, December). *Crown Land | The Canadian Encyclopedia*. https://www.thecanadianencyclopedia.ca/en/article/crown-land

Nogha Enterprises Ltd. (2019). *Nogha Enterprises Ltd*. http://www.nogha.com/

North, D. C. (1990). *Institutions, Institutional Change and Economic Performance.* Cambridge University Press.

OECD. (2020). *Linking Indigenous Communities with Regional Development in Canada*. OECD. https://doi.org/10.1787/fa0f60c6-en

Preston, V., & Lo, L. (2000a). Asian theme malls in suburban Toronto: Land use conflict in Richmond Hill [Canadian urban landscape examples, 21]. *Canadian Geographer; Toronto*, *44*(2), 182–190.

Preston, V., & Lo, L. (2000b). Canadian urban landscape examples—21. *Canadian Geographer; Toronto*, *44*(2), 182–190.

Promislow, J. (2014). Treaties in History and Law. *U.B.C Law Review*, *47*(3), 1085–1183.

Public Legal Education Association of Saskatchewan. (2011). *From Dream to Reality*. Office of the Treaty Commissioner (Saskatchewan). http://www.otc.ca/public/uploads/resource_photo/FromDreamToReality1.pdf

Quesnel, J. (2016, August). *Urban reserves can spur First Nation economic development*. Fraser Institute. https://www.fraserinstitute.org/blogs/urban-reserves-can-spur-first-nation-economic-development

Riley, S. F. (2012). Land use regulations and the returns to low-income homeownership. *The Annals of Regional Science*, *49*(3), 745–766. https://doi.org/10.1007/s00168-011-0450-8

Robertson, D. (2020, October 22). Kapyong concept plan “time to complete that community.” *Winnipeg Free Press*. https://www.winnipegfreepress.com/local/kapyong-concept-plan-time-to-complete-that-community-572837582.html

Rogers, S., Ballantyne, C., Thompkins, E., & Ballantyne, B. (2018). Price of the Soil: Property Values of Leasholds and Certificates of Possession. *Journal of Aboriginal Economic Development*, *11*(1), 60–74.

Shields, Kelly. (2020, June). [Personal communication].

Tk'emlups te Secwépemc. (2019). *Lands, Leasing & Tax*. https://tkemlups.ca/departments/lands-leasing-tax/

Todd, R. (2008). Aboriginal Peoples and the Land: Ownership, Understanding and Development. *British Journal of Canadian Studies*, *21*(1), 105-128,152.

Tsawwassen First Nation. (2019a). *Planning and Development*. Tsawwassen First Nations. https://tsawwassenfirstnation.com/portfolio/planning-and-development/

Tsawwassen First Nation. (2019b). *TFN History and Timeline | Tsawwassen First Nation*. https://tsawwassenfirstnation.com/general-info/tfn-history-and-timeline/

Tsawwassen First Nation. (2019c). *TFN Vision & Mandate | Tsawwassen First Nation*. http://tsawwassenfirstnation.com/general-info/tfn-vision-mandate/

Wainer, A., & Zabel, J. (2019). Homeownership and wealth accumulation for low-income households. *Journal of Housing Economics*, 101624. https://doi.org/10.1016/j.jhe.2019.03.002

Winnipeg. (2016). *An Overview of Best Practices for the Establishment of and Development within Aboriginal Economic Development Zones*. Planning, Property and Development Department.

Winnipeg. (2018). *Municipal Service and Development Agreement—Pequis First Nation and Winnipeg*. https://www.google.com/search?q=municipal+service+and+development+agreement&rlz=1C1GGRV_enCA751CA751&oq=municpal+service+and+development+agre&aqs=chrome.1.69i57j33l5.15450j0j7&sourceid=chrome&ie=UTF-8

Yao, H., & Pretorius, F. (2014). Demand Uncertainty, Development Timing and Leasehold Land Valuation: Empirical Testing of Real Options in Residential Real Estate Development. *Real Estate Economics*, *42*(4), 829–868. https://doi.org/10.1111/1540-6229.12052

Appendix A

According to the Additions to Reserves (ATR) Policy has allowed First Nations to augment their existing reserve lands using three policy provisions:

- *Legal obligation:* Where Canada has a commitment or legal obligation to transfer land due to a land exchange agreement., self government agreement etc.
- *Expansion needs:* This includes transferring land to support residential or economic expansion
- *Compensation*: This would include land transfers arising from rulings by the Specific Claims Tribunal, typically due to an unfulfilled Treaty obligation.

For example, in Manitoba, the Treaty Land Entitlement Agreements provided for the transfer of up to 1.4 million acres of lands (.9% of the provincial land area) and $190 million for land purchases of private lands and associated processing costs. Saskatchewan has a similar set of agreements.

The information maintained by Crown-Indigenous Relations and Norther Affairs Canada records the additions to reserve since 2011. Since 2011, 503 additions have occurred, involving almost 400,000 acres of land (about ¼ of the area of Prince Edward Island.

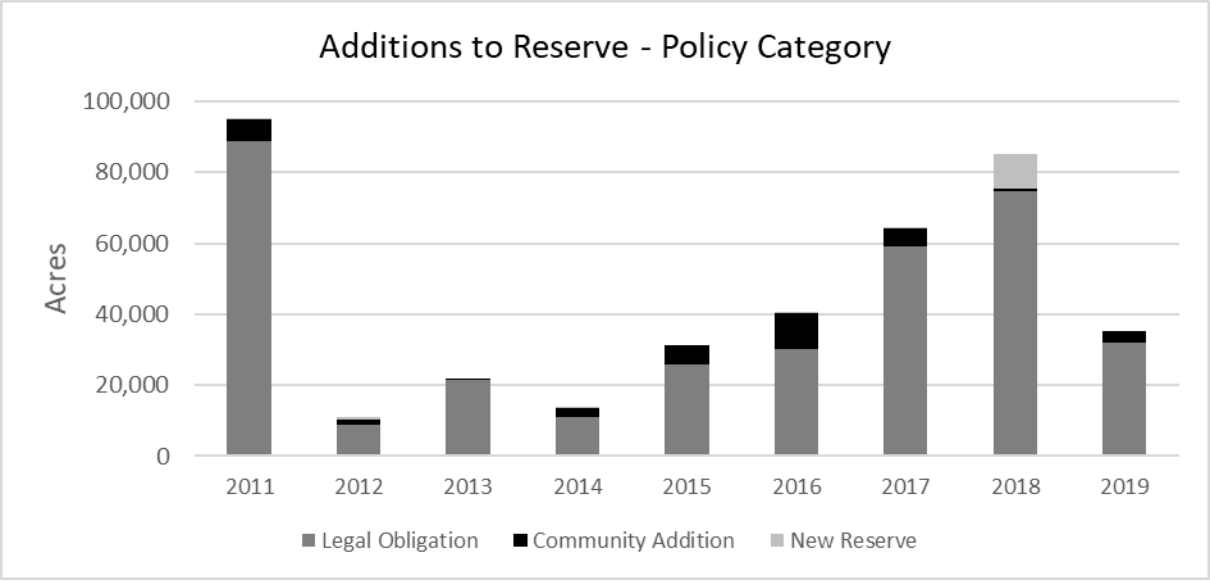


Figure A1 – Additions to Reserve

Most additions to reserve have occurred in rural areas (416) with only four in the North (Table A6). Manitoba and Saskatchewan account for 60% of the total land area added to reserves **Table A4**, and 74% of the total number of transfers **Table A5**. Many additions occur under the Legal Obligation policy, with very few due to Compensation (New Reserve) **Table A9**. The nomenclature used on the web site does not align with the provisions of the ATR policy.

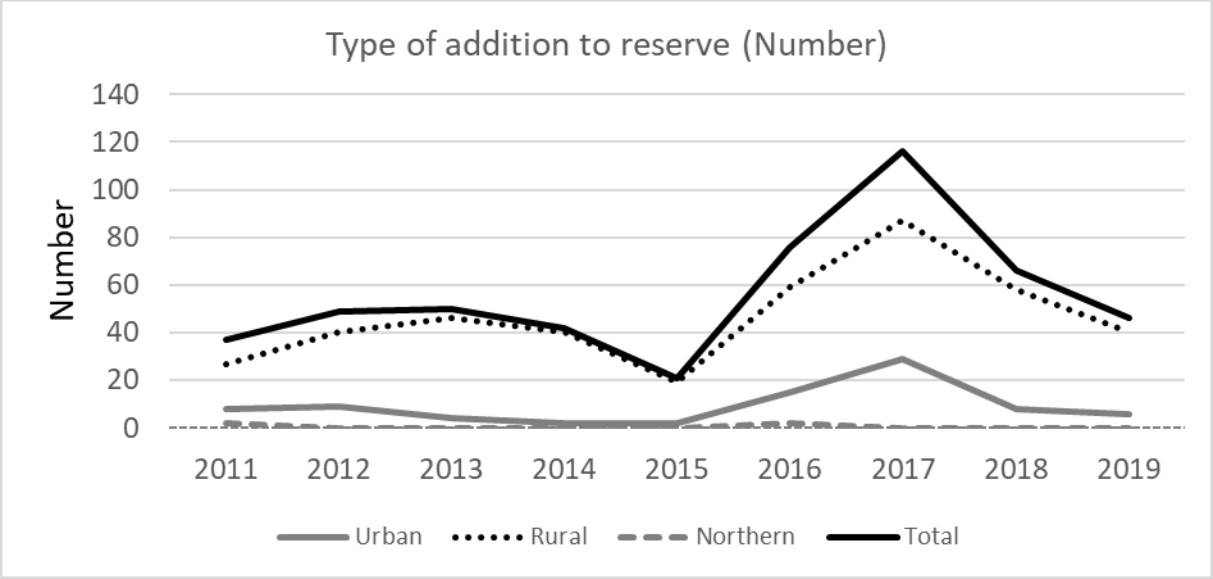


Figure A2 – Additions to Reserve

The rapid increase in approvals between 2015 and 2017, has declined sharply, especially the approvals for urban reserves.

Table A4 - Additions to Reserves (Acres)											
	2011	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019***	**Total**	**Percent**
Atlantic	164	142	0	0	0	3	32	221	3,935	4,497	1.1%
Quebec	1	1,081	0	2,386	29	10,001	367	315	259	14,438	3.6%
Ontario	1,060	0	0	0	0	1,908	29,624	26,036	146	58,773	14.8%
Manitoba	23,515	112	3	0	0	3,119	28,446	40,712	22,530	118,436	29.8%
Saskatchewan	32,536	9,151	15,399	11,066	3,915	16,245	5,587	17,758	5,373	117,031	29.4%
Alberta	543	13	0	0	5,338	8,780	0	0	0	14,674	3.7%
Northwest Territories	37,264	0	0	0	0	0	0	0	0	37,264	9.4%
British Columbia	33	403	6,490	35	21,792	230	646	99	3,118	32,847	8.3%
Total	**95,115**	**10,902**	**21,892**	**13,487**	**31,075**	**40,285**	**64,701**	**85,140**	**35,361**	**397,960**	
* Partial year Source: Author's Calculations based on (Canada, 2019)											

Table A5 -Additions to Reserve (Number)											
	2011	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**201**	**Total**	**Percent**
Atlantic	3	5	0	1	0	1	4	1	8	23	4.6%
Quebec	1	2	0	1	1	7	4	2	1	19	3.8%
Ontario	4	0	0	0	0	2	11	4	1	22	4.4%
Manitoba	5	1	1	1	0	9	67	32	21	137	27.2%
Saskatchewan	21	31	30	38	12	44	28	23	10	237	47.1%
Alberta	1	1	0	0	1	1	0	0	0	4	0.8%
Northwest Territories	1	0	0	0	0	0	0	0	0	1	0.2%
British Columbia	1	9	19	1	7	12	2	4	5	60	11.9%
Total	**37**	**49**	**50**	**42**	**21**	**76**	**116**	**66**	**46**	**503**	
* Partial year Source: Author's Calculations based on (Canada, 2019)											

Table A6 - Additions to Reserves by Location Category (Number)											
	2011	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019***	**Total**	**Percent**
Urban	8	9	4	2	2	15	29	8	6	83	16.5%
Rural	27	40	46	40	19	59	87	58	40	416	82.7%
Northern	2	0	0	0	0	2	0	0	0	4	0.8%
Total	**37**	**49**	**50**	**42**	**21**	**76**	**116**	**66**	**46**	**503**	
* Partial year Source: Author's Calculations based on (Canada, 2019)											

Table A7 - Additions to Reserves by Location Category (Number)											
	2011	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019***	**Total**	**Percent**
Urban	38,275	391	13	36	46	6,915	886	350	150	47,063	11.8%
Reserve	53,528	10,511	21,879	13,451	31,029	28,728	63,815	84,790	35,211	342,942	86.2%
Northern	3,312	0	0	0	0	4,642	0	0	0	7,955	2.0%
Total	95,115	10,902	21,892	13,487	31,075	40,285	64,701	85,140	35,361	397,960	
* Partial year Source: Author's Calculations based on (Canada, 2019)											

Table A8 - Additions to Reserve - Policy Category (Acres)											
	2011	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019***	**Total**	**Percent**
Legal Obligation	88,823	8,932	21,489	11,066	25,707	30,226	59,167	74,720	32,014	352,144	88.5%
Community Addition	6,157	1,347	403	2,386	5,367	10,046	4,899	724	3,347	34,678	8.7%
New Reserve	135	623	0	35	0	13	635	9,696	0	11,137	2.8%
Total	**95,115**	**10,902**	**21,892**	**13,487**	**31,075**	**40,285**	**64,701**	**85,140**	**35,361**	**397,960**	
* Partial year Source: Author's Calculations based on (Canada, 2019)											

Table A9 - Additions to Reserve - Policy Category (Number)

	2011	2012	2013	2014	2015	2016	2017	2018	2019*	Total	Percent
Legal Obligation	25	34	38	39	19	61	103	54	39	412	81.9%
Community Addition	11	11	12	2	2	13	12	10	7	80	15.9%
New Reserve	1	4	0	1	0	2	1	2	0	11	2.2%
Total	**37**	**49**	**50**	**42**	**21**	**76**	**116**	**66**	**46**	**503**	

* Partial year
Source: Author's Calculations based on (Canada, 2019)

Notes

[1] I would like to acknowledge the helpful comments of Adrian McNair (Tsawwassen First Nation), Wanda Charles (University of Manitoba), Darryl Neufeld (Indigenous Services Canada), Kelly Shields (City of Winnipeg), and Michael McCandless.

[2] The term *Indigenous community* refers three types of entities. Reserves defined under the Indian Act, areas defined under a comprehensive land and self-government agreement, and settlements on unceded lands. Also, for residents of communities defined by comprehensive land and self-government agreements or treaties, the economic benefits from the land flow to the group; the individual receives benefits depending upon the traditions and practices of the individual First Nation.

[3] The phrase "First Nation urban community" covers a community such as TFN which has negotiated a comprehensive land and self-government agreement independent of the Indian Act and an urban reserve such as Kapyong Lands defined within the Indian Act.

[4] The term Indigenous community in this paper refers to a First Nation situated within of proximate to an urban area and whose land rights are covered by a comprehensive agreement or a reserve as defined by the Indian Act.

[5] To reiterate, any individual member of a First Nation can own land in freehold.

[66] The two existing urban reserves in Winnipeg pay 100% and 80% of service fees/property taxes, but are quite small properties compared to Kapyong.

[7] Canada Land Company is a federal crown corporation that manages the transfer if federal properties to other uses in the private and public sector.