An Overview of Best Practices for the Establishment of and Development within Aboriginal Economic Development Zones

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1 Introduction

On February 16, 2016, the Standing Policy Committee on Property and Development, Heritage, and Downtown Development concurred in the recommendation of the Assiniboia Community Committee and directed the Winnipeg Public Service to:

a) Investigate best practices for the establishment of, and development within, Aboriginal Economic Development Zones (AEDZ), as identified in Section 10 of Complete Communities; and
b) Identify best practices amongst other jurisdictions.

The following report responds to this motion, and was created by reviewing literature and case studies related to the establishment and development of urban reserves. It should be noted that Aboriginal Economic Development Zones, as described in the City of Winnipeg's *Complete Communities Direction Strategy* By-law, are more commonly referred to as 'urban reserves' in other jurisdictions throughout Canada.

The purpose of this report is to provide an overview of the various tools and best practices associated with the establishment of, and development within, urban reserves in other jurisdictions. The first section provides a very brief context, outlining Federal policy and practice related to urban reserve establishment. The second section provides an overview of the various tools commonly used by municipalities and First Nations in pursuit of successful urban reserves. Next, commonly accepted best practices employed in other jurisdictions are discussed along with potential implementation tools. The final section includes a brief overview of current policy and practice in Winnipeg.

2 Context

2.1 Additions to Reserve (ATR)

Canada continues to owe land, referred to as '**Treaty Land Entitlement'** (**TLE**), to specific First Nations under the terms of the original treaties (signed between 1871 and 1910). As part of the settlement process, some First Nations have an opportunity to acquire land and apply to the Federal Government to have it designated as 'reserve'.

The term '**Addition to Reserve'** (**ATR**) describes a parcel of land added to the existing land base of a First Nation. The ATR Policy was created by the Federal Government in 1972 and updated in 2001. This policy sets out the conditions and issues to be addressed before a parcel of land will be considered for designation to reserve status.

Not all reserves are intended to accommodate residential uses for First Nation members. Reserve land, sometimes far removed from the parent reserve, can be obtained for social, institutional or economic development purposes. Reserves meant to serve these purposes are often in strategic locations with access to the travelling public or urban populations. These reserves may also be created to provide services or support to members in urban centres. Regardless of the function or use, lands given reservation status in urban areas are commonly referred to as '**urban reserves**'.

2.2 Steps to Establishing an Urban Reserve

When preparing an ATR application, the First Nation(s) acquires a parcel of land, either from the Crown or from a private owner. Then the First Nation(s) engages the Municipality in an effort to resolve issues of mutual concern through negotiation. These include (but are not limited to) tax considerations, by-law harmonization, impacts on provincial policies and plans, third party access (if a private land owner requires access to a road or water course by the reserve), and existing leases or permits on the land.

The purpose of the negotiation is to work towards the creation of a mutually beneficial and agreeable '**Municipal Development and Services Agreement**' (**MDSA**). An MDSA outlines the type of services that one party provides to another, and the corresponding fees that the receiver of services agrees to pay. A table outlining elements included in various MDSAs between municipalities and First Nations throughout Western Canada can be found in Appendix A (Municipal Development and Services Agreement Matrix).

Research suggests that negotiating a MSDA can be one of the most challenging aspects of creating an ATR (Peters 2007). The Federal Government promotes a "Good Neighbour" approach, encouraging First Nations and Municipalities to negotiate "good will, good faith and reasonableness" (INAC, 2013). Multiple resources and guides for negotiating MSDAs are available to municipalities and First Nations, which offer templates and tips for maintaining positive relationships throughout the tough negotiation process.

Indigenous and Northern Affairs Canada (INAC) states that for successful and meaningful negotiation to happen, First Nations should identify the future land uses intended for the subject land. (INAC 2013). A mutual understanding of future potential land use types and intensities being considered on the subject land will help inform servicing feasibility studies and ultimately, the subject matter of an MDSA.

The final step in the ATR process is to apply to the Federal Government to ensure the requirements of the ATR policy have been satisfied. Once this is complete, the Governor General is responsible for granting final approval.

2.3 Federal Policy

Once land has been designated as reserve by the Federal Government, the First Nation has the authority to determine how to use the land according to the needs and interests of their community. However, as noted above, when considering an ATR application in an existing municipality, INAC requires that the First Nation and municipality negotiate to "harmonize" by-laws. This means that both First Nation(s) and the Municipality must come to an understanding of how each jurisdiction's land uses and by-laws will co-exist. As Kostyniuk (2015) notes:

> ..neither party's by-laws must be the same, but … there should be efforts made to discuss each party's existing, an/or future, development objectives and by-laws. In terms of land use by-laws, the *harmonization* of zoning regulations may be discussed, but it is not required that the First Nation community or municipality assume either party's zoning regulations as their own.

Similarly, under section 87 *the Indian Act*, urban reserves (resulting from successful application through the ATR process) are no longer subject to the jurisdiction's property or school taxation requirements. The First Nation is encouraged to negotiate with the municipality and school division, but by law is only required to negotiate with the municipality (INAC 2013).

To make operations easier, the First Nation often (but not always) adopts the same by-laws as the surrounding jurisdiction, and pays grants in lieu of property taxes that are equal to what would have been charged if the lands were still under the municipality's jurisdiction.

3 Implementation Tools

To be most effective, the implementation tools mentioned below must be created by parties who respect and trust each other, and who are able to communicate frequently and openly. This section follows a general progression of tools that groups may choose to use throughout the ATR process, starting with optional relationship-oriented tools (which respond not only to the regulatory standards but also demonstrate positive relational and reconciliatory principles), and culminating in the standard, technical-based MDSA.

Federal policy requires that provinces and municipalities be notified and consulted when lands have been selected for ATR, and requires that jurisdictions negotiate issues of mutual concern and interest, including servicing (often paid for in different fees that compensate for tax loss), and by-law compatibility (INAC 2013). These "issues of mutual interest and concern" can be addressed through the use of a variety of the tools outlined below. First Nations and municipalities must decide together which tool(s) they prefer to use to address any given concern.

3.1 Letter of Intent

When building trust between two governments, it may be helpful to develop documents that envision future work together. A letter of intent can be an informal, one-page letter from one group to another outlining how and why one group wants to work with another. This tool can be used when communicating between high-level elected officials such as the Chief, the Mayor, or the band and municipal councillors. **The Federation of Canadian Municipalities (FCM)** has included a template in its toolkit, and recommends that groups write these letters to "encourage future meetings and informal discussions where individual community visions can be discussed and ways in which joint concerns may be dealt with" (FCM, 2011, p.24).

3.2 Communications Protocol

A communications protocol agreement (also called a memorandum of understanding, community accord, relationship agreement, etc.) is a way to define the scope of a relationship between two or more communities (FCM, 2011, 26). A communications protocol is always tailored to meet the unique needs of the signatories (FCM, 2011, 26), and can evolve or be enhanced over time.

FCM notes that a communications protocol helps ensure groups meet regularly and continue to share information even after the terms of the current governments come to an end. If groups have mutual interest or common community or regional goals, a communications protocol can help them work through tough issues. The FCM toolkit states that generally, a communications protocol will outline the following basic ideas:

- Date and signatories
- General "whereas" statements
- Purpose and Objectives of the Agreement
- Principles and Values
- Key Interests
- Process (including decision making, meeting frequency, how to share information, etc.)
- Dispute Resolution
- Terms (how long agreement is valid, whether it is/can be legally binding, etc.)
- Signatures

It is important to note that in the case studies reviewed, communications protocols were created before MDSA negotiations began, as they outline how the groups agree to nurture their ongoing relationship, and how they agree to pursue areas of common interest in the future (TWN and the District, 2007).

3.3 Joint Plans

The development of joint planning documents (like area/site plans, sustainability plans, and plans to increase health or social outcomes for communities) are often provided for in Communications protocol or, in the case of Lheidli T'enneh and the City of Prince George, a Comprehensive Master Agreement.

Area or site plans are useful during the negotiation of an MDSA, as they can outline the types of land use for an area. A broad vision for land use can assist parties when negotiating fees for services, or when discussing by-law compatibility. Although the First Nation has sole jurisdiction over the *development* of ATR Lands, joint plans can act as an agreement between the City and the First Nation about the *amount*

and/or general type of development suitable for the subject area, which may include an area wider than the urban reserve footprint.

Joint plans also outline a vision for an area or community, and allow the parties to prepare for future opportunities without being limited by current zoning regulations.

First Nations might prefer to develop joint plans, as these documents (particularly site/area plans) can be used in the ATR applications. As noted above, federal policy requires that the First Nation demonstrate that the concerns of local governments (e.g. land use harmonization, service sharing) have been met. These documents can also help First Nations clarify their vision, objectives and policies for development on the site.

Municipalities might prefer to develop joint plans, as they can become a tool to engage the public about the advantages of urban reserves, particularly if the planning area is larger than the urban reserve footprint. They can also encourage complementary municipal development around the urban reserve. One of the largest benefits of joint planning for municipalities, however, is that these documents can identify development-related issues and engineering requirements, which will help the municipality when costing out servicing fees.

3.4 Public Engagement Methods

The previous tools are designed to be used when working between governments, but cooperation and solid relationships must also be fostered at the community level. Misconceptions and misinformation can lead to mistrust and negative feelings. By engaging citizens through web resources, door-to-door information sharing, meetings and other consultations, the entire community benefits and new initiatives will be more widely accepted (FCM, 2011, 23)

Community engagement methods provide a powerful opportunity for municipalities and First Nations to work together to:

- Improve local support;
- address concerns and myths; and
- encourage behaviour changes from residents of both communities.

3.5 Municipal Development Services Agreements (MDSAs)

MDSAs are agreements (between municipalities or between a municipality and a First Nation), where one party agrees to purchase specific services from another (FCM, 2011, 4). This type of agreement is the standard implementation tool used by municipalities and First Nations when negotiating and providing services to an urban reserve. MDSAs are often based on cost comparisons and feasibility studies, and can be negotiated when:

- One party is able to provide services to the other;
- It is physically feasible to provide necessary services; and
- There is a cost benefit to service partnering (FCM, 2011, 4).

The FCM notes the following two best practices should be considered when developing an MDSA:

1) **As many services as possible should be considered**, including services such as recreation facilities, libraries, snow removal and other services (FCM, 2011, 61). See Appendix A for a table outlining the contents of MDSAs from other jurisdictions.

2) **Service agreements should build on knowledge gained from past experience and the experiences of others;** there is no need to duplicate work that has already been completed (FCM, 2011, 61). Similarly, if a jurisdiction has past experience with developing MDSAs, future MDSAs might be completely different. This is because the First Nation's needs and priorities may have changed, or the other party might be a different First Nation community with different needs and priorities.

FCM also notes that professional facilitators and negotiators can help parties communicate their desires and needs more effectively to each other. These neutral parties help move the discussion through difficult or complicated issues (FCM, 2011, 62).

Furthermore, MDSAs often establish some sort of notification process between the parties (e g. Joint by-law committee, a planning district commission, or a notification process) outlining how to work together in the future and notifying about proposed developments that may affect the other jurisdiction (FCM, 2011, 73). Generally, jurisdictions notify each other by sending a copy of a proposed by-law to the other party to receive comments before the by-law is adopted (FCM, 2011, 74). If there are issues, the parties may need to follow a predetermined dispute-resolution process (see Section 4.4 - Conflict Resolution).

Finally, if communities have previously signed or agreed upon a Communications Protocol, Community Accord or MOU (see Section 3.2– Communications Protocol), it is helpful to reference the protocol in the MDSA, to emphasize the importance of ongoing communication (FCM, 2011, 71).

3.5.1 Feasibility Studies

Feasibility studies are often needed to determine the details of a MDSA, and can provide necessary background information as groups decide on governing principles, types of services, who will provide the services, how much they will cost and how they will be managed (FCM 2011, 58). Furthermore, a feasibility study may also identify the risks, benefits, and potential negative impacts of any proposed development. In this way, they can be useful for ensuring initiatives make financial and practical sense for all parties (FCM, 2011, 9). In many instances, a feasibility study will identify legal considerations to be addressed with negotiating an MDSA.

FCM recommends that a feasibility study should outline:

- how services are currently being provided in each community;
- the current costs for both parties to perform the services individually;
- how the level and quality of service could improve, or how costs could be reduced if communities shared (or invested jointly in) infrastructure, facilities, resources and/or equipment; and
- the long-term life cycle of the service agreement (FCM, 2011, 58).

3.5.2 By-law Compatibility

As mentioned previously, when considering an ATR application in an existing municipality, INAC requires First Nations and Municipalities to understand how each jurisdiction's land uses and by-laws will co-exist. This ensures by-laws are compatible or "harmonized", so land uses or new development undertaken by one party has minimal negative impact on the other. As FCM notes, "By-law compatibility does not mean that all the by-laws must be the same, but rather that both parties have considered how well their laws fit together" (FCM, 2011, 71).

MDSAs generally address by-laws and by-law enforcement in two ways:

- The service receiver contractually agrees to comply with the service provider's by-laws; or
- The First Nation adopts its own by-laws with equivalent provisions to the municipal by-laws (FCM, 2011, 71).

Often, the service provider's by-laws are adopted or mirrored by the service receiver, particularly when the service provider has experience operating services and has well-established code enforcement systems (FCM, 2011, 72). However, this need not always happen, as by-law compatibility only means that both parties must consider how their laws fit together (FCM, 2011, 71).

4 Best Practices

The following section provides an overview of best practices identified from a review of other municipal jurisdictions with various levels of experience in working with First Nations in the establishment and development of urban reserves. Where applicable, examples of how jurisdictions have employed these best practices have been included, along with potential implementation tools.

4.1 Build Positive Relationships

Positive relationships are vital when negotiating, renegotiating, and implementing service agreements and other joint protocols. Good relationships provide a basis from which parties can create documents and agreements that serve the needs of both parties. The tools outlined in the previous section work best when they are used by governments that know and respect each other, and take time to listen to each other's needs and concerns.

The FCM Toolkit devotes an entire unit of its four-unit resource to the importance of relationship building. FCM highlights a number of principles designed to help communities deepen relationships with First Nations by focusing on integrity, equality and fairness, mutual goal-making, and being clear about processes and expectations. Other notable ways to build relationships include:

Constant and open communication: One of the most important actions required to build positive relationships is to communicate frequently and openly. The FCM Toolkit stresses that ongoing communication and political cooperation is paramount, and must be made a priority (FCM, 2011, 10). In many of the case studies reviewed, formal ways to communicate were established, but as relationships strengthened, groups increasingly communicated and worked together in both formal and informal ways.

When working between governments, it is easy to forget that the cooperation and support of citizens is also needed. Therefore, relationships must also be fostered at the community level as well. FCM notes that "[by] engaging citizens in information sessions, workshops and consultations, the entire community benefits and cooperation agreements will be more widely accepted" (FCM, 2011, 23).

Ensuring continuity: Similar to the above principle, ensuring continuity is a way to maintain relationships, even in the midst of political turnover. First Nations communities have elections every two years, whereas municipal elections are held every four years (FCM, 2011, 10). If not managed, this mismatched election cycle can hinder community partnership. As negotiations may span more than one government, it is important to keep moving forward even while leadership is in transition.

Particularly through election periods, both First Nations and municipalities should keep communicating by meeting frequently and keeping good records of decisions and discussions.

Respecting cultural (and other) differences: In the government-to-government relationship, cultural differences must be respected. Both parties must come to the table aware of their differences, but willing to engage in a respectful way. Parties must also be prepared to work in a

"highly emotional environment" that not only deals with a current tense issue (negotiating fees for services), but carries with it centuries of injustice and power imbalances.

This best practice in action:

- The Tsleil-Waututh Nation and the District of North Vancouver have established a Co-operation Protocol, to establish "an effective government-to-government working relationship…ongoing dialogue… [and] an information sharing and cooperative planning process" between the parties (TWN and the District, 2007) The Protocol establishes a Steering Committee to implement the protocol, develop an information sharing and consultation procedure. In addition, an annual Council-to-Council forum is organized to monitor and evaluate the implementation of the Communications Protocol and any joint initiatives.

- In Manitoba, Rolling River First Nation and the Municipality of Clanwilliam-Erikson have been working together since 2014. The communities intend to share infrastructure, motivated by desires to save money so they can invest strategically in each communities' futures. Both groups acknowledge that mutual success is the best option, but they also know that working together is not always easy. One of the ways in which the community fostered relationships was to form the Community Champions – a group consisting of an elected official and a staff person from each community. The group got to know each other on a person level and explored issues together. In the words of Councillor Don Huisman, "The more we talk, the more we understand, and it becomes easier and easier to find solutions" (FCM, 2016, 2).

Potential tools to implement this best practice include: Letter of Intent, Communications Protocol, Joint Plans, Public Engagement Methods, MDSA.

4.2 Respect Government Jurisdictions and Positions

FCM emphasizes the importance of "fairness" when negotiating together. This means all parties are to respect that negotiations take place in a government-to-government context. Everyone must respect the jurisdiction of each party and be aware of their respective legal rights (FCM, 2011, 62). The First Nation has sole authority to determine how to use their reserve lands according to the needs and interests of the community (INAC 2013).

This best practice in action:

- **Formal recognition in joint plans and/or community accords**: On its title page, the Victoria Official Community Plan states: "We raise our hands to the Songhees and Esquimalt Nations in whose traditional territories we live and work. Hay sxw qa (Thank you)" (Victoria, 2012).

  The first article in the 2003 accord between the District of Powell River and Sliammon First Nation includes two statements: the first recognizes Sliammon First Nation's traditional territory, respects their unresolved rights and title, and respects the governing authority of the Chief and Council. A second statement acknowledges and respects Powell River as a municipal government with provincially-awarded authority.

The government-to-government relationship can also be acknowledged when working together. As is the case in any government, members from both parties generally should contact their equal in the other government or community. For example, Band Managers would approach Chief Administrative

Officers (CAOs) as they are both heads of administration, Chiefs and Mayors would coordinate when needed, and technical staff from each party would work with each other (FCM, 2011, 19). FCM notes that this is "especially important at the beginning of a relationship to show respect and ensure your concerns are addressed in face-to-face meetings with the right person" (ibid.)

Potential actions/tools to implement this best practice include: Acknowledgement in community plans (as noted above) and Communications Protocol, Public Engagement Methods, Joint Plans, MDSA.

4.3 Distinguish the Political from the Technical

This concept closely mirrors the common dispute resolution/negotiation tactic to "separate the person from the problem". FCM notes that details and protocols about how parties will work together and service agreements can generally be grouped into two categories: technical concerns and political concerns (FCM, 2011, 19).

Political concerns include relationships, historic tensions, governance, dispute resolution jurisdiction and policy, all of which are sensitive and highly personal in nature. *Technical concerns include* management of joint facilities, services, fees, engineering standards, and community health and safety needs, regulations and requirements. (FCM, 2011, 19). It is possible to include both political and technical concerns in one document (e.g. an MDSA); however this has the potential to greatly increase the risk that technical problems will affect how the two partners work together.

In the reviewed case studies, jurisdictions often separated communications agreements from land use and/or servicing agreements. This action reflects the fact that projects (e.g. establishment of an urban reserve) are have a completion date, but relationships are ongoing. In an effort to separate the political from the technical, many municipal/First Nation partnerships have used a Communications Protocol/Community Accord/Memorandum of Understanding, which represents a formal commitment to work with each other 'in good faith'. These protocol agreements continue to guide the relationship as different projects are initiated.

Similarly, many jurisdictions separate agreements designed to harmonize land use (e.g. area or site plans) from MSDAs. This allows the groups to develop a joint land use vision for a given urban reserve (and surrounding area if applicable) which guides future development and related. After the jurisdictions agree on a vision for potential future land uses, they are in a positive position to focus on the technical details of service agreements. The common vision (or plan) created during this process may also include commonly agreed upon policy statements that can be referred to during disagreements.

Maintaining separate documents also decreases the possibility that one signatory will feel forced to agree to one aspect of the agreement (e.g. an unfavourable dispute resolution mechanism) in order to see another (e.g. a proposed land use) move forward.

Potential tools to implement this best practice include: Letter of Intent, Feasibility Studies, Communications Protocol, Joint Plans; these tools can ensure that documents for Communications, land use, and Servicing are separated, MDSA.

4.4 Conflict Resolution

Unfortunately, one absolute certainty is that conflicts are sure to arise between a municipality and a First Nation when considering matters related to an urban reserve. It can, therefore, be considered a best practice to plan for and mitigate conflict.

The simplest way to address conflict is to prevent it. FCM recommends that jurisdictions agree on preferred procedures for how discussions take place. Examples include how often meetings will occur (as negotiations are too complex to negotiate over e-mail), how the agenda will be set, and who will chair the meetings. Another example involves how decisions will be made (FCM, 2011, 41). Groups can also take time to work towards consensus building, which requires groups to reach a mutually agreeable solution that meets the interest of all parties (Burgess and Spangler, 2003).

FCM notes that when parties do disagree, established ground rules, principles or systems (like those outlined in a communications protocol) can help them respond to a conflict before relationships are negatively affected (FCM, 2011, 23). When interpersonal conflict escalates, groups can commit to Alternative Dispute Resolution methods like mediation, arbitration, or other trusted third parties; all of which can help resolve conflicts outside the court system (FCM, 2011, 42).

Conflicts may also arise between the jurisdictions and community residents. It is important, therefore, that parties work together to determine how they will engage (and share information) with the people to whom they are accountable.

This best practice in action:

- The leadership of Sliammon First Nation and Powell River, BC first met during the construction of a new seawalk which (unbeknownst to Powell River) was disturbing historic areas and damaging cultural items. The Mayor and the Chief met for coffee to discuss the issue, and the City ended up writing a cheque to the First Nation to take over construction of the seawalk, ensuring that the historic area would be respected. After this encounter, the two communities began to meet more frequently. To formalize their relationship, in 2003 they drafted a Community Accord (Communications Protocol), which acknowledges the jurisdiction and unique responsibilities of both communities. In 2004, the communities developed a protocol agreement on culture, heritage and economic development. They also appointed intergovernmental coordinators and began meeting regularly. The communities continue to discuss projects, plans, and other servicing agreements (FCM 2011, 48-51).

Potential tools to implement this best practice include: Letter of Intent, Communications Protocol, MDSA, Public Engagement Methods (e.g. FAQs on website to educate the public, or community meetings to dispel myths and rumours), MDSA.

4.5 Plan Together

The joint nature of planning and negotiating is emphasized throughout this report. This can be seen in two different ways:

- **Creating joint documents.** Jurisdictions can work together beyond the creation of MDSAs. Joint documents like area or site plans help address imminent issues, and help prepare for MDSA negotiations. These documents also outline a common vision of how an area will evolve in the

long term (25+ years). Through joint documents, groups can identify current priorities and future opportunities for collaboration (FCM, 2011, 23).

- **Working and acting together.** Joint Planning Agreements (or provisions for joint planning included in Communications protocol documents) can establish mechanisms for acting together. For example, joint Council meetings are an effective way to get political representatives together to provide updates on each other's communities, establish relationships, and cooperate on issues of mutual concern (FCM, 2011, 19). Notification processes, as well as joint review boards, a joint by-law committee, or a planning district commission are all ways to establish relationships, build trust and ultimately, work and act together (FCM, 2011, 73).

This best practice in action:

- Lheidli T'enneh and the City of Prince George have drafted a Comprehensive Master Agreement, in which communities agree to consult with each other during development and reviews of Community Plans. The groups agree to "prepare a single comprehensive neighbourhood plan for each parcel of Lheidli T'enneh Urban Land and adjacent City land" and adopt these plans within their respective jurisdictions.

  The Lheidli T'enneh/Prince George Draft Comprehensive Master Agreement also includes a section on harmonized land use planning and development, in which they agree to "use their best efforts to accommodate and address concerns of the other regarding any … proposed land use or development" (p.6). The parties agree to consult with each other during development and reviews of Community Plans. In addition, the parties will "prepare a single comprehensive neighbourhood plan for each parcel of Lheidli T'enneh Urban Land and adjacent City land" and adopt these plans within their respective jurisdictions.

- After initial relationship-building efforts and a workshop facilitated by FCM, Rolling River First Nation and the Municipality of Clanwilliam-Erikson put up signs indicating their intention to work together as partners. The communities are now developing a cooperation agreement as well as sewage lagoon and snow cleaning agreements, and a joint regional solid waste strategy. Rolling River's Band Manager noted that previously, the communities lived side by side but didn't talk to each other. Now, as they get to know each other and plan together, in addition to being neighbours, they are building friendships and planning for the future together (FCM, 2016, 2).

Potential tools to implement this best practice include: Letter of intent, Feasibility Studies, Communications Protocol, Joint Plans, various Public Engagement Methods (e.g. web updates). MDSA..

4.6 Embrace and Encourage (don't just accept) Opportunities

It is important to note that once an urban reserve is established the land is under jurisdiction of the First Nation. The First Nation is responsible for attracting, choosing and retaining investment opportunities. The Aboriginal Economic Development Board (2014), however, has found that active support and collaboration of non-Aboriginal communities can impact successful development within an urban reserve. Therefore, an important municipal role regarding development within an urban reserve is to encourage success by continuing to build positive relationships with First Nation communities. This can be done not only at the negotiating table, but also through embracing and encouraging development.

It should be noted that even if the proposed development(s) would not be the first choice of a municipality, local governments do not have a veto over any proposed ATR application. Most ATR applications are the result of a legal obligation, so a veto would interfere with the Crown's authority (INAC 2013). Simply acknowledging that urban reserves are a current reality that the municipality must accept means it may be missing out on tremendous economic and social opportunities.

Proactive support for development on an urban reserve enables the municipality to form positive relationships with First Nation communities, combat negative perceptions about urban reserves, make the ATR process flow as smoothly as possible, and realize the economic benefits of developed land more quickly. A municipality can encourage the process by providing technical supports and expertise like planning and other technical advice, being responsive to First Nation requests for meetings, and promoting public awareness through municipal channels (e.g. website, advertisements, public meetings, etc.).

This best practice in action:

- Saskatoon's web site includes information about Treaty Land Entitlement and urban reserves, a large "Frequently Asked Questions" page, and multiple other resources designed to build public awareness about the benefits of urban reserves. The City has also developed community profiles of the First Nations who have land holdings and reserves in the Saskatoon region. The profiles include demographic information, and are designed to provide an overview of the "economic story of First Nations and the contributions they are making" to Saskatoon (City of Saskatoon, 2015)

  In addition to public awareness, Saskatoon has been proactive in ensuring First Nations have access to the services they need to create economically successful development on ATR lands. In 2007, Saskatoon's Planning Branch hired a consultant to determine the need for human, technical, and city planning resources to assist First Nations pursuing the creation of (and development on) urban reserves in and close to the city. In 2008, the City hired staff to assist First Nations with the TLE process and liaise with First Nation agencies and individuals. That same year, they committed to implementing key components of an established TLE Communications Strategy Project (City of Saskatoon, 2008).

Potential tools that can be used to implement this best practice include: Communications Protocol, Public Engagement, Joint Plans.

5 Local Implementation

5.1 OurWinnipeg & Complete Communities

Support for urban reserves can be found in *OurWinnipeg*, as well as the *Complete Communities Direction Strategy* By-law (*Complete Communities*). *OurWinnipeg* acknowledges the importance of Aboriginal culture, values and vision, and recognizes that "The Aboriginal community is vital to Winnipeg's economic, cultural and social fabric both now and into the future" (*OurWinnipeg* p. 73). *OurWinnipeg* commits the City to collaborating with partners to "raise the profile of Aboriginal culture in our community" and ensure that "all Aboriginal residents have opportunities to live, work and play in our city" (*OurWinnipeg*, p. 76).

Section 10 of *Complete Communities* provides direction for development of "Aboriginal Economic Development Zones". The section begins by recognizing that Canada continues to owe land to Manitoba First Nations in accordance with the seven treaties signed between 1871 and 1910. It also suggests that these First Nations have an opportunity to acquire lands within the City of Winnipeg as fulfillment of their Treaty Land Entitlement. The need for tools and processes to address issues of by-law compatibility, provision of services and other "areas of mutual concern such as land use planning" is identified as a requirement to achieve the goal of "enabling mutual economic development interests" (*Complete Communities*, p 122) between the City and First Nations.

A MDSA is identified as the preferred implementation tool for the City to use when engaging with First Nations in the establishment of, and development on, an urban reserve. Direction 1 of Section 10 provides policy direction for MDSAs to include "provision of, and payment for, services, by-law application and enforcement on the reserve, and a joint consultative process for matters of mutual concern, such as land use planning, a dispute resolution process and any other additional relevant items" (*Complete Communities.* p 123). This policy direction supports negotiating MDSAs with First Nations, which clearly reflect the best practices identified in other jurisdictions.

5.2 Conclusion

This document has outlined the Additions to Reserve process and has highlighted principles and tools which foster positive on-going relationships between municipalities and First Nations in support of successful Aboriginal Economic Development Zone development. It is evident that the best practices identified in other jurisdictions are implemented using a variety of tools. In Winnipeg, best practices found in other jurisdictions are supported in *OurWinnipeg* and *Complete Communities* which provide direction to include these best practices in Municipal Development and Services Agreements.

There is no single standard collection of tools that are applicable in all jurisdictions and/or situations. The appropriate tool used in one municipality may not be the most appropriate tool to use in another. It follows that each municipality should work with local First Nations to decide which tools are the most appropriate to use when considering an urban reserve, as well as maintaining a positive ongoing relationship. It should also be recognized that selection of tools employed in any given scenario may require refinement over time. The spirit of best practices would suggest that a municipality and First Nation work together in refining these tools.

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Appendices

On following page

Appendix A – Municipal Development and Services Agreement Matrix

			Agreements												
			Comprehensive Agreements						Specific Services Agreements						
									Water and Sewer			Building Inspection	Fire Protection	Solid Waste	
			The Regional District of East Kootenay & Akisq' nuk First Nation	Tsleil Waututh Nation & the District of North Vancouver	Campbell River Indian Band Council & City of Campbell River Leaseholder Service	Tsawout First Nation & the Corporation of the District of Central Saanich General Servicing Agreement	Kahkewistawah First Nation & the City of Yorkton	Long Plain First Nation and the City of Winnipeg	City of Chilliwak & Tzeatchen Indian Band Sewer & Water Agreement	The Corporation of the City of Duncan & Cowichan Tribes	The City of Meadow Lake & Flying Dust First Nation	Soda Creek First Nation & Caribou Regional District	The City of Meadow Lake & Flying Dust First Nation	Village of Lebret & Star Blanket Cree Nation	
			BC	BC	BC	BC	SK	MB	BC	BC	SK	BC	SK	SK	
Agreement Contents	Preamble	Definitions	✓	✓	✓	✓		**	✓	✓					
		General Terms of Agreement	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
	Provision of Services	Quality of Services	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	
		Construction of Services	✓	✓	✓				✓	✓	✓				
		Access to Services	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
		Ownership of Services	✓	✓	✓		✓	✓	✓	✓	✓	✓			
		Repairs and Maintenance of Services	✓	✓					✓	✓	✓				
		Payment of Services	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
	Service Type	Water & Sewer	✓	✓	*	✓	*	✓	✓	✓	✓			✓	
		Fire Protection	✓	✓	*	✓	*	✓					✓		
		Solid Waste	✓	*	*		*							✓	
		Parks & Recreation	✓	*	*	✓	*								
		Public Transit		*	*		*								
		Animal Control	✓	*	*		*								
		Building Inspections	✓	✓	*		*	✓				✓			
		Emergency Services	✓	*	*	✓	*	✓							
		Street, Lane & Sidewalk Maintenance		*	*	✓	*	✓							
		Snow Removal		*	*		*								
	Specific Clauses	Termination or Breach of Agreement	✓	✓	✓	✓			✓	✓		✓	✓	✓	
		Liability & Indemnity	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	
		Term of Agreement	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
		Zoning & Land Use Regulations		✓			✓	✓							
		Contact Info for Delivery of Notice	✓	✓	✓		✓	✓	✓		✓	✓			
		Severance		✓	✓			✓	✓	✓					
		Amendment of Agreement		✓		✓	✓			✓				✓	
		Enurement		✓	✓	✓		✓	✓					✓	
	Relationship Building	Communication Protocol						✓							
		Governing Laws & Jurisdiction	✓	✓	✓	✓	✓	✓	✓	✓		✓			
		Land Use Compatibility					✓	✓	✓						
		Dispute Resolution	✓	✓	✓	✓		✓	✓						

* Agreements do not explicitly outline services to be provided, but instead make a general reference to "*municipal services",* that are to be provided "to the same extent and same level of services as the City would normally provide to similarly zoned lands within the City boundaries."

** Agreement has no *Definitions* section, but states that "terms used in this agreement will have meanings ascribed to them in the *City of Winnipeg Charter*".

Source: Matrix prepared by Ashley Kostyniuk and was derived from the FCM (2011). Comprehensive Service Agreement Template (pp. 1-16), and the MB Department of Aboriginal and Northern Affairs. (2004). Reference Manual for MDSAs (p. 10-22).