

**Residential Urban Reserves:
Issues and Options for Providing Adequate and Affordable Housing**

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EXECUTIVE SUMMARY

1. Objective and Questions

This report has been produced for the Bridges and Foundations Project on Urban Aboriginal Housing in Saskatoon. The central objective is to explore the issues and options for creating and configuring residential urban reserves in Saskatoon as one of the options for providing quality affordable housing for Aboriginals, and possibly also for non-Aboriginals, with and without core housing needs in culturally supportive communities. In keeping with that objective, this report addresses the following six central questions:

- ◆ What are the needs of Aboriginals in Saskatoon for affordable and adequate housing?
- ◆ How are existing residential urban reserves configured?
- ◆ Does the creation of residential urban reserves constitute a potentially valuable and viable option for providing adequate and affordable housing for Aboriginals with and without core housing needs?
- ◆ What are the challenges and choices facing any First Nations considering creating residential urban reserves in Saskatoon?
- ◆ What are the major policies and processes for creating residential urban reserves in Saskatoon?
- ◆ What initiatives should First Nations undertake to insure that they are strategically positioned to create residential urban reserves in Saskatoon designed to provide adequate and affordable housing for Aboriginals with and without core housing needs?

2. Aboriginal Housing and Development Needs in Saskatoon

The second section provides an overview of the housing needs as well as the economic, community, and political development needs of Aboriginals in Saskatoon. The overview reveals that a substantial proportion of Aboriginals in Saskatoon face the following situations: they have housing and employment needs; they have social development needs because they live in neighbourhoods in which community infrastructure and services, health, safety, and social cohesion all require further development; they have economic development needs because they face low incomes due to underemployment and unemployment; and collectively they have political development needs. It also reveals that unless corrective action is taken, the scope of those problems is likely to increase in the future as the size of the Aboriginal population increases.

3. Configuration of Residential Urban Reserves and Subdivisions

The third section provides an overview of the configuration of some residential urban reserves and subdivisions. It reveals that there are similarities and differences among them in the configuration of the following: (a) the location and population of reserves; (b) the residential subdivisions, landholdings, housing stock; and (c) the agreements and relations between band and municipal councils. It also reveals that there are similarities and differences in the perceptions of band and municipal officials regarding the benefits and problems that they generate related to housing, land-use, the local economy, the finances of individuals, the finances of band and municipal councils, the local social conditions, and the local social relations. The consensus among band and municipal officials is that the benefits outweigh the problems.

4. Value and Viability of Residential Urban Reserves

The fourth section provides an analysis of the value and viability of residential urban reserves for providing affordable housing for Aboriginals with and without core housing needs. The analysis suggests that the creation of urban reserves is one way of providing affordable and adequate housing for those with and without core housing needs, but not the only means. Furthermore, it suggests that in addition to contributing to efforts to meet housing needs, they provide other potential benefits both to band members and band councils. The analysis of the viability of such reserves suggests that the viability of such reserves is highly contingent on an array of factors, including the following four: (a) the configuration of key policy and program frameworks of the federal, provincial and First Nations government; (b) the configuration of the reserve governance and management frameworks of the First Nations that create such reserves; and (c) the configuration of the reserve; and (d) the configuration of the ownership of the housing stock.

5. Challenges and Choices for Creating Residential Urban Reserves

The fifth section provides an analysis of some major challenges and choices confronting band councils contemplating creating residential urban reserves. Among such challenges are the following: their limited fiscal capacity; the uncertainty about precise costs and benefits; the magnitude of the housing needs; the lack of consensus among band members; dilemmas in dealing equitably with all band members; and preconceived notions that reserves are problematical. Among the choices are those related to the following matters: (a) the precise configuration of the reserve; (b) the development and management of the housing subdivision; (d) the allocation of lots; (e) the design, ownership and price of the housing stock; (f) the development and management of the rental housing stock; (g) the nature of housing needs addressed; and (g) the demographic profile and status of homeowners and renters. The major conclusions in that section are that the value and viability of such reserves and subdivisions are highly contingent on how they address those challenges and choices. Moreover, given that neither the challenges nor choices are likely to be precisely the same for all band councils, it is important that each of them review and address them in a way that is consonant with the housing needs of their members, and their own priorities and financial resources.

6. Policies and Processes

The sixth section provides an overview of the policies and processes for creating urban reserves, creating residential subdivisions therein, and allocating land and housing in such subdivisions. The overview reveals that there are a highly complex set of policies and processes that deal with such matters which are largely embodied in the Indian Act, the FNLMA, the Saskatchewan Treaty Land Entitlement Framework Agreement, INAC's Land Management Manual, and the policies and bylaws of band councils. The overview reveals that as a result of the broader self-governance initiative there seems to be a trend to increasing the level of authority and autonomy of First Nation band councils and their members to deal with land management matters as evidenced by the enactment of the First Nations Land Management Act which band councils may use to remove themselves from the relatively restrictive land management regime in the Indian Act and increase their authority and autonomy in managing their lands.

7. Recommendations and Concluding Observations

The seventh section consists of two subsections. The first provides a list of recommendations for band councils interested in creating residential urban reserves. The general purpose of those recommendations is to encourage band councils to reflect on whether they are strategically positioned to create residential urban reserves and, if not what initiatives they should undertake to ensure that they are. Recommendations are made for, among other things: (a) the assessment of housing needs and preferences; (b) the assessment and development of consensus on the creation of such reserves; (c) the assessment and development of their governance, management and financial capacities; (d) the development and maintenance of strategic partnerships; (e) the acquisition of land in or near urban areas; (f) the review of existing models and best practices among residential urban reserves; (g) the review and possible revision of existing statutory, regulatory and policy frameworks, that impinge on residential urban reserves; and (h) the development of an urban residential reserve as a pilot project.

The second sub-section reiterates and clarifies some of the major points raised in this report regarding the value and viability of residential urban reserves for addressing the core housing needs of Aboriginals, and possibly also non-Aboriginals, in Saskatoon and possibly also other urban areas.

One major point is that although such reserves constitute a potentially valuable and viable option for that purpose, it is not the only option. A second major point is that although they constitute a potentially valuable and viable option, there are many contingencies that have to be dealt with effectively and efficiently to maximize their value and viability. A third major point is that care must be taken to ensure that any potentially positive reserve creation initiatives are not derailed by prejudicial presuppositions that they will either create new problems or aggravate those that already exist in the form of 'segregated ghettos', 'uneven playing fields', and social conflict. There is no evidence to suggest that reserves, in any form, automatically create or contribute to any of those problems. Nevertheless, to preclude or at least mitigate any of those or any other potential problems, it is imperative that the central goal in creating any reserve is the development of healthy and safe communities for the benefit of those who live in and near them today and in the future.

1. INTRODUCTION

Adequate and affordable housing for Aboriginals in urban and rural areas of all provinces and territories in Canada has been and continues to be a matter of major concern for all governments in this country. Such concerns were echoed by the Royal Commission on Aboriginal Peoples (RCAP) [Canada, 1996b]:

Despite significant public spending over the past decade, housing, water supplies and sanitation services for Aboriginal people fall far below Canadian standards in many communities. Overcrowded and dilapidated houses, unclean and limited supplies of water, inadequate disposal of human wastes - these conditions pose an unacceptable threat to the health of Aboriginal people and reinforce feelings of marginalization and hopelessness.

The document produced by the federal government in response to the RCAP report also echoed those concerns. In that document the federal government acknowledged that: "One of the most important elements of people's sense of well-being is access to good quality housing. Fifty percent of dwellings on First Nations reserves require renovation or replacement." The federal government's document then proceed to outline some of the policy initiatives designed to deal with the housing needs of Aboriginals both on-reserve and off-reserve across the country as follows [Canada, 1997]:

The government's new on-reserve housing policy, introduced in 1996, establishes a solid framework for incorporating the required structural reforms within which sustainable improvements are being achieved. The new policy provides First Nations with greater control while strengthening accountability. The development of community-based housing programs and multi-year plans provides First Nations with flexibility to accommodate the diverse housing needs within their communities. The policy encourages communities to build links between housing and community economic development, job creation and skills enhancement, as well as promoting partnering with the private sector and more private investment on reserves. The government recognizes housing as a priority area and plans to make increased investments, in combination with existing resources to accelerate the implementation of new on-reserve housing policy by First Nations.

That document goes on to explain how the federal government is also committed to provide support for off-reserve Aboriginal housing through the following types of programs managed by the Canada Mortgage and Housing Corporation (CMHC): subsidies for social housing, Residential Rehabilitation Assistance, Home Adaptations for Seniors Independence, and Shelter Enhancement. The document also notes that CMHC continues to work with Aboriginal and non-Aboriginal stakeholders to facilitate the acquisition of housing by Aboriginals through the private housing market through the On-Reserve and Urban Native Housing programs.

Within three years that the federal government released its response to RCAP's report, it entered into a formal cooperative arrangement with the government of Saskatchewan to deal with issues affecting Métis and off-reserve First Nations people in the province. At the same time the Saskatchewan provincial government adopted its "Framework for Cooperation" designed to foster consultation and cooperation among various governmental and non-governmental stakeholders in dealing with various problems faced in urban areas by Métis and off-reserve First Nations families and individuals [Saskatchewan, 1999]. The consultation process on this initiative produced a strategy which embodied several major objectives for improving the quality of life such families and individuals, including the objective "...to increase the

proportion of Métis and off-reserve First Nations people living in adequate, affordable housing over 20 years” [Saskatchewan 2001; Saskatchewan, 2004a].

The foregoing observations and quotations drawn from some of the most significant documents produced during the past decade by the Royal Commission on Aboriginal Peoples, the government of Canada, and the government of Saskatchewan are important reminders of problems that have existed and continue to exist regarding the housing needs of Aboriginals both in urban and non-urban areas and the promises that governments make to try to deal with them. A collective effort on the part of governmental and non-governmental stakeholders is required to deal with those problems and to live up to those promises.

1.1 Objective of the Report

This report has been produced for the Bridges and Foundations Urban Aboriginal Housing Project in Saskatoon for which the stated primary goal is “...building functional, sustainable relationships between Aboriginal and non-Aboriginal organizations to design and develop culturally supportive communities and quality affordable housing options” [Bridges and Foundations, 2001]. In keeping with that general goal, the central objective of this report is to explore the issues and options for creating and configuring residential urban reserves in Saskatoon as one of the options for providing quality affordable housing for Aboriginals and possibly also for non-Aboriginals with and without ‘core housing needs’ in culturally supportive communities within the City of Saskatoon.

It must be underscored at the outset that the objective is to merely explore the issues and options related to the creation and configuration of such reserves for that purpose, and not to make a case for creating them or configuring them in a particular way. The task for making the case for or against the creation of such reserves and precisely on how to configure them is primarily the responsibility of First Nations band councils and to a much lesser extent of some other governmental and non-governmental stakeholders with whom they have to negotiate various aspects of the creation and configuration of such reserves. This report is intended to serve those interested in examining the possibility and feasibility of creating and configuring such reserves with a reference document that will be useful not only for stimulating thinking regarding various issues and options related to their creation and configuration, but also for understanding key policies and procedures that impinge on such undertakings.

It must also be underscored at the outset that this report does not deal with a single or singular model of residential urban reserves; there are many models of urban residential reserves that can and should be contemplated regarding what may or may not be done in Saskatoon. Three such general models are: (a) reserves that consist only of a single apartment block or tower; (b) reserves that consist only of fully developed residential sub-divisions without any other types of developments; and (c) reserves that consist of fully developed residential sub-divisions as well as commercial and industrial developments. Two other general models of residential reserves of note are based on the level of ‘institutional completeness’. Whereas one model consists of residences only, the other consists of an extensive set of organizational or institutional infrastructure needed for governance, management and service delivery in the community.

1.2 Key Concepts for the Report

For purposes of this report, it is useful to define three key concepts that were used above in explaining its central objective, namely ‘residential urban reserves’, ‘core housing needs’ and ‘culturally supportive communities’. ‘Residential urban reserves’ refers to First Nations reserves that can be differentiated on the basis of their geographic proximity to major urban centres. There are three general types of such reserves: the first, is located entirely within the boundaries of a major urban centre, the second is located immediately adjacent to a major urban centre, and the third is located within a very short commuting distance from such a major urban centre of approximately five to ten kilometers [Canada, 2004a]. The population profile of some of the most notable of such reserves is provided in Figure 1.1. ‘Core housing needs’ refers to a situation faced by individuals or families with relatively low incomes whose cost for their basic housing consumes a disproportionately high component of their total income. According to the Canada Mortgage and Housing Corporation [CMHC, 2004]: “A household is said to be living ...in core housing need if it would have to spend 30 per cent or more of its before-tax income to pay the median rent of alternative local housing that is acceptable” in adequate in condition (i.e., no major repairs required) and suitable in size (i.e., with enough bedrooms for the size and make-up of the household) to meet the norms of the National Occupancy Standard. This definition of core housing needs is different than some conceptualizations of ‘homelessness’ and ‘relative homelessness’ in some housing studies [SIIT, 2000]. ‘Culturally supportive communities’ refers to communities in which Aboriginal culture is valued, celebrated, and promoted. All communities have the potential for being culturally supportive regardless of their precise demographic configuration. Whether they are or not is, of course, a matter of choice.

1.3 Central Questions of the Report

In keeping with the objective noted above, this report addresses these six central questions:

- ◆ What are the needs of Aboriginals in Saskatoon for affordable and adequate housing?
- ◆ How are existing residential urban reserves configured?
- ◆ Does the creation of residential urban reserves constitute a potentially valuable and viable option for providing adequate and affordable housing for Aboriginals with core housing needs?
- ◆ What are the challenges and choices facing any First Nations considering creating residential urban reserves in Saskatoon?
- ◆ What are the major policies and procedures for creating residential urban reserves in Saskatoon?
- ◆ What initiatives should First Nations undertake to insure that they are ‘strategically positioned’ to create residential urban reserves in Saskatoon designed to provide adequate and affordable housing for Aboriginals with and without core housing needs?

1.4 Organization and Methodology of the Report

The report consists of six major sections devoted in turn to each of the six questions noted above. The information for this report has been collected using several conventional research methods including: the analysis of primary sources such as government statutes and policy documents; the analysis of secondary sources such as books, journal articles, and reports produced by academic analysts and various stakeholder groups; and confidential interviews with informed Aboriginal and non-Aboriginal observers of the residential urban reserves phenomenon in Canada, many of whom have been directly involved either in managing such reserves or in managing relations between such reserves and various orders of government.

Figure 1.1**POPULATION CONFIGURATON OF SELECTED RESIDENTIAL URBAN RESERVES****Membertou (Sydney, Nova Scotia Area)**

Aboriginal Population	Total	Male	Female
Total - All persons	620	305	315
Aboriginal identity population	595	295	300
Non-Aboriginal population	25	10	15

Millbrook (Truro, Nova Scotia Area)

Aboriginal Population	Total	Male	Female
Total - All persons	740	375	370
Aboriginal identity population	615	305	310
Non-Aboriginal population	130	65	65

Wendake (Quebec City Area)

Aboriginal Population	Total	Male	Female
Total - All persons	1,545	760	785
Aboriginal identity population	1,165	565	595
Non-Aboriginal population	375	190	185

Opaskwayak Cree Nation 21A (The Pas, Manitoba Area)

Aboriginal Population	Total	Male	Female
Total - All persons	230	120	110
Aboriginal identity population	195	100	95
Non-Aboriginal population	40	25	15

Opaskwayak Cree Nation 21E (The Pas, Manitoba Area)

Aboriginal Population	Total	Male	Female
Total - All persons	1,990	1,000	990
Aboriginal identity population	1,980	995	985
Non-Aboriginal population	15	0	10

Opaskwayak Cree Nation 21I (The Pas Manitoba, Area)

Aboriginal Population	Total	Male	Female
Total - All persons	140	70	65
Aboriginal identity population	105	55	55
Non-Aboriginal population	30	20	15

Tsuu T'Ina (Calgary, Alberta Area)

Aboriginal Population	Total	Male	Female
Total - All persons	1,980	985	995
Aboriginal identity population	885	430	455
Non-Aboriginal population	1,100	560	545

Burrard/Tsleil-Waututh (Vancouver, B.C. Area)

Aboriginal Population	Total	Male	Female
Total - All persons	1,205	560	640
Aboriginal identity population	245	110	130
Non-Aboriginal population	965	450	510

Musqueam 2 (Vancouver, B.C. Area)

Aboriginal Population	Total	Male	Female
Total - All persons	1,280	620	655
Aboriginal identity population	520	250	270
Non-Aboriginal population	760	370	385

Skowkale 10 (Chilliwack, B.C. Area)

Aboriginal Population	Total	Male	Female
Total - All persons	240	115	125
Aboriginal identity population	135	65	70
Non-Aboriginal population	110	55	60

Skowkale 11 (Chilliwack, B.C. Area)

Aboriginal Population	Total	Male	Female
Total - All persons	185	90	100
Aboriginal identity population	20	10	10
Non-Aboriginal population	170	80	85

Tzeachten (Chilliwack, B.C. Area)

Aboriginal Population	Total	Male	Female
Total - All persons	705	345	365
Aboriginal identity population	225	110	110
Non-Aboriginal population	485	235	250

Kwaw-kwaw-Apilt (Chilliwack, B.C. Area)

Aboriginal Population	Total	Male	Female
Total - All persons	360	160	200
Aboriginal identity population	30	15	10
Non-Aboriginal population	330	140	190

Skowkale 10 (Chilliwack, B.C. Area)

Aboriginal Population	Total	Male	Female
Total - All persons	240	115	125
Aboriginal identity population	135	65	70
Non-Aboriginal population	110	55	60

Skowkale 11 (Chilliwack, B.C. Area)

Aboriginal Population	Total	Male	Female
Total - All persons	185	90	100
Aboriginal identity population	20	10	10
Non-Aboriginal population	170	80	85

Tsinstikeptum 9 (Kelowna, B.C. Area)

Aboriginal Population	Total	Male	Female
Total - All persons	4,975	2,330	2,635
Aboriginal identity population	540	220	315
Non-Aboriginal population	4,435	2,110	2,325

Tsinstikeptum 10 (Kelowna, B.C. Area)

Aboriginal Population	Total	Male	Female
Total - All persons	855	410	445
Aboriginal identity population	110	45	60
Non-Aboriginal population	745	365	385

Kamloops 1 (Kamloops, B.C. Area)

Aboriginal Population	Total	Male	Female
Total - All persons	1,410	710	700
Aboriginal identity population	715	365	355
Non-Aboriginal population	695	350	345

Source::

Stats Canada, *Community Profiles* 2001. <http://www12.statcan.ca/english/Profil01/PlaceSearchForm1.cfm>

N.B.:

- Community Profile Statistics were not available for other notable residential urban reserves in some provinces.
- Numbers for some columns or rows do not add up perfectly, because Stats Canada rounds them up or down to the nearest multiple of five.

2. ABORIGINAL HOUSING AND DEVELOPMENT NEEDS

2.1 Introduction

The central objective of this section is to provide an overview of the current and future housing, economic, community and political development needs of Aboriginals in Saskatoon as portrayed in the extant literature. Before turning to a discussion of those needs, however, it is useful to provide a brief overview of the data on current and future Aboriginal population trends in Saskatoon. Accordingly, this section consists of several subsections devoted, in turn, to the current and future Aboriginal population trends in Saskatoon and the housing, economic, community, and political development needs of that population.

2.2 Aboriginal Population Trends in Saskatoon

A significant proportion of the population in Saskatoon is Aboriginal. Both the national census data and the provincial health registry indicated that approximately 9-10% of the population in the Saskatoon Metropolitan Census Area is Aboriginal. According to the 2001 census, Saskatoon had the highest concentration of Aboriginal people as a percentage of the total population in census metropolitan areas. [See Table 2.1] Moreover, among Saskatchewan cities, Saskatoon's concentration of Aboriginal people as a percentage of the total population was fourth behind Yorkton which had 10.6%, North Battleford which had 15.6% and Prince Albert which had 29% of the total population. Nevertheless, in terms of absolute numbers the 2001 census revealed that Saskatoon has approximately twice as many Aboriginal people as Prince Albert. Whereas the former had 20,275, the latter had 11,640 people [Canada, 2003b; Saskatchewan 2004b].

The proportion of Aboriginals in Saskatoon is likely to increase substantially in the future for several reasons, but most notably due to the 'Aboriginalization' and 'urbanization' phenomena in Saskatchewan. The 'Aboriginalization' of the province's population is a very significant demographic phenomenon in Saskatchewan. The phenomenon is evident in the fact that Saskatchewan is a leader among the provinces in the proportion of Aboriginals as a percentage of the total population and is likely to continue to be so to an even greater extent in the future. Indeed, census data reveals that only Manitoba's Aboriginal population of 13.6% is higher than Saskatchewan's 13.5%. Moreover, all indications are that the proportion of Aboriginal population is likely to increase substantially in the future due to some of the recent population trends which are expected to persist and even accelerate during the next half century. Whereas Saskatchewan's Aboriginal population increased by 17% from 1996 to 2001, the non-Aboriginal population decreased by 3.7%. Such a growth rate has led to projections that by 2045 Aboriginals will likely constitute approximately 25% to 33% of the province's population, and possibly an even higher proportion of some major urban centres such as Saskatoon [FSIN, 1997; Lendsay, et al., 1997:61; Stokes, 2003:4; Saskatchewan, 2004b; Saskatchewan, 2004c].

TABLE 2.1

Aboriginal People in Major Metropolitan Centres, 1951 - 2001							Percent of Total CMA Population
	1951	1961	1971 ^[1]	1981	1991 ^[2]	2001	2001
Halifax	--	--	--	--	1185	3525	0.1
Montreal	296	507	3215	14450	6775	11275	0.3
Ottawa-Hull	--	--	--	4370	6915	13695	1.3
Toronto	805	1196	2990	13495	14205	20595	0.4
Winnipeg	210	1082	4940	16575	35150	55970	8.1
Regina	160	539	2860	6575	11020	15790	8.3
Saskatoon	48	207	1070	4350	11920	20455	9.1
Calgary	62	335	2265	7310	14075	22110	2.3
Edmonton	616	995	4260	13750	29235	41295	4.4
Vancouver	239	530	3000	16080	25030	37265	1.9

^[1]The 1971 data do not include the Inuit.

^[2]Montreal, Calgary and Vancouver had, within their boundaries, reserves that were incompletely enumerated in either 1991 or 2001 or both, affecting the counts for those years and cities.

Source: Peters, Evelyn, J. and Oksana Stachenko. 2004. *Atlas of Urban Aboriginal Peoples*.

http://gismap.usask.ca/website/Web_atlas/AOUAP/

TABLE 2.2
(Saskatoon Aboriginal Population Trends— 1971-2001)

Year	Variable	Aboriginal		North American Indian		Métis	
		No.	% of City	No.	% of City	No.	% of City
1971 ^[1]	Single Ethnic Origin	1,080	0.85	--	--	--	--
1981	Single Ethnic Origin	3,490	2.28	2,290	1.50	1,165	0.76
	Total Ethnic Origins ^[2]	4,220	2.77	2,600	1.71	1,565	1.03
1991	Single Ethnic Origin	7,435	4.05	5,440	2.97	2,055	1.12
	Aboriginal Identity ^[3]	11,920	5.73	6,380	3.07	5,585	2.68
2001	Single Ethnic Origins	9,965	5.15	7,940	4.10	1,855	0.96
	Aboriginal Identity	18,420	9.51	10,750	5.55	7,650	3.95

^[1]Does not include Métis people.

^[2]Comparable to Aboriginal identity.

^[3]This data is from Aboriginal Peoples Survey and is available only for Saskatoon Census Metropolitan Area comprising the City of Saskatoon and surrounding rural municipalities.

Source: Peters, Evelyn, J. and Oksana Stachenko. 2004. *Atlas of Urban Aboriginal Peoples*.

http://gismap.usask.ca/website/Web_atlas/AOUAP/

The notable factors generally cited for this level of ‘Aboriginalization’ of Saskatchewan’s population are the following: the relatively high birth rate among Aboriginals in the province as compared

to non-Aboriginals; the relatively low level of out-migration of Aboriginals from Saskatchewan to other provinces and territories; the relatively high level of out-migration of non-Aboriginals from Saskatchewan to other provinces and territories; the low level of international or inter-provincial migration to Saskatchewan of non-Aboriginals; the increased lifespan of First Nations members resulting from improved health services and health; the relatively high percentage of the Aboriginal population that is currently under the age of eighteen which will be having families in the coming decades; and the increased incidence of intermarriage between Aboriginals and non-Aboriginals.

That 'Aboriginalization' phenomenon will be quite pronounced in Saskatoon for two reasons. The first is that there will be an increase in the absolute size of its current Aboriginal population for the reasons cited above. The second is that the phenomenon of urbanization within the Aboriginal community is likely to increase the migration of Aboriginals from rural and northern remote regions of the province to the larger urban centres such as Saskatoon. In Saskatchewan as in other provinces there has been a massive migration of First-Nations from reserves to urban areas during the past five decades [Canada, 2003b]. This is evident in the estimate by the Saskatoon Tribal Council that 80% of their population lives off reserve and predominately within Saskatoon [Chhokar, 2003]. The migration of Aboriginals to Saskatoon and other urban areas is already quite significant and is likely to become even more significant in the future, unless something occurs that reverses the current trends. At the turn of this century close to half of the Aboriginal population in Saskatchewan lived in urban centres with a population of 4,000 or more [Elliot, 2003]. It must be noted, however, that the migration of Saskatchewan's population to major urban centres is not limited to Aboriginals. Non-Aboriginals are also migrating to such centres [Elliot, 2004]. Although such migration by non-Aboriginals to Saskatoon is likely to reduce an otherwise more dramatic effect of the proportion of Aboriginals vis-à-vis their non-Aboriginals counterparts in the city that is likely to be created by the influx of Aboriginals, it is unlikely to negate it completely. Consequently, the ratio of Aboriginals to non-Aboriginals living in Saskatoon is likely to increase in the future. Even if that ratio is not changed by such migration trends, there is a high probability that the absolute number of Aboriginals living in Saskatoon will increase. The migration of Aboriginals to urban areas such as Saskatoon is caused by the "push and pull" factors created by peoples' assessments of the relative nature and scope of problems and potential in pursuing educational, employment opportunities and obtaining affordable and adequate housing in those areas as compared to the reserves located in remote rural and northern areas. Meeting housing needs alone is not a sufficient condition for people to decide where they will live. This is why in some cases they are prepared to settle for inadequate or less affordable housing where they choose to live, even though more adequate and affordable housing is greater elsewhere. As implied in reports that have examined migration patterns of Aboriginals, there are many factors that influence their decisions on where to reside [Crozier, 1991; Clatworthy, 1996; Cooke, 1999; Maxim, 2000; Clatworthy and Cooke, 2001]. In the case of Indians migrating from urban areas to reserves, for example, their decisions may be influenced by their perceptions of the quality of life there. As has been noted elsewhere: "...reserves may represent the stability and support of extended family, kinship networks, cultural and other benefits that are not

available in the city, and it is to be expected that reserves will be a primary destination of out-migrants from urban areas” [Norris, et al., 2001].

None of the foregoing should be interpreted to mean that the flow of registered Indians in Saskatchewan is entirely away from reserves in rural areas to non-reserve communities in urban areas. An analysis based on 1991-1996 census data of the migration patterns of such Indians reveals that there is also a flow to reserves [Norris, et al., 2001]. Indeed, it revealed that during that census period several major census metropolitan areas in Canada, though not Saskatoon, experienced a net migration of registered Indians away from such areas to reserves. Data from the 2001 census indicate that those trends continue to prevail [Canada, 2003b]. Clearly, a substantial number of band members across the country chose to move to and live on reserves during that census period. There are probably many more reasons than just those noted above for their decisions to do so, not the least of which was probably that, contrary to what they had hoped, they were unable to find either employment or adequate and affordable housing in the urban areas in which they were living.

2.3 Aboriginal Housing Needs in Saskatoon

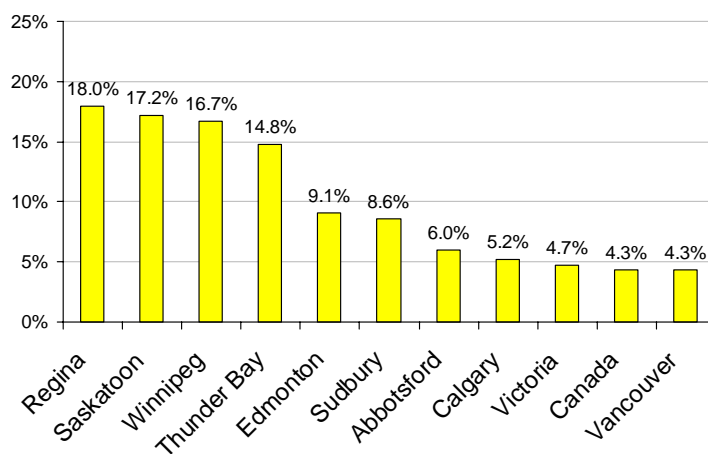
In Saskatoon, as in other major urban centres across Canada, a substantial proportion of Aboriginals and non-Aboriginals alike have a need for adequate and affordable housing [FCM, 2000a; FCM, 2000b; FCM 2004; Canada, 2004f]. The nature and scope of the housing problems faced by Aboriginals across Canada noted in the report of the Royal Commission on Aboriginal Peoples (RCAP) certainly exist in Saskatoon. RCAP identified three major sets of problems related to adequacy and affordability of housing. The first problem was insufficient access to adequate and affordable housing for a high proportion of Aboriginals living on and off reserves that is required for basic comfort, health and safety. Among the problems identified were that a substantial portion of the old housing stock in which Aboriginals lived was badly deteriorated and that the new housing stock on reserves was deteriorating despite substantial government contributions for housing construction during the previous decade. The second problem was a relatively high proportion of Aboriginals (approximately 33%) who face a so-called ‘core need’ because their income does not cover the full cost of housing. According to RCAP, an estimated 84% of households on reserves did not have sufficient income to cover the full cost of housing and approximately half of those did not have any disposable income to contribute to housing. Such data led RCAP to conclude that “The major obstacle to meeting housing needs is the gap between incomes and costs, that is, affordability” [RCAP, 1996]. The third problem was what RCAP described as a reduction in the level of investments by governments in housing for Aboriginals, which could have an adverse effect not only on adequate and affordable housing for Aboriginals, but also on the quality of life and race relations within communities.

Table 2.4
Cities with the Greatest Number of Aboriginal (non-reserve) Households, 2001

	Total	Owner	Renter
Canada	319,265	153,375	165,890
Winnipeg	24,955	9,445	15,505
Vancouver	18,300	5,805	12,495
Edmonton	17,830	6,990	10,840
Toronto	11,460	4,630	6,830
Calgary	9,990	4,535	5,455
Saskatoon	8,035	2,705	5,325
Ottawa-Gatineau	7,905	3,820	4,085
Montreal	7,185	2,695	4,490
Regina	6,405	2,040	4,360
Hamilton	3,810	1,600	2,215

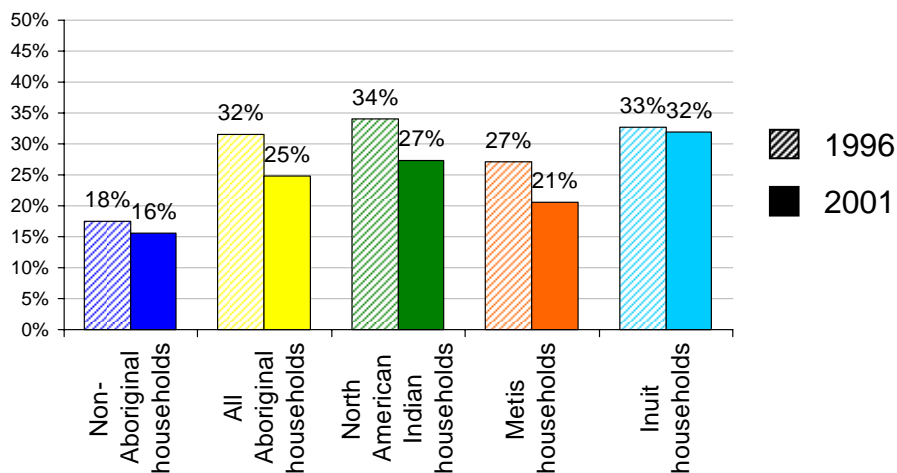
Aboriginal total does not include on-reserve households
 Source: CMHC (census-based housing indicators and data)

TABLE 2.4
Cities with the Greatest Share of Renter Households that are Aboriginal Households (non-reserve), 2001



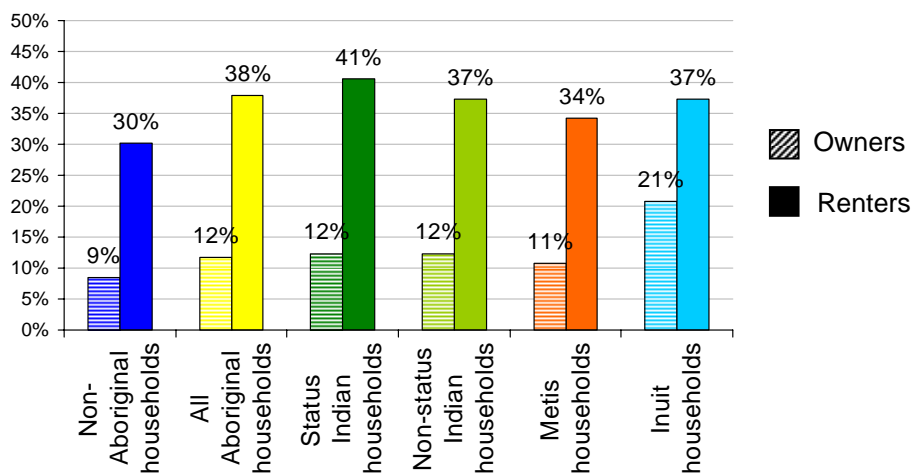
Aboriginal total does not include on-reserve households
 Source: CMHC (census-based housing indicators and data)

**TABLE 2.5
Incidence of Core Housing Need, 1996-2001**



Aboriginal total does not include on-reserve households
Source: CMHC (census-based housing indicators and data)

**TABLE 2.6
Core Housing Need More Prevalent Among Renters**



Aboriginal total does not include on-reserve households
Source: CMHC (census-based housing indicators and data)

Renter households are 2-3 times more likely than owners to be in core housing need.

Although Aboriginals constitute approximately 9-10% of the population in the Saskatoon Census Metropolitan Area, it is recognized that they constitute a higher percentage of the population which has a need for adequate and affordable housing. This has been one of the major factors that have motivated the municipal government and various stakeholder agencies to establish the Saskatoon Community Plan for Homelessness and Housing with funds provided under the federal government's National Housing Initiative [Saskatoon, 2002; Saskatoon 2003]. Recent national data on housing reveals that urban Aboriginal people make up 20% to 50% of the total homeless population in Canada and that they are overrepresented among the portion of the population that lives in substandard housing [Walker, 2003; Hanna and Hanson, 2004].

The housing profile for Aboriginals in major urban centres in Saskatchewan, including Saskatoon, is consistent with the national profile. Survey data collected in 2000 from Aboriginal respondents in Saskatoon, Regina and Prince Albert reveals that 20% indicated that they were "without shelter", 86% were unsure whether they could stay in their current housing for an extended period of time, and 17% indicated poor or very poor current housing conditions [SIIT, 2000]. The scope of housing needs by Aboriginals in Saskatoon is also evident in the results of a survey conducted in 1999 which revealed that approximately 68% of approximately six to seven thousand shelter users were Aboriginal people and that they were using such shelters for longer periods than had been the case in the past [YWCA, 1999].

A notable characteristic of the problem of adequate and affordable housing in Saskatoon both among Aboriginals and non-Aboriginals is that it manifests itself most visibly and dramatically in the portion of the city known locally as the "west side" or the "lettered avenues". This is confirmed by 2001 census data which revealed that there were four census tracts where people who identified as Aboriginal made up 30% or more of the total tract's population. These tracts with the highest concentration of Aboriginal population were clustered in the southwestern part of the city relatively close to the downtown area.ⁱ Those who live and work in that part of the city know of the nature and scope of the housing problems and the challenges it poses for individuals, families and the community. Although the housing problems are most clearly evident in that part of the city, they are by no means entirely confined there; to varying extents the housing problems are evident in other parts of the city that have lower end housing stock.

The high incidence of the Aboriginal population who need adequate and affordable housing is largely a function of three sets of factors. The first and most significant economic factor is the relatively high proportion of Aboriginals who are either unemployed or underemployed as compared to their non-Aboriginal counterparts. Data reveals that the high poverty rates found within the Aboriginal population in Canada are particularly pronounced in Saskatchewan, and that it is more than three times higher than for non-Aboriginals. Whereas the poverty rate among the former is 53.1% the poverty rate of the latter is 15.5% [Ross, et al., 2000]. Moreover, in Saskatoon the average income for Aboriginal households is only 43% of the average for all households in the city [Ross, et al., 2000]. The second factor is the low vacancy rate in Saskatoon. The fact that in recent years Saskatoon has had either the lowest or one of the lowest

vacancy rates in Canada, makes it very difficult for Aboriginals to find adequate and affordable housing [Saskatoon, 2003]. The low vacancy rate not only drives up housing costs which places adequate housing beyond the means of many low income and impoverished Aboriginals. The third factor, and closely related to the other two, is the discriminatory practices of some landlords and sellers against Aboriginals and particularly among those in the lower income levels, and particularly when the vacancy rate is very low [Walker, 2003, Hanna and Hanson, 2004].

The high proportion of Aboriginal population in need of adequate and affordable housing includes families as well as specific subgroups such as women, elderly persons and students. Such unmet housing needs have significant adverse effects not only for the general comfort of Aboriginals but also for their health, safety, employment and education. To its credit the City of Saskatoon recognizes that rental units must be maintained and rent sustained at affordable levels for Aboriginal and non-Aboriginal low and moderate income families [Saskatoon, 2003].

2.4 Aboriginal Economic, Community and Political Development Needs in Saskatoon

In addition to housing needs noted above, Aboriginals in Saskatoon also have economic, community and political development needs. The nature and scope of these needs are described in turn below.

2.4.1 Economic Development Needs

The urban Aboriginal community in Saskatoon, as in other urban centres across the country, has economic development needs [Canada, 2001c]. The reason for this is that the majority of the members of the Aboriginal urban community in Saskatoon do not have access to the requisite level of economic activity and economic returns. Indeed, the majority of them have much higher unemployment and underemployment levels as well as lower income levels than their counterparts in the non-Aboriginal community. In the case of unemployment levels 2001 data indicate that the unemployment rate among Aboriginals in Saskatoon was 23% compared to approximately 10% for non-Aboriginals [Saskatchewan, 2004b]. In the case of the income levels the data indicate that in 2001 the average income for Aboriginals (\$15,991) in Saskatoon was approximately 60% of those for non-Aboriginals [Saskatchewan, 2004b].

2.4.2 Community Development Needs

The urban Aboriginal community in Saskatoon, as in other urban centres across the country, also has the following three sets of community development needs. The first are what might be termed 'community infrastructure and services needs'. These are the needs for various types of community infrastructure and services that contribute to healthy and happy communities (e.g., recreational and social facilities and services). The second are what might be termed 'community safety needs' which includes a need to live safely with relatively little concern for one's safety both inside and outside their homes. The third set are what might be termed 'community bonding or cohesion needs' which includes a relatively high level of affinity toward other members of the community and a high degree of positive social relationships among members of that community. For many Aboriginals living in Saskatoon such bonding and cohesion with the general urban is lacking. The reason for this is that, despite all of its positive attributes, socially

Saskatoon is still not a perfectly bonded and cohesive community. There is a social distance between substantial portions of the Aboriginal and non-Aboriginal population. Indeed, there is even a social distance within each of those two components of the population. All of this is particularly evident on the west side of the city where the bulk of the Aboriginal population resides. Such distance creates problems for various aspects of community, economic and political development. The problem of social distance among Aboriginal people living in urban centres and its consequences has been described in the report of RCAP's National Round Table on Aboriginal Urban Issues as follows [RCAP, 1993]:

The diversity of origins and cultures of Aboriginal people living in a particular city often poses difficulties in establishing a sense of community, even for those whose ties with their homelands and original communities have weakened over time. Differences in Aboriginal status and entitlements may also interfere with collective efforts to address shared concerns.

2.4.3 Political Development Needs

The urban Aboriginal community in Saskatoon, as in other urban centres across the country, has political development needs. This includes needs both in terms of governance within the Aboriginal community *per se*, and also governance in the wider urban polity. In terms of their political development needs in the wider urban polity, the majority of Aboriginals in Saskatoon do not participate either as candidates or as voters in local, provincial or federal elections [Smith, 1997]. Moreover, they do not participate in various governance committees that deal with economic and community development matters. The result of this is that their needs and preferences regarding various matters, including housing, are not always reflected in the decisions made by various governments and community agencies.

In terms of political development needs within the Aboriginal community *per se*, some governance institutions are not configured in a way that they can address all the needs and preferences of various members of the Aboriginal community related to various matters, including housing, efficiently and effectively. One of the major obstacles for such organizations in attempting to address various needs and preferences of Aboriginals in an efficient and effective manner is the fragmented configuration of the Aboriginal community which consists of several sub-communities with a vast array of needs and preferences due to the highly diverse nature of their membership. For example, despite their best efforts, the existing institutions devoted to dealing with housing for Aboriginals struggle to deal efficiently and effectively with the housing needs of all Aboriginals in the Saskatoon community. In the case of First Nations, this raises an important question regarding the extent to which individual band councils who have a critical mass of their members living in Saskatoon should take a more direct and active role in addressing the housing needs of their members and possibly also those of other persons through various options, including the creation of residential urban reserves. Indeed, such councils may also want to consider whether they should establish satellite governance and service delivery frameworks within or near Saskatoon so as to better serve their members who reside in or near the city.

The importance of effective governance systems in urban areas has received some valuable attention by many academics [Breton, and Grant, 1984; Peters, 1992; Wherrett and Brown, 1994; Young, 1994; Peters, 1995; Adams, 1999; Graham, 1999; Peters, 1999; Newhouse and Peters, 2003], organizations

[Aboriginal Council of Winnipeg, 1998; NAFC and LRCC, 1999; Canada West Foundation, 2001], and the Royal Commission on Aboriginal Peoples [RCAP, 1996]. The Commission noted the challenges facing Aboriginal governments and their people in urban areas and suggested that at least three general approaches should be considered in improving the situation, namely: (a) changes in existing public governance institutions in urban areas to involve Aboriginals on existing boards, on Aboriginal affairs committees, and on co-management bodies; (b) Aboriginal self-governance through an urban Aboriginal community of interest approach involving members with diverse Aboriginal origins either on multi-function or single-function governance bodies; and (c) Aboriginal self-governance through one of four models designed to serve either the members of only one nation or of several nations in an urban setting. The four models identified by RCAP include:

- the extra-territorial jurisdiction model in which each nation could establish a governance system for their members in urban areas;
- the host-nation model in which one nation would serve as host and provide services not only to its own members but also to the members of other nations;
- the separate and distinct urban governance model for each Aboriginal political community in the urban areas, and
- the urban treaty nation governance model in which service agencies to deal with the Aboriginal and treaty rights of urban Aboriginals be established on an urban-wide basis [RCAP, 1996].

2.5 Conclusions

This overview reveals that a substantial proportion of Aboriginals in Saskatoon, and particularly those living on the west side of the city, face the following interrelated problems:

- ◆ they do not have adequate or affordable housing;
- ◆ they are economically disadvantaged and do not enjoy their proportionate share of economic development benefits;
- ◆ they live in neighbourhoods which have an array of community development needs in terms of community infrastructure, services, health, safety, and social cohesion; and
- ◆ they do not have an optimal mix of formal and informal political institutions, organizations and processes that exist primarily to deal with their particular needs and preferences related to housing and economic, community, and political development.

In the case of the existing housing problems the overview also reveals that if current trends persist, and some creative corrective action is not taken to accelerate the pace by which a greater proportion of Aboriginals in Saskatoon can access adequate and affordable housing, those problems are likely to continue and possibly even increase in the future [Canada, 2004b]. The obvious questions that emerges here is: What can be done to deal with those housing problems? However, in the remainder of this report the focus is on the narrower questions: Do urban residential reserves constitute a potentially beneficial initiative for dealing with the housing needs of Aboriginals in Saskatoon and possibly also with their economic, community, and political development needs? As part of the effort to answer that question, the next section of this report provides an overview of the several aspects of existing residential urban reserves across Canada.

3. CONFIGURATION OF RESIDENTIAL URBAN RESERVES AND SUBDIVISIONS

3.1 Introduction

The central objective in this section is to provide an overview of several important aspects of existing residential urban reserves and subdivisions therein which may be of some importance for First Nations bands wishing to create residential urban reserves or residential subdivisions. Toward that end, this section provides an overview of the following: (a) the geographic, demographic and functional configuration of residential urban reserves; (b) the configuration of residential subdivisions; the configuration of landholdings; the configuration of the housing stock; the configuration of reserve-municipal agreements; the configuration of some of reserve-municipal relations; and the configuration of benefits and problems of the proximity of residential reserves and urban municipalities. This section is based largely on information obtained from interviews with band and municipal officials from some selected neighbouring reserve and municipal communities across Canada. However, some information was also gleaned from other sources containing statistical data and explanation of various aspects of residential urban reserves and their relationships with municipalities, and observations by the author based on field trips to some reserves.

3.2 Configurations of Urban Reserves

In discussing the configuration of urban reserves *per se*, as opposed to the configuration of the residential sub-divisions, it is useful to focus on three major types of configurations— geographic, demographic, and functional.

3.2.1 Geographic Configuration

Geographically, residential urban reserves are configured in one of three ways vis-à-vis the neighbouring urban municipality. Whereas some are entirely encircled by the neighbouring municipality, others are located either immediately adjacent to the neighbouring urban municipality and share borders both with that municipality as well as other small urban and rural municipalities, or are located within a very short commuting distance from the major urban municipality and therefore do not share boundaries.

3.2.2 Demographic Configuration

Demographically, the population of residential urban reserves is configured in one of two ways in terms of the racial and Aboriginal status of residents. Whereas on some reserves the population consists only of First Nations band members, on other reserves it consists of a mixture of First Nations band members, Aboriginal non-band members, and non-Aboriginals. Although the bulk of residential urban reserves consist of only First Nations band members, there are many in which the population consists of individuals of Aboriginal and non-Aboriginal ancestry who are not band members. In cases where the populace consists of a combination of those three groups, the proportion of band members to non-band members varies considerably. Whereas in some cases the First Nations band members constitute a very large portion of the population, in other cases they only constitute a small portion of the population. Indeed, in some cases the band members constitute as little as one tenth of the population. Moreover, it is

noteworthy that on some residential reserves the non-Aboriginal population far exceeds the Aboriginal population.

The combination of First Nations band members and Aboriginal and non-Aboriginals who are not band members is a relatively common phenomenon, especially in British Columbia. There, and in some other provinces, it is particularly common for reserves that are strategically located either within the boundaries of, or immediately adjacent to, major urban centres in areas that are either highly convenient from a commuting standpoint or highly attractive from a quality of life standpoint. Moreover, they are generally located in, or adjacent to, urban centres with housing markets that have the following two characteristics:

- ◆ limited space for additional real estate developments either within or adjacent to such centres; and
- ◆ relatively high prices both for developing real estate and for developed real estate.

In addition to contiguity of borders, another geographic factor that seems to increase the proportion of non-band members on reserves is what might be termed continuity and ease of access in the nature of the developed or developable land base. The greater the continuity and ease of access, the greater the likelihood that Aboriginals and non-Aboriginals who are not band members are likely to live on the reserve. Although all of the aforementioned characteristics seem to account for the racial and Aboriginal status mix, any one of them may be sufficient a condition for such a mix to occur. There is no doubt that the strategic geographic location of reserves and the nature of the housing market are major factors that influence the decisions not only of band members but also those of Aboriginal and non-Aboriginal band members to live on reserves. This is an important point for any First Nations interested in creating urban residential reserves to note.

3.2.2 Functional Configuration

Functionally, residential urban reserves are configured in two general ways. Whereas some are configured so that land is used exclusively for residential purposes, others are configured so that it is used for institutional, commercial or industrial purposes as well as residential purposes. Both types of configurations are prevalent across Canada. The most common type is the one in which there is a mix of residential and institutional properties which are needed for governance and the provision of educational, health and other community services. In some instances the residential reserves also contain some limited commercial developments such as convenience stores and gas stations. Although somewhat less common, there are also instances in which there are significant commercial or industrial developments such as shopping malls and industrial parks. In cases where there are shopping malls and industrial parks, they are generally properly zoned and developed for those particular purposes and, set apart from the residential sub-divisions [Adkin, 2003]. The precise functional configuration of the residential urban reserves tends to depend on the nature of the overall nature of zoning and land-use for the area in which they are located. Generally, they are consistent and consonant with the general zoning and land-use for the area in which they are located. It must be underscored that in cases where residential urban reserves are also used for the other functions identified here, generally there are relatively distinct zones within the reserve for

conducting each function. In the case of First Nations that have multiple parcels of land in an urban setting, there is a tendency to use some either exclusively or primarily for residential purposes and others for commercial or industrial purposes. One factor which seems to affect the functional configuration of the residential urban reserves is the size of the reserve population. Generally, the pattern seems to be that the larger the size of the population on the reserve, the greater the likelihood that it will have a combination of residential, institutional, commercial and industrial developments. Moreover, indications are that the larger the size of the population, the greater the likelihood that there will be a high degree of 'institutional completeness', which is characterized by a wide array of governmental, community, and commercial services available on reserve. Clearly, as with so many other aspects of development, size matters.

3.3 Configuration of Residential Sub-divisions

The configuration of residential sub-divisions on urban residential reserves is varied. There are four basic models of residential sub-divisions. The first model consists of a single residential sub-division with a housing stock that is relatively uniform in size, quality, and price. The second model consists of a single residential sub-division with a housing stock that is relatively diverse in size, quality and price. The third model consists of multiple residential subdivisions with housing stocks that are essentially the same in size, quality and price across the subdivisions. The fourth model consists of multiple residential sub-divisions, each of which contains a housing stock that is relatively uniform in size, quality and price within the subdivision, but different than that of one or more of the other sub-divisions.

The configuration and scale of the residential sub-divisions seems to be correlated to the size of the reserve population and its socio-economic stratification. Reserves with smaller populations that are relatively homogenous socio-economically, and which do not sub-lease lots to Aboriginals and non-Aboriginals who are not band-members, are more likely to have a single residential sub-division in which the housing stock is relatively homogenous. Reserves with larger populations that are relatively heterogeneous socio-economically, and which lease lots to Aboriginals and non-Aboriginals who are not band-members, are more likely to have either of the following: (a) one sub-division with a housing stock that is not uniform in size, quality and price; or (b) two or more residential sub-divisions each of which consists of a housing stock that is relatively homogenous in size, quality and price but differs in size, quality and price from the housing stock of at least some, if not all, of the other subdivisions. The latter model is more common in cases where a First Nations band has multiple and separate parcels of reserve land, each of which caters to different components of the housing market both among their members and among Aboriginal and non-Aboriginal band members. More specifically, it is more likely to be evident where head leases have been issued either to band-owned sub-division development companies or private sub-division development companies who have either a particular subdivision concept or a particular portion of the housing market in mind. In summary, the overview of the extant urban residential reserves suggests that homogeneity and heterogeneity in housing stock is a function of homogeneity and heterogeneity in the socio-economic stratification among band members as well as non-band members living on reserve.

For all intents and purposes of this report an important observation is in order here, regarding the configuration of residential sub-divisions for providing adequate and affordable housing for Aboriginals and non-Aboriginals with core housing needs. In no case has an entire new residential sub-division been created exclusively for the purpose of providing adequate and affordable housing for Aboriginals with core housing needs. Insofar as providing such housing has been an objective, generally it has resulted both in the upgrading of the existing housing stock in existing residential subdivisions, and in the addition of a limited number of single or multiple dwelling housing units either to existing or new residential subdivisions. Most, if not all, of the new residential subdivisions have tended to be created primarily, if not exclusively, for the purpose of providing housing for relatively affluent persons who do not have core housing needs. Undoubtedly, the major reason for this is that residential subdivisions designed to serve the housing needs of the relatively affluent Aboriginal and non-Aboriginal persons are more likely both to generate the initial capital required for developing the subdivision and to generate more revenues for band councils which they can use for various community development purposes, including providing adequate and affordable housing for some of their band members with core housing needs.

3.4 Configuration of Landholdings for Residential Subdivisions

There are three major categories of landholdings that comprise residential sub-divisions on existing residential urban reserves. The first major category of landholdings are parcels of lands of various sizes which are assigned to band members through the use of the following three different legal instruments: a 'certificate of possession' which authorizes them to use the land on a long-term basis for the designated purpose; a 'certificate of occupation' which authorizes them to use the land on a short term basis while any unresolved issues related to that particular parcel of land are resolved; and a 'locatee ticket' which is a unique form of landholding on some reserves comparable to a 'certificate of possession' granted to holders until 1951 pursuant to an historic entitlement based largely on a family's use of the land prior to the creation of the reserve.

The second major category of landholdings consists of head-leases and sub-leases. Head-leases, which authorize holders to develop and manage an entire subdivision, are assigned to the following three general categories of property developers acting individually or in partnership: (a) a band council's own property development corporation; (b) a property development corporation owned privately by one or more entrepreneurial band members; and (c) a property development corporation that is owned privately by non-band members. In all three cases residential lots can be sub-leased either to band members or to non-band members as specified in the head-lease. For band councils that are managing their lands pursuant to the Indian Act the assignment of the head-leases must be approved by a Band Council Resolution and by the Minister, and sub-leases are assigned pursuant to the provisions specified in those head-leases. For band councils that are managing their lands pursuant to the First Nations Land Management Act, the assignment of head-leases and sub-leases are made in essentially the same way, except that the approval of the Minister is not required.

3.5 Configuration of Housing Stock

The type, quality, value and forms of ownership of the housing stock on residential reserves are quite varied. Although the bulk of the housing stock consists of single-unit dwellings (e.g., houses, or trailer parks), there are some multiple-unit dwellings (condominiums, apartment blocks, and special residences). Multiple dwelling units are less common and tend to be used primarily for social housing to meet the health and personal care needs of disabled and aged band members. The value of the housing stock covers the full cost spectrum from the lowest-range to the highest-range within their respective regions. The quality of the housing stock is generally comparable to that of the surrounding residential subdivisions within the neighbouring municipalities. Regardless of the age of the housing stock it is generally in relatively good shape rather than what might be described as severely run-down. Generally, clusters of run down houses which one might call a “slum neighbourhood” are not common on residential urban reserves. There are two possible explanations for this. One explanation is that there are more employment and business opportunities for band members living on reserves in urban areas, than for those living in rural areas. Another explanation is that there is an impetus for band councils and band members to follow the norms for property maintenance of the neighbouring municipality as a matter of community pride.

On reserves where only band members reside, generally the housing stock is owned either by individual band members for their personal use, or by an agency of the band councils which either rent it to band members at market value or on a subsidized basis, or use it as social housing for band members who cannot afford either to purchase or rent residential properties. On reserves where non-band members reside, some of the housing stock is also owned by those non-band members who lease the land either from the band council’s subdivision development agency or from the private subdivision development agency that holds the head-lease for that land.

The housing stock on urban residential reserves is owned by three categories of owners. The first category is band members, the second category is Aboriginal and non-Aboriginal persons who are not band members, and the third category is the band council which either rents to band members and non-band members or uses it for social housing. In some cases the ownership of the housing stock is transitional. More specifically, in cases where band members either obtain a mortgage through CMHC, or a loan from any other financial institution using the Ministerial Loan Guarantee loan program, ownership of the property is temporarily transferred to the band council until the loan is fully repaid.

3.6 Configuration of Reserve-Municipal Agreements

The precise configuration of agreements between the reserve governments and neighbouring municipal governments is quite varied. There are at least three major types of agreements between them [Dust, 1995; Mountjoy, 1999]. The first category consists of what are commonly known as bylaw compatibility agreements. Very few of the existing urban residential reserves have such agreements and tend to deal with relatively minor matters such as animal and nuisance control. The reason for this is that such agreements are a relatively recent invention that are required under the Additions to Reserve Policy and various treaty land entitlement frameworks, but were not required when most of the existing residential

urban reserves were created many decades ago. Indications are that some of the existing residential urban reserves and their neighbouring municipalities are attempting to negotiate such agreements because both sides appreciate that they are quite important for coordinating and harmonizing their respective efforts for dealing with regulatory matters of mutual interest and importance.

The second category consists of land-use, development and taxation agreements. Such agreements deal with the nature and scope of residential, commercial and industrial developments on reserves as well as the taxation regime that band councils would impose on the same. Such agreements are also relatively uncommon among existing residential reserves largely because they are a relatively new invention and were not a major consideration when such reserves were originally created many decades ago.

The third category consists of service agreements. These are by far the most common type of agreements. The vast majority of urban reserves surveyed had agreements related to the provision of basic municipal services such as: water and wastewater management, recycling, street maintenance, fire suppression, policing, animal control, recreation, library, and emergency planning. It must be underscored, that not all urban residential reserves enter into agreements with municipalities for the provision of all such services. In some cases First Nations tend to provide those services on their own.

Whereas most band councils and municipal councils had one or more of the aforementioned types of bilateral agreements, a few of them have started to develop special bilateral and multi-lateral governance partnerships which allow them to deal with some matters such as land use development and regional services such as landfills, recycling and fire protection on a joint-basis through membership in regional authorities [Fraser Basin Council, 2000].

Payment formulas for the provision of services to reserves by municipal councils pursuant to service agreements vary. Of the municipalities with service agreements, some of the notable modes for calculating level of payment for services provided include the following:

- ◆ Percentage of general municipal mill rate levied by municipalities to its taxpayers
- ◆ Full recovery of actual costs
- ◆ One time payments
- ◆ Per capita fees
- ◆ Per unit fees
- ◆ Cost sharing on an equal basis

3.7 Configuration of Reserve-Municipal Relations

The configuration of relations between neighbouring reserve and municipal councils are complex and highly varied [Molgat, 1998]. The climate of such relations varies on a continuum from highly positive on a consistent basis to highly negative on a consistent basis. Band and municipal representatives alike generally indicated that their relations fell somewhere between these two ends of the continuum. Although most of them indicated that their relations generally fell within the positive half of the continuum, and depicted them as either highly or moderately positive on a consistent basis, others noted that such relations were either negative or strained, and others indicated that they fluctuated between negative and positive depending on the issues that were being addressed and the individuals who were involved in addressing

them. In the case of reserve-municipal relations involving either one band with more than one municipality or conversely one municipality with more than one band, it was not uncommon to hear that relations were not the same with all bands or municipalities. Regardless of the precise climate of such relations, most reserve and municipal officials noted that they posed at least some minor challenges which required a special commitment and effort on their part to address in an effective manner.

The factors that they cited in explaining what accounted for the nature relations between them were similar to those that have been cited before in other studies that examined such relations [Irwin, 1994; Didluk, 1997; Hughes, 1997; Larbi, 1998; Mountjoy, 1999; Lafond 1999; Irwin 1999; CMAR, 2002; Alberta, 2002; FNA4LM, 2003a]. The positive relationships between reserve and municipal officials were attributed to the following factors:

- ◆ A shared attitude between them that reserve and municipal communities are essentially two parts of the same community that are involved in an interdependent symbiotic relationship;
- ◆ A shared set of goals between them for developing a strong and sustainable local or regional economy and a healthy and harmonious local or regional community;
- ◆ A high degree of familiarity and trust between them;
- ◆ A set of ongoing, regularized, formal and informal meetings and communications between them to discuss matters of mutual interest and concern.

The negative relationships between band and municipal officials were attributed to the absence, or at least inadequate degree of presence, of the aforementioned factors. Specific factors that were underscored by such officials as contributing to their negative relationships included the following:

- ◆ Disagreements on the precise nature, scope and causes of problems between them;
- ◆ Disagreements on the best means to deal with those problems;
- ◆ Different visions and interests related to economic and community development matters;
- ◆ Different views regarding their respective rights and responsibilities related to governance and service delivery;
- ◆ Lingering trust issues based on past interaction between them or their predecessors on various matters;
- ◆ Public statements by both sides that reflected a lack of sensitivity and understanding;
- ◆ An unwillingness to meet work in concert to advance the needs and goals of their respective communities;
- ◆ The negative interpersonal relations between such representatives;
- ◆ An obsession with protecting and exercising their respective jurisdictional authority in matters related to planning, development, user fees, taxation, and commercial operations such as casinos and bingo halls;
- ◆ A belief that consulting with each other is unnecessary, inconvenient, counterproductive, and prone to cause costly delays;
- ◆ Negative attitudes about each other.

3.8 Configuration of Benefits and Problems of Residential Urban Reserves

Band and municipal officials identified several sets of benefits and problems generated by the proximity of residential urban reserves and the neighbouring urban centres for their respective governments and communities. This included benefits and problems for the following: housing, land use planning and development, finances, social conditions, and social relations.

In the case of housing, band and municipal officials noted that the existence of residential urban reserves made a contribution to meeting some of the housing needs of Aboriginals and non-Aboriginal persons alike. However, it was generally understood that the existence of such reserves did meet all of the housing needs either for those with and without 'core housing needs'. Such benefits were most pronounced in those parts of British Columbia experiencing housing problems due to massive increases in the size of the population within their boundaries.

In the case of land use planning and development, band and municipal officials in some provinces indicated that the proximity of residential urban reserves and municipalities produced some valuable collaboration which has been essential in producing rational and coherent land-use plans that would benefit their respective communities. Nevertheless, some of them indicated that the proximity of the urban reserves and urban centres compounded some problems of land use planning and development.

Both band and municipal officials also noted that the proximity of urban reserves and major urban municipalities contributed to the finances of their respective communities and, by extension, to the finances of their respective councils. Financial benefits cited by such officials for their respective councils included the level of federal government funding for infrastructure, community development, and health and social services targeted for the reserve community. Financial benefits cited by such officials for their respective communities included increased consumer choice and convenience offered by on-reserve and off-reserve businesses, and increased tourism and convention draws. Band officials also cited several other significant financial benefits that accrued both to their councils and to members of their communities. The economic benefits for band councils included substantial revenue streams derived from land leasing, house rentals, user fees for local services and programs, and band taxes imposed on businesses operating on the reserve. Such revenue streams were deemed to enhance the level of financial sustainability and independence for band councils. The financial benefits for band members in their capacity as workers, entrepreneurs and consumers included increased access to the following: a large and highly diversified labour market; opportunities for potential economic and business partnerships; and a large consumer base that would not have existed in a remote or isolated community.

Some band officials who noted the financial benefits of the proximity of the reserve to major urban centres added that such benefits could have been even greater if certain practices and policies were improved. This includes improved practices by municipal governments to include band councils in various decision-making processes and potential development opportunities; better understanding by municipal officials and members of their communities of the potential advantage to on-reserve businesses provided by federal funding and tax exemption; less restrictive federal regulatory regimes regarding the financial management and economic development activities of band councils; and easier access to finances for residential and commercial developments by band councils and band members from agencies such as CMHC and banks. Another obstacle to increased economic benefits for band councils and their members noted by some band officials is the limited size and precise location of their existing reserves. They

indicated that either more land in their current location or in an even better location would have substantial economic benefits for their respective councils and communities.

The most common financial problem identified by respondents surrounded the nature of competition between reserve and non-reserve businesses. Whereas some municipal officials pointed to concerns that prevailed in their communities regarding the extent to which businesses located on the reserve have a competitive advantage in selling gas, cigarettes and other small consumer items, by virtue of tax exemptions, band officials noted that small on reserve businesses had difficulty competing with large businesses located in the neighbouring urban municipality.

In the case of social conditions and social relations the consensus among band and municipal officials was that the proximity of, and interaction among, the two communities generally tended to contribute to the following: greater access to education, health and recreational services; greater accessibility to various other types of social and cultural activities that raise the quality of life both for the reserve and municipal communities, and increased intercultural awareness and appreciation.

Not all band and municipal officials perceived the existence of the aforementioned benefits to social conditions and social relations. Whereas some band and municipal officials stated that no such benefits existed. Indeed, some indicated in the case of the reserve community there were no differences either in the social conditions or in the social relations of urban residential reserves as compared to those that existed for reserves located in remote rural parts of their province. In commenting on the social distance that persists between reserve and municipal residents, some band officials noted that the majority of residents in the neighbouring municipality would not know anything about the urban reserve. Similarly, some municipal officials noted that the proximity of residential urban reserves and the urban municipal centre contributed to some tensions and even to altercations between reserve and municipal residents.

3.7 Conclusions

Although there are many similarities among them, existing residential urban reserves in various provinces are by no means configured in a uniform manner. There are substantial differences among them in their geographic, demographic and functional configurations. Differences among them also exist in the configuration of residential subdivisions, landholdings, housing stock, and in the configuration of the agreements and relations between band and municipal councils. Some differences among them also exist in the perceived benefits and problems that they generate related to housing, land-use, the local economy, the finances of individuals, the finances of band and municipal councils, and the local social conditions and relations. Despite any such differences, however, the consensus among band and municipal officials is that the benefits outweigh the problems. This overview of existing urban residential reserves suggests that any First Nations band councils considering the creation of residential urban reserves in Saskatoon or elsewhere must consider a range of possible configurations and must weigh a range of potential benefits and problems. The existing residential reserves offer a range of models that may be used for any First Nations band councils interested in creating either a new residential urban reserve or a residential subdivision on an existing urban reserve.

4. VALUE AND VIABILITY OF RESIDENTIAL URBAN RESERVES

4.1 Introduction

The central objective in this section is to discuss the potential value and viability of creating residential urban reserves for providing adequate and affordable housing for Aboriginal people with and without 'core housing needs'. The objective is not to provide a detailed or definitive assessment of either the value or viability, but to raise and reflect on some important issues and options that should be factored into any preliminary assessment made by First Nations band councils and any of their potential partners in creating residential subdivisions on any existing or future urban reserves. With that objective in mind this section addresses the following question: Does the creation of residential urban reserves constitute a valuable and viable option for providing adequate and affordable housing for Aboriginals with and without core housing needs in Saskatoon? The central theme of this section is that the value and viability of urban residential reserves for providing adequate and affordable housing for Aboriginals with and without core housing needs is highly contingent on an array of factors. The remainder of this section consists of two subsections devoted, in turn, to the issues of the value and viability of such residential urban reserves.

4.2 Value of Residential Urban Reserves

The principal objective of this subsection is to discuss the value of creating residential urban reserves for providing adequate and affordable housing for Aboriginals with and without core housing needs as compared to other means of providing such housing. However, some attention is also devoted to the value of creating such reserves both for band members and band councils when compared to other means of providing adequate and affordable housing for such Aboriginals.

4.2.1 Value for Providing Adequate and Affordable Housing

The experience of First Nations in other provinces in using residential urban reserves for providing adequate and affordable housing for Aboriginals with and without core housing needs, suggests that the creation of such reserves in Saskatoon is possible and potentially valuable for such purposes. Indeed, the experience of residential urban reserves in other provinces suggests that they could also be used for providing adequate and affordable housing for non-Aboriginals with and without core housing needs. It must be underscored, however, that in those other provinces no residential urban reserves were used exclusively to provide housing for Aboriginals or non-Aboriginals with core housing needs. Generally, such reserves provided housing for persons with and without core housing needs. Moreover, in the case of Aboriginals, housing on those reserves was provided not only to band members, but also to non-band members of Aboriginal and non-Aboriginal ancestry.

Although residential urban reserves can be used for providing adequate and affordable housing for Aboriginals with and without core housing needs, it must be underscored that it is only one means for doing so. After all, affordable and adequate housing for Aboriginals with and without core housing needs who require some financial supports for housing has been and may continue to be provided off-reserve through three general approaches. The first approach consists of the general housing support and subsidy programs

provided by the federal and provincial governments either directly or indirectly through various local housing agencies. The second approach is for municipalities, in consort with educational and health authorities, to consider strategies for developing sub-divisions that are appropriate in serving Aboriginals with and without core housing needs. The third approach is targeted housing support programs offered by some First Nations band councils exclusively for their band members who are living in urban areas in the form of loans or grants for mortgages or rents.

Given the foregoing observations regarding the alternative ways that the housing needs of First Nations band members and possibly also other Aboriginals can be met, the question remains: Is there any special value either for First Nations band members and First Nations band councils to use residential urban reserves as a means of providing adequate and affordable housing? As discussed below, the answer to that question is a highly qualified yes.

4.2.2 Value for Band Members

The major assured value for First Nations band members stems from various benefits that would accrue to them as a result of living or working on reserve by virtue of treaty rights, the provisions in sections 87 to 90 of the Indian Act, or any special policy or program established by band councils for those living or working on reserve [Kuhlen, 1985; Bartlett, 1990]. The most notable of such benefits are the tax exempt status and various loans or grants that are contingent on living or working on reserve.

In addition to the benefits that would accrue exclusively to First Nations band members, there are at least three other potential benefits that apply to any Aboriginals. The first of these is the potential benefit of acquiring affordable and adequate housing which depends on the nature of the residential sub-division or community and the terms and conditions for purchasing or renting housing. Other potential sets of value which could accrue to Aboriginals with and without core housing needs but which are highly contingent on a host of factors include the following: living in a subdivision or neighbourhood which is potentially safer and healthier than the ones in which many Aboriginals in Saskatoon with 'core housing needs' tend to live in today; and living in a subdivision or neighbourhood in which Aboriginal culture is potentially valued and practiced more than it is in the ones in which many Aboriginals in Saskatoon with and without core housing needs tend to live in today. The overall financial, health and safety, and cultural benefits would likely depend on the level of 'institutional completeness' of the residential urban reserve; the greater the level of institutional completeness, the greater the potential of maximizing each of those three potential benefits.

4.2.3 Value for Band Councils

For First Nations band councils the major value of creating residential urban reserves as a means of providing housing for their members with core housing needs, and possibly also for those without such needs, is that it provides them with three important benefits that have implications both for them and their respective communities on and off-reserve.

The first major benefit for band councils is that by exercising their powers under various sections of the Indian Act, but particularly subsection 81(1) which deals with general by-laws and subsections 83(1)

which deals with money by-laws, it would provide them with extensive controls over many, though by no means all, planning and development matters that have implications both for them and for their members.

The most notable of these implications are the following:

- ◆ Designing the residential urban reserve in terms of what they deem the optimal mix of residential, institutional, and commercial development so as to enhance its value and viability;
- ◆ Defining the purpose and nature of housing developments so that it meets the diverse housing needs of their members with and without core housing needs who are currently living in urban centres or may do so in the future, including various categories of members such as families, students attending post-secondary institutions, persons with disabilities, and elders;
- ◆ Establishing the configuration of the basic infrastructure and the provision of services in the residential subdivision(s);
- ◆ Determining the nature and level of service fees and taxation regimes that they may want to impose on their members or anyone else living, working or operating a business on the reserve.
- ◆ Designing sub-divisions with community facilities and artifacts that foster the recognition, celebration and perpetuation of Aboriginal culture;
- ◆ Moderating the cost of housing for their members with and without ‘core housing needs’ largely by virtue of the fact that depending on how they decided to allocate and use land, they could either allocate lots using the ‘certificate of occupation’ system, or their property development corporation could set the lease rates for housing lots and the rents for rental properties; and
- ◆ Determining who can reside on the residential urban reserve, as they are authorized to do pursuant to both the Indian Act and the First Nations Land Management Act.

The second major benefit, and closely related to the first, is that it could provide band councils with a central place on which to locate some of their organizations responsible for providing governance and community services not only to their members who would be living on that reserve, but also for their other members living off-reserve in or near the urban centre in which the reserve is located. Of course, First Nations do not have to develop a residential urban reserve for this particular purpose; they could simply create a reserve designated solely for institutional or commercial purposes, part of which would be designated for use by the band’s governance and community services agencies. However, creating a reserve that serves both purposes is likely to render it more valuable and viable.

The third major benefit for band councils which can be served by the creation of residential urban reserves is the generation of revenue. Assuming that the relatively healthy state of the housing market in Saskatoon persists, the proper management of such residential urban reserves would afford them the opportunity to generate a relatively steady stream of financial returns on their investment. Naturally, the level of revenue that could be generated is contingent on an array of factors, not the least of which is whether to focus on providing housing to those with core housing needs or to those with high levels of disposable income. Indeed, the few residential urban reserve developments that have been contemplated by some First Nations band councils either in the Saskatoon region or in some other urban regions of the province in recent years have focused on the housing needs of persons with high disposable incomes who could afford to lease land or housing units from the band council’s property development and management agency. One type of development project that has received the most attention in recent years has been the construction of housing around golf courses on reserve land. The goal of that particular type of project, of course, was to have a dual development (i.e., housing subdivision and a golf course) that could generate a

substantial and steady revenue stream for them. These and other benefits for band councils have been noted in a presentation by Saskatoon city officials [Sully and Emmons, 2004:8-9]. In discussing the benefits of existing urban reserves, albeit not residential ones, in Saskatoon they noted that:

First Nations have benefited significantly from the creation of Urban Reserves. Through the acquisition and development of lands in and around Saskatoon, economic and commercial opportunities are being provided to the growing urban population of Aboriginal people. There are now increased employment and business opportunities for Aboriginal people within the City. The Bands are now able to capitalize on both rural and urban economic benefits resulting from the diversification of their land base. Bands have also been able to secure the financial resource base that will ensure a stable self-sufficient and autonomous future for First Nations people. Through this process, self-government becomes possible and can be initiated.

Those same officials noted that the City of Saskatoon also benefited from the creation of such reserves. In their words [Sully and Emmons, 2004]:

The creation of Urban Reserves in Saskatoon has resulted in benefits to the City in the capacity of financial, political and social advantages. Financially, the City benefits directly from revenue generated through services it provides to Urban Reserve developments and indirectly from taxation revenue and job creation generated by off-reserve economic spin-offs. Politically, the creation of reserves within Saskatoon has created positive relationships between Saskatchewan First Nations and the City. Socially, Urban Reserves within the City stand as a symbol that First Nations people are making a positive contribution to the community.

Any First Nations thinking of developing residential urban reserves as a revenue generating venture should keep in mind three important points that have significant implications for the financial value and ultimately also the financial viability of such a development. First, such reserves do not constitute a panacea for revenue generation. While they entail some potential benefits, they also entail substantial financial risks that would be too great for most, if not all First Nations to bear if the development failed.

Second, if First Nations are merely interested in generating revenue through real estate developments, creating residential reserves either for those with or without core housing needs is not the only way to do it. They could also do this through investments in residential and commercial properties off reserve which they could make available to some of their members in various ways. This option would provide them with investments in residential and commercial properties that would not be encumbered in the same way in which such properties on reserve are encumbered by virtue of the fact that bands cannot sell them without ministerial or cabinet approval. This option might provide them with greater flexibility to respond to the vagaries of the housing market and dispose of certain real estate assets more quickly than might be possible within the context of a reserve regime.

Third, in calculating the financial value, and ultimately the financial viability of residential urban reserves any First Nations band councils contemplating creating one or more in the Saskatoon city region either for their band members or for non-band members should be careful not to overestimate the potential to generate revenues based on the experience with such reserves of some of their counterparts in other provinces. This is particularly true of their counterparts in British Columbia. The reason for this is that their counterparts in other provinces have had a competitive advantage over them that stems from at least three key factors. The first factor is that their counterparts in other provinces already owned developable reserve land in or immediately adjacent to major urban centres. Thus, they did not require the initial capital outlay

for purchasing land and converting it to reserve status. The second factor is that those reserves are located in a region of the country that during the past few decades has experienced the hottest real estate market in the country and will likely continue to do so for some time as a result of the dual effect of an exceptionally high population growth caused by internal and international migration to those areas, and the relatively limited land supply in the areas in which most of those people are settling. In such a housing market the proportion and absolute number of band and non-band members seeking to own or rent homes on leased reserve land is undoubtedly much higher than in areas in which the housing market does not have the same pressures of limited land supply and relatively high cost both for land and for housing units. The third factor is that most, if not all, of those reserves are the traditional home reserves in which the basic housing needs of most of their members have been addressed in one way or another for many years. In developing any sub-division on their own or through a head-lease arrangement with a private developer, they did not have to start from scratch and therefore did not have to wrestle with as many issues and options as would confront First Nations councils considering building a residential urban reserve in Saskatoon. In short, for some band councils in some other provinces the aforementioned factors have made the development of residential subdivisions on existing reserves both for their band members and also for non-band members with and without core housing needs a highly desirable, viable and in some instances even profitable option. It should not be assumed, however, that the same levels of financial return could be generated within the context of the housing market in the Saskatoon region.

In summary, the major value of the conversion of land to reserve land for First Nations band councils is that it is neither taxable by the municipality nor subject to the payment of grants-in-lieu of taxes regime that applies to other Crown land. Moreover, reserve status also insulates such land from all municipal bylaws and from some provincial laws. In the case of municipal bylaws the restriction is by virtue of the fact that such bylaws of a municipality cannot apply beyond its boundaries, and for legal purposes a reserve is a parcel of land that is beyond such boundaries. This is not true of provincial laws. The Indian Act states that all provincial laws apply to reserves, except those provincial laws that either deal with matters which are already dealt with in that particular act, or that contravene either it or any other regulatory or policy instruments enacted pursuant to it. This is articulated in Section 88 of the Indian Act as follows:

“Subject to the terms of any treaty and any other Act of Parliament, all laws of general application from time to time in force in any province are applicable to and in respect of Indians in the province, except to the extent that those laws are inconsistent with this Act or any order, rule, regulation or by-law made thereunder, and except to the extent that those laws make provision for any matter for which provision is made by or under this Act.”

Collectively, the foregoing exemptions from taxation, municipal bylaws and some provincial laws afford band councils considerable freedom to establish both their own taxation and user fee regimes and their own bylaws that are consonant with their development objectives [FNA4LM, 2003d]. It must be noted, however, that the creation of reserves also generates some constraints for First Nations. The reason for this is that reserve status puts such land holding under the direct control of policies and regulations promulgated

by the federal government which may create some encumbrances in managing and selling land and any residential or commercial buildings on it which would not exist if the land were held by the band council in fee simple.

4.3 Viability of Residential Urban Reserves

In creating a residential urban reserve a major objective for the First Nations band council involved is its viability. There are at least two major types of viability that must be considered. The first type is financial viability. Any First Nations band council which decides to create such a community or subdivision will want to ensure that it is either a revenue generating or at least a revenue neutral initiative and does not become a financial drain for them. The second type is what might be termed 'functional viability'. Any First Nations band council which decides to create such a community or subdivision will want to ensure that it remains relatively high functioning with a high degree of social capital and social cohesion without any major persistent social problems that threaten its long term functional and financial viability.

The experience of First Nations operating residential urban reserves in other provinces suggests, though in no way guarantees, that such reserves can be potentially viable both financially and functionally in Saskatoon. However, as with the value of such reserves, their viability is contingent on an array of factors most of which are commonly highlighted in the literature on community development and sustainability. Four of the most important of those sets of factors for the financial and functional viability of residential urban reserves are as follows: (a) the configuration of policy and program frameworks; (b) the configuration of governance and management frameworks; (c) the configuration of the reserve; and (d) the configuration of the ownership of the housing stock on the reserve. Each of these factors is explained briefly, in turn, below.

4.3.1 Configuration of Policy and Program Frameworks

The first set of factors is the configuration of two major sets of policy and program frameworks. One of these is the federal government's framework related to the types of treaty rights that First Nations members possess while living or working on reserves as opposed to living and working off reserve. The greater the benefits of exercising such rights, the more likely it is that First Nations members will want to live and work on reserve. Such a desire to live and work on such reserves will enhance their financial and functional viability. Equally important are the housing policy and program frameworks of the federal and provincial governments. The nature and level of incentives which their policies and program provide for developing and living in housing units on reserves is very important for encouraging Aboriginals and even non-Aboriginals to live on residential urban reserves. Also important are the career training, employment and income support policies and programs of the federal and provincial governments. Given that adequate housing and adequate incomes are inextricably related, it is imperative that attention and resources are devoted to both of them.

4.3.2 Configuration of Governance and Management Frameworks

The second major set of factors which is likely to affect the viability of residential urban reserves is the configuration of the reserve governance and management frameworks. The efficacy of governance on the reserve provided by the band council and the efficacy of the management of landholdings and housing units provided either by the band council or by any of its committees or agencies is absolutely essential for the viability of the residential urban reserve. This is equally true of residential urban reserves created exclusively for high income earners, exclusively for middle-income earners, or exclusively for persons with core housing needs, or some combination of the three. The importance of the configuration and quality of governance increases as the scope of the challenge of sustaining financial and functional viability increases. Good governance and good management is absolutely imperative for good residential urban reserves that are financially and functionally viable. If good governance and good management cannot be assured, the viability of such a venture is highly compromised and its development is very risky. As noted in various reports, the importance of good governance and good management is a pre-condition for success [Canada, 1999a; Koeck, 2000; Fiscal Realities 2000].

4.3.3 Configuration of Reserves

The third major set of factors which is likely to affect the viability of any residential urban reserves is their configuration. This includes both the configuration of the number and functional types of all reserves in an urban area, and the specific configuration of each reserve within that area. In the case of the configuration of the number and functional types of reserves, there is likely to be limits to the number and types of urban residential reserves that are financially viable with a single urban area. After all, there is not an unlimited market either for residential subdivisions or institutional and commercial subdivisions on reserves in any urban areas. The limit of the market is a function of two major factors: the real estate needs of the entire urban population and the criteria that First Nations band councils choose to apply regarding to whom it is willing to make reserve land available for residential, institutional, or commercial purposes.

In the case of the configuration of individual reserves, their geographic configuration, functional configuration, and demographic configuration are likely to have some important implications for their financial and functional viability. The important aspects of the geographic configuration of the reserve include features such as its proximity to what are deemed highly desirable or attractive geographic locations, and the strategic location of the reserve in relation to other subdivisions and various commercial and community services or any other attractive component of the urban area. The more strategically located a reserve is in relation to such elements of the urban area, the greater are the prospects for its viability.

The important aspects of the functional configuration of the reserve include the appropriate mix of residential, institutional, and commercial developments on or around the reserve. Providing the right mix of residential, institutional and commercial development directly on reserve may contribute both to its financial and functional viability. If institutional or commercial developments which are important for persons residing on reserve cannot be located on the reserve, the next best thing would be to have them in a close and convenient location next to or near to the reserve.

The important aspects of the demographic configuration of a given residential reserve include both the socio-cultural profile and the socio-economic profile of the population living on it. In terms of the socio-cultural profile, the mix of band members and non-band members or Aboriginals and non-Aboriginals is likely to be factor in the social dynamics of the reserve. Whether it becomes a factor for the financial and functional viability of the reserve depends on the nature or quality of the people. More specifically, it depends on their level of commitment to intercultural understanding and social harmony.

The socio-economic profile of the population is also likely to be very important for the financial and functional viability of a residential urban reserve. An optimal balance in the proportion of residents within the various socio-economic strata is conducive to a financially and functionally sustainable community. If the vast majority of residents are chronically impoverished, the financial and functional viability of a community is seriously compromised. This factor is becoming increasingly recognized among housing and community planners who postulate that raising the income levels of persons with core housing needs must be given as much, if not more, attention than providing them with housing subsidies [Brant, 2000; Chhokar, 2004].

None of the foregoing discussion regarding the socio-economic profile of the population of a reserve is intended to suggest that the development of residential subdivisions on reserves which are designated exclusively for low income earners with core housing needs are not viable. The viability of any residential development is a function of more than just the initial income levels of the persons who are targeted to live there. Insofar as income levels may be important, their initial income levels are less important than their income levels over time while living there. After all, even if income levels is deemed an important factor in the ability of a residential subdivision to ensure the development and basic upkeep of the housing stock and the community infrastructure, designating a subdivision for relatively low income earners would not necessarily be a major problem if the people living in that subdivision were on an escalating income trajectory that remained relatively substantial and steady over time. This is why as noted above addressing income as well as housing needs is imperative in such instances. The effect of providing both adequate housing and adequate income for persons with core housing needs is bound to contribute to a more viable residential development in the long run than only providing adequate housing. The biggest challenge, of course, is to find the means by which to achieve adequate income levels.

4.3.4 Configuration of Ownership of Housing Stock

The fourth major factor, and closely related to the discussion above regarding demographic configuration, is the configuration of the ownership of the housing stock. The housing and community development literature emphasizes that the proper configuration or balance of housing properties that are owned versus those that are rented is absolutely essential for the viability of any housing subdivisions either on-reserve or off-reserve. The conventional wisdom is that subdivisions with a high proportion of home ownership are more viable than those with a high proportion of rental properties. This factor, along with the previous one, raises an important point regarding whether residential urban reserves should be created exclusively to meet the needs of Aboriginals with core housing needs. The viability criterion would suggest that it is

imperative for residential urban reserves to be created not only for Aboriginals with core housing needs, but also for those without core housing needs. This is something which seems to be understood among managers of housing developments in existing residential urban reserves. As noted elsewhere in this report none of the existing residential urban reserves in other provinces was established exclusively for the purpose of providing adequate and affordable housing for Aboriginal persons who have core housing needs. Moreover, as also noted elsewhere in this report, insofar as providing such housing has been an objective, generally it has resulted both in the upgrading of the existing housing stock in existing residential subdivisions, and in the addition of a limited number of single or multiple dwelling housing units either to existing or new residential subdivisions. Recognizing the need to develop residential subdivisions that have an optimal configuration of ownership of the housing stock not only in terms of the balance of owned and rented units but also in terms of housing for persons with core housing needs and those without core housing needs is important for their financial and functional viability. Such optimal configuration or balance can be sought either within a single residential subdivision or in the case of an urban reserve with more than one residential subdivision across two or more subdivisions. The challenge faced by those who govern and manage existing residential reserves and those who may do so in the future is to ascertain and to achieve the optimal configuration or balance in the housing stock.

4.4 Conclusion

The foregoing analysis has focused on the value and viability of residential urban reserves for providing affordable housing for Aboriginals with and without core housing needs. The analysis of the value of such reserves suggests that they constitute one option, but not the only option, for providing affordable and adequate housing for those with and without core housing needs. It also suggests that such reserves could be valuable both for band members and band councils. For band members the major benefit is that it allows them to exercise various rights and receive various benefits which are contingent on living or working on reserves. For band councils the three major benefits are: (a) extensive controls over many, though by no means all, planning and development matters related to the residential subdivision(s); (b) a central place on which to locate some of their governance and community service institutions needed in the urban centre; and (c) the generation of revenues which they can use for various purposes. The analysis also suggests, that in Saskatoon as in any other urban centre, the viability of such reserves is highly contingent on an array of factors, including the following four: (a) the configuration of key policy and program frameworks of the federal, provincial and First Nations government; (b) the configuration of the reserve governance and management frameworks of the First Nations that create such reserves; and (c) the configuration of the reserve; and (d) the configuration of the ownership of the housing stock. The foregoing points suggest that the creation of residential urban reserves is an option that is potentially valuable and viable for providing adequate and affordable housing for Aboriginals with and without core housing needs. However, their precise value and viability is contingent on an array of factors which First Nations considering the creation of such reserves must factor into any decisions regarding, among other things, whether to create them, their purposes, and their configurations.

5. CHALLENGES & CHOICES FOR CREATING RESIDENTIAL URBAN RESERVES

5.1 Introduction

The creation of urban residential reserves in Saskatoon as a means of providing affordable and adequate housing for Aboriginals with and without core housing needs entails a series of challenges and choices. The objective in this section is to provide an overview of some of those challenges and choices.

5.2 Challenges for Creating Residential Urban Reserves

Any First Nations that wishes to create a residential urban reserve in Saskatoon faces at least six major challenges which are inextricably interrelated. These are by no means the only challenges, but some of the ones that would likely emerge very early in the planning process for such a reserve.

5.2.1 Limited Fiscal Capacity

The first major challenge is limited fiscal capacity. Regardless of how much First Nations favour the creation of a residential urban reserve, most are unlikely to have the requisite financial resources to purchase the land and develop the requisite infrastructure for residential subdivisions. This problem is compounded by the fact that a major source of income for many First Nations in recent years have come from the Treaty Land Entitlement Agreement and many of them have already invested funds either in acquiring large parcels of agricultural land in rural areas and commercial buildings in major urban centres such as Saskatoon. The limited fiscal capacity contributes to a lack of consensus among the leadership and membership regarding the merits of creating urban residential reserves as opposed to using whatever funds they have available for other purposes.

5.2.2 Uncertainty About Costs and Benefits

The second major challenge, and closely related to the first, is the uncertainty about the precise costs and benefits of creating residential urban reserves. The estimation of costs and benefits is very difficult because there is a vast array of variables which could impinge on any calculations of the same. As noted elsewhere in this report, the calculations must be made with the current and projected characteristics of the Saskatoon housing market in mind. Care must be taken not to make estimations in Saskatoon based on the experiences of First Nations in other provinces which are operating in housing markets that have characteristics which are very different.

5.2.3 The Magnitude of the Housing Needs

The third major challenge is the magnitude of the housing needs. Any First Nations thinking of creating residential subdivisions on urban reserves for providing adequate and affordable housing only for their respective band members faces one of two major problems. There would either not be enough band members with and without core housing needs who would want to or could live on such a reserve to warrant and make one viable, or there would be many more than could be accommodated within the scope of any number of affordable and sustainable residential housing development projects. Both of those situations would present dilemmas for band councils in deciding whether to create one or more residential subdivisions. Similar types of dilemmas would emerge, and in some respects would likely be compounded

if, as a means of dealing with the problem of too few band members, band councils were to open up eligibility for housing in a residential subdivision to non-band members of Aboriginal or non-Aboriginal ancestry. Choices would have to be made regarding who would be eligible to own or rent housing units in the residential subdivisions. Invariably, some band members would likely feel that their housing needs should take precedence over those of non-band members. Consequently, although financial viability may have been achieved, political legitimacy of such a project would be compromised in the eyes of some band members who are unable to rent or own housing units in such a residential development.

5.2.4 Lack of Consensus Among Band Members

The fourth major challenge, and closely related to the first, is the lack of consensus among the First Nations leadership and membership regarding the value of creating residential urban reserves in Saskatoon, or any other major urban centre. The lack of consensus is rooted in several factors. One such factor is that they have a membership that is fragmented both geographically because members live either on the home reserve or in Saskatoon and various other centres across the province and the country, and socio-economically because the incomes of members vary widely. Such fragmentation tends to create a lack of consensus among the leadership and membership regarding in which of the many centres they should invest in housing for band members, as well as the way in which resources devoted to housing should be allocated among band members with and without core housing needs. The lack of consensus is also rooted in the fact that many band members of each First Nations band in Saskatoon, both with and without core housing needs, are already living in various neighbourhoods throughout the city and would not necessarily want to move to a new location were a reserve to be created. Undoubtedly, their willingness to relocate would depend on their calculations that the financial and non-financial benefits of relocation would outweigh the benefits of remaining in their current housing units and neighbourhoods.

5.2.5 Dilemmas in Dealing Equitably with all Band Members

The fifth major challenge is the dilemma in dealing equitably with all band members in terms of setting residency criteria for living on a residential urban reserve. This dilemma is particularly pronounced in the case of band members who, regardless of their socio-economic status, have serious personal or social problems that would likely not make them ideal candidates to reside within a residential urban reserve. However, any measures to prevent them from living on a residential urban reserves created by their band council would likely result in criticisms regarding inequities as well as disenchantment and disputes.

5.2.6 Preconceived Notions that Reserves are Problematical

The sixth major challenge is the views espoused by many residents in urban centres that the creation of reserves would have the following negative effects:

- (a) create “ghettos” within the city;
- (b) create what is often referred to as an “uneven playing field” for those living, working, or operating businesses on reserves vis-à-vis their counterparts in the city; and
- (c) create obstacles to social cohesion insofar as a ‘we’ versus ‘them’ mentality would prevail between those living on reserve and those living in the municipality.

First Nations would have to consider the effects that such views would have not only on the short term dynamics surrounding the creation of urban residential reserves, but also on the long term dynamics and relations between those living on residential subdivisions on reserve and those living in neighbouring residential subdivisions. They would also have to consider ways that they could either change or at least mitigate the negative effects of such views. For that purpose, they would likely have to devote substantial resources to two major tasks. The first task is to make people understand that in the absence of residential reserves, existing urban communities already have ‘ghettos’, ‘uneven playing fields’ of all types with slopes that are disadvantageous for various groups and individuals (especially Aboriginals), and problems of social cohesion. The second task is to make people understand that in many communities where residential urban reserves exist, the aforementioned problems either do not exist, or they are not caused by the existence of the reserve.

5.3 Choices for Creating Residential Urban Reserves

As explained in the next section of this report, decisions for creating and configuring residential urban reserves in Saskatoon rest primarily with First Nations band councils, the Minister of INAC and Cabinet. The role of the provincial government, municipal government, and school board is not insignificant, but by no means determinative. This is especially true where federal Crown land is used for such residential developments because it would merely require a decision by the federal government to change in the designation of the purpose of the land and the title from the Crown to the band council. The change in designation of purpose or title in such instances does not entail a hiving off or separation of a portion of land from the city or from its tax base *per se*, as would be the case if the land had been owned either by a municipality or by private interests.

Pursuant to federal policies, all types of reserves, regardless of where they are created or for what purposes, can be set aside either for one band or for a multiplicity of bands. There is nothing that prevents two or more bands from collaborating on jointly creating a reserve for their mutual benefit. Moreover, even if a reserve is set aside only for one band, there is nothing that prohibits several band councils, tribal councils, or any other Aboriginal governance body to consult and collaborate with each other on ensuring that such reserves serve and benefit members of various bands, or anyone else. Although such consultation and collaboration is not required, it would be prudent whenever any First Nations bands contemplate the creation of sustainable urban residential reserves in Saskatoon to provide adequate and affordable housing for persons with and without core housing needs.

Regardless of how many Aboriginal governing entities are engaged in the creation and configuration of urban residential reserves, there is a series of choices or options that they must consider [See Figure 5.1]. What follows is a brief explanation of each of those choices. These choices are all important and, some of them are interrelated. They are not necessarily organized in order of importance or even the logical sequencing. How much importance is attached to any of those sets of choices and in what order is something that anyone contemplating such a development must determine based on their particular circumstances and objectives.

FIGURE 5.1
CHOICES FOR CREATING RESIDENTIAL URBAN RESERVES

1. Geographic Location of Residential Urban Reserves

- ◆ Option 1: Within the city limits
- ◆ Option 2: Adjacent to the city
- ◆ Option 3: Commuting distance from the city

2. Purpose of Residential Urban Reserves

- ◆ Option 1: Residential purposes
- ◆ Option 2: Residential and institutional purposes
- ◆ Option 3: Residential, institutional, and commercial purposes

3. Developing and Managing Housing Sub-Divisions

- ◆ Option 1: Property development and management corporation owned by the band council
- ◆ Option 2: Property development and management corporation owned by band members
- ◆ Option 3: Property development and management corporation owned by non-band members
- ◆ Option 4: Partnership among any two or more corporations noted above

4. Allocating Housing Lots

- ◆ Option 1: Lots assigned to band members by certificates of possession
- ◆ Option 2: Lots assigned to band members or non-band members by lease or sub-lease
- ◆ Option 3: Lots assigned to band and non-band members by use of mix of certificates of possession, leases and sub-leases.

5. Nature of Design, Ownership, and Price of Housing Stock

Design Options:

- ◆ Option 1: Single Dwelling
- ◆ Option 2: Multiple Dwelling
- ◆ Option 3: Mix of Single and Multiple Dwelling

Ownership Options:

- ◆ Option 1: Owned by individuals
- ◆ Option 2: Owned by band councils
- ◆ Option 3: Owned by private developers

Price Options:

- ◆ Option 1: Low priced housing
- ◆ Option 2: Medium priced housing
- ◆ Option 3: High priced housing
- ◆ Option 4: Mixed low, medium and high priced housing

6. Developing and Managing Rental Housing Stock

- ◆ Option 1: Band council committee or management agency
- ◆ Option 2: Community based social housing management agency
- ◆ Option 3: Private housing management agency

7. Nature of Housing Needs Addressed

- ◆ Option 1: Housing for people with core housing needs
- ◆ Option 2: Housing for people with and without core housing needs
- ◆ Option 3: Housing for people without core housing needs

8. Profile of Homeowners and Renters

- ◆ Option 1: Band members from only one band
- ◆ Option 2: Band members from more than one band
- ◆ Option 3: Band members and Aboriginal non-band members
- ◆ Option 4: Band members and Aboriginal and non-Aboriginal non-band members
- ◆ Option 5: Aboriginal non-band members
- ◆ Option 6: Non-Aboriginal non-band members

FIGURE 5.2
MODELS OF POTENTIAL RESIDENTIAL URBAN RESERVES AND SUBDIVISIONS

NATURE OF HOUSING SUPPLY
BASED ON NEEDS OF OWNERS & RENTERS

DEMOGRAPHIC PROFILE AND STATUS OF HOME OWNERS AND RENTERS		Housing for People With Core Housing Needs	Housing for People With and Without Core Housing Needs	Housing for People With and Without Core Housing Needs
	Band Members			
	Band Members and Aboriginal Non-Band Members			
	Band Members and Non-Aboriginal Non-Band Members			
	Band Members and Aboriginal and Non-Aboriginal Non-Band Members			
	Aboriginal and Non-Aboriginal Non-Band Members			
	Aboriginal Non- Band Members			
	Non-Aboriginal Non-Band Members			

5.3.1 Choices on Geographic Configuration of Residential Urban Reserve

Once a band council has decided that it is interested in creating one or more urban residential reserves in Saskatoon, the first major decision that it must make is the precise geographic location or locations for the same. Its three basic options are to locate it on land within the existing municipality of Saskatoon, land immediately adjacent to Saskatoon, or land that is a short distance from Saskatoon. A range of factors or considerations impinge on the choice of geographic location. Among the more notable ones are the following: the size and price of the parcel of land, and its proximity to various community and commercial facilities and services.

5.3.2 Choices on Purpose of Residential Urban Reserve

The second major decision that confronts band councils regarding the configuration of a residential reserve is its precise purpose. The choices available to them are as follows: for the reserve to serve only a residential purpose and therefore consist only of housing units without any other types of development; for the reserve to serve a double purpose, namely residential and institutional, and therefore consist of housing units and buildings devoted to house governance and community service agencies; or for the reserve to serve a triple purpose, namely residential, institutional, and commercial, and therefore consist of a mixture of housing units and buildings designed for institutional and commercial entities. In effect, they must decide on the level of institutional completeness that will exist on a reserve community. Existing residential urban reserves across Canada have varying degrees of institutional completeness which serve as useful models for any band council to evaluate and emulate.

5.3.3 Choices on Developing and Managing of Housing Subdivision

The third major decision that confronts band councils is on how any residential subdivision will be developed and managed. The basic choices that are open to them are whether to rely on a development and management agency that is owned and controlled by any of the following: (a) the band council or a band agency; (b) a private company owned and controlled by band members; (c) private development agency owned by non-band members; or (d) a partnership among any two or more of those [Korchinsky, 1998; Hanna and Hanson, 2004].

5.3.4 Choices on Allocating Housing Lots

The fourth major decision that confronts band councils is how to allocate housing lots. The basic choices that are open to them are whether lots should be allocated as follows: (a) to band members by certificate of possession; (b) to band and non-band members by leases or sub-leases; or (c) mix of certificates of possession, leases and sub-leases. These are all useful legal mechanisms for allocating lots for housing purposes.

5.3.5 Choices on Design, Ownership and Price of Housing Stock

The fifth major decision that confronts band councils is the nature of design, ownership, and the price of the housing stock that will be developed on any residential urban reserves. In the case of the design of the housing stock the basic choices are: (a) only single dwelling; (b) only multiple dwelling; and (c) mix of single and multiple dwelling. In the case of ownership of the housing stock the basic options open to them are: (a) ownership by individual home owners; (b) ownership by band councils; and (c) ownership by private developers. In the case of price, the basic choices that are open to them are whether to develop (a) only low priced housing stock, (b) only medium priced housing stock; (c) only high priced housing stock, or (c) a mix of low, medium and high priced housing stock [Walker, 2003; Hanna and Hanson, 2004]. The precise mix of housing stock and the precise way that it is configured has major implications for the value and viability of residential urban reserves.

5.3.6 Choices on Developing and Managing the Rental Housing Stock

The sixth major decision that confronts band councils is the management of the rental housing stock that is established on any residential urban reserves. The basic choices that are open to them are whether to have it management by: (a) a band housing management agency; (b) a community based housing management agency; or (c) a private housing management agency.

5.3.7 Choices on Nature of Housing Needs Addressed

The seventh major decision that confronts band councils is on the nature of the housing needs that will be addressed by the creation of all or any part of any residential subdivisions established on reserves. The basic choices that are open to them are whether to address the housing needs of: (a) only people with core housing needs, (b) only people without core housing needs; or (c) people with and without core housing needs. The choices they make in this regard have important implications for the legitimacy, value and viability of any residential development.

5.3.8 Choices on Demographic Profile and Status of Homeowners and Renters

The eighth major decision that confronts band councils is on the demographic profile and status of homeowners and renters who will be allowed to live on any residential subdivision that is developed. The basic choices that are open to them are whether to allow: (a) only band members from one band; (b) band members from more than one band; (c) band members and Aboriginal non-band members; (c) band members and Aboriginal and non-Aboriginal non-band members; (d) Aboriginal non-band members; (e) Aboriginal non-band members; or Non-Aboriginal non-band members. [See Figure 5.2] Such decisions will become increasingly complicated in the future as a result of the fragmentation of citizenship within First Nations that was explained in an INAC report as follows [Canada, 2004b]:

- *As a result of changes to the Indian Act in 1985 and membership codes enacted by First Nations, there are now several “classes” of Indians - those who have both Registered Indian status and membership in a band, those who are registered but do not have band membership, and those who have membership but are not entitled to be registered. There is also a group of descendants of Registered Indians who are neither members of a band nor entitled to be registered.*

- *The size of these “classes” of Indians will depend on the size, marriage patterns, location and membership codes of individual First Nations. In some cases long term projections indicate that there will be substantial numbers of reserve.*
- *Residents who will not have membership rights, and in other cases the projections suggest that there will be substantial numbers who will not have Indian status. Those without membership status will not have voting rights, and in some reserve communities an increasing segment of the population will fall into this disenfranchised group.*
- *The division of First Nations populations into different classes is likely to lead to a range of issues, including legal challenges, internal conflicts, and intergovernmental disputes. If different reserve residents receive different services or have different entitlements this may lead to friction and splits in particular communities and calls for separate institutions or governance structures.*
- *The growth of these new divisions among First Nations will have implications for the form and administration of Aboriginal self-government. How will First Nations governments accommodate the various classes of reserve residents in the political process? What about the off-reserve population affiliated with the First Nation, both formally and through ancestry?*
- *Federal and provincial governments will also need to develop policies with respect to responsibilities for the provision and funding of services to the various on- and off-reserve Aboriginal populations. Will the federal/provincial split in responsibilities correspond to on- and off-reserve geography? Will cost-recovery agreements and mechanisms be put in place? How far does the federal responsibility for Aboriginal people extend? While Canadian governments have been dealing with these questions for years, the emergence of the new classes among the descendants of Registered Indians complicates the issue and puts it in new terms*

5.4 Conclusion

The foregoing overview reveals that band councils considering creating residential subdivisions in urban areas face an array of challenges and choices, several of which have been explicated in this section of the report. The value and viability of such residential subdivisions are highly contingent on how they address those challenges and choices. It is imperative, therefore, that everyone involved understand the various challenges and choices. Neither the challenges nor choices are likely to be the same for all band councils. It is important, therefore, that each of them review and address them in a way that is consonant both with the housing needs of their members, and with their own priorities and financial resources.

6. POLICIES AND PROCESSES FOR CREATING RESIDENTIAL URBAN RESERVES

6.1 Introduction

Any stakeholders involved either directly or indirectly in any initiative that could lead to the creation or management of residential urban reserves should be fully cognizant of the extant policies and procedures related to such initiatives. The objective in this section is to provide a brief overview of the policies and procedures for the following: creating residential urban reserves, creating residential subdivisions on a new or existing reserve, allotting residential lots, and allotting housing stock. Accordingly, this section consists of four sub-sections devoted to each of those topics. Before providing those overviews a caveat is in order. The policies and procedures related to these matters are highly detailed and relatively complex. It is impossible to explain all of them and their nuances within this section of the report. Therefore, the objective in this section is the modest one of providing a general explanation of what they entail rather than a detailed and definitive one which anyone considering developing a residential reserve will require and should obtain from the official documents.

6.2 Policies and Processes for Creating Residential Urban Reserves in Saskatchewan

The creation of residential reserves in Saskatchewan's largest urban centres is governed by policies embodied in various statutes, regulations and policy documents. The objective in this section is to provide an explanation of some of the most important policies and processes. Toward that end, it addresses the following questions which are likely to be uppermost in every stakeholder's minds:

- ◆ Who may create residential urban reserves?
- ◆ What is the process for creating residential urban reserves?

Before addressing each of those questions it is useful to note four important points. First, although the discussion is devoted to the creation of urban reserves, it must be noted that technically there are two slightly different types of entities that may be created; one is merely an addition to an existing reserve and the other is a new reserve that has a distinct number and/or name. Second, the policies and procedures for the creation of residential urban reserves are no different than those for the creation of reserves that are to be used either exclusively for institutional, commercial or industrial purposes, or some combination of any of those. Third, the federal policies and procedures for the creation of residential urban reserves or any other type of reserves, located either in Saskatoon or any other urban area within Saskatchewan, are embodied in the Additions to Reserves policy (ATR) outlined in INAC's Land Management Manual [Canada, 2001b], and the Treaty Land Entitlement Framework Agreement (TLEFA), and not in any federal statute. This point is noted explicitly in the introductory section of the Additions to Reserves Policy which states that:

“There is no statutory authority either under the Indian Act or any other federal legislation to set aside land as a reserve. Instead, lands are granted reserve status by federal Order in Council (OIC) pursuant to the Royal Prerogative exercised by the Governor in Council, which is a non-statutory authority.”

This particular fact does not change when First Nations in Saskatchewan opt to operate under the First Nations Land Management Act. The reason for this is that the FNLMA does not deal with the creation of reserves or additions to existing reserves *per se*; it only deals with the management of reserve lands either in an existing reserve or on any reserve which may be created in the future. It is noteworthy that the only statute that devotes some attention to the reserve creation process, albeit largely indirectly, is the Saskatchewan Treaty Land Implementation Act (S.S. 1993, c. T-20.1). That Act contains provisions regarding consequential amendments to municipal, education, and crown minerals acts designed to officially sanction both negotiations and any agreements concluded as a result of such negotiations between TLEFA entitlement bands on one hand and municipalities, school boards, or some crown corporations on the other related to certain matters of importance for each of them stemming from the setting aside of any land as reserve land [Martin-McGuire, 1999; David Miller, 1999; Barron and Garcea, 1999; Barron and Garcea, 2000].

Fourth, currently, band councils in Saskatchewan who may be interested in creating a residential urban reserve in the City of Saskatoon find themselves within one of three groups: they already have land that is designated as a reserve in Saskatoon; they have property that is not designated as reserve land; or they do not have any land holding in Saskatoon. For First Nations who fall within the first group, the creation of a residential reserve would merely require them to adopt a band council resolution for the creation of one or more residential subdivisions, and then to seek Ministerial approval for the same. For First Nations who fall within the second group, however, the creation of a residential reserve would require them to adopt band council resolutions both for the creation of the reserve and the development of any residential subdivisions therein, and then to seek Ministerial approval for the same. For First Nations who fall within the third group, the process for the creation of a residential reserve would require them to adopt band councils resolutions related to the acquisition of land, the conversion of such land to reserve, and the development of any residential subdivisions, and then to seek Ministerial approval for the same. While a few Saskatchewan First Nations fall within the first and second category, the vast majority of them fall within the third category because they do not own any property in Saskatoon.

6.2.1 Who May Create Residential Urban Reserves in Saskatoon?

The creation of residential urban reserves in Saskatchewan involves the band councils, their members and either or both the federal Minister responsible for Indian Affairs and the federal Governor in Council. Although provincial and municipal governments are granted a consultative role related to some issues that arise in creating and operating the reserve, they do not have an authoritative role on such matters. The involvement of the band councils and their members stems from the fact that the creation of new reserves, or any additions to existing reserves, requires a request from, and the consent of, band councils and their members. As noted in a previous section, a reserve can be set aside either for one band or for several bands. There is nothing that prevents two or more bands from collaborating on jointly creating a reserve for their mutual benefit. Governance or management in the context of a partnership is complex and risky. Moreover, even if reserves are set aside only for one band, there is nothing that prohibits several band councils, tribal

councils, or any other Aboriginal governance body to consult and collaborate with each other on ensuring that such reserves serve the housing needs of members of several bands and anyone else whom they allow to live there. Although such consultation and collaboration is not required, it would be prudent to undertake it whenever possible [Loizides, Stelios, and Greenall, 2001]. Any joint undertaking in creating urban reserves and any collaboration in providing adequate and affordable housing are not without potential risks commonly posed by partnerships. It is imperative, therefore, that any First Nations that pursue such initiatives choose reliable partners in whom they trust [Langdon, 1999; Canada, 2001a].

6.2.2 What is the Process for Creating Residential Urban Reserves?

To reiterate, currently the policies and processes for the creation of any type of urban reserves in Saskatchewan are outlined in the Additions to Reserves policy (ATR) [Canada, 2003a] and the Saskatchewan Treaty Land Entitlement Framework. The former is the federal government's national policy outlined in INAC's Land Management Manual, that applies to lands acquired by bands (whether through land claims agreements or any other legitimate means) and targeted for conversion to reserve status [Canada, 2001b]. The latter is a special regional protocol that applies to all First Nations acquiring land and creating reserves pursuant to a province-wide land claims agreement signed in 1992 by the federal government, the Saskatchewan provincial government, and twenty-six treaty land entitlement bands in the province [Saskatchewan 1992; Canada, 1993]. The basic principles and processes for creating reserves in those two documents are very similar. The fundamental difference between them is that the TLEFA contains some provisions that are pertinent to that particular land entitlement process, and which apply to what are termed 'entitlement reserves' created as a result of land acquisitions pursuant to that agreement [Martin-McGuire, 1999; Makela, 1999].

Of particular note in this respect are the provisions in the TLEFA that deal with timelines within which lands must be acquired and reserves created. The important date regarding the acquisition of land is contained in Article 11 of the TLEFA which stipulates that the Entitlement Bands have undertaken to reach their Shortfall Acres Acquisition Date on or before the twelfth anniversary (i.e., 2004) of the Framework Agreement, with the possibility of extending it to the fifteenth anniversary (i.e., 2007). The tacit understanding is that those are target dates to be achieved on best efforts basis. Articles 9 and 11 of the TLEFA contained three critical dates that dealt specifically with the timelines for the creation of reserves pursuant to the provisions in that agreement. The first is that the provisions regarding urban reserves may be in effect for up to eighteen years, unless the parties otherwise agree, after which-point the current federal policy on reserve creation will be in effect. The second is that within three years of the signing of the agreement a preliminary review would be undertaken to consider whether any adjustments were needed to any terms and conditions for reserve creation contained in sections 11.02 to 11.04 and Schedule 6 of the TLEFA. The third is that those three particular sections and that schedule, unless otherwise agreed to in writing by the parties, would be in effect for at least fifteen years (i.e., 2007). Moreover, it stated that following the fourteenth anniversary (i.e., 2006) of the execution of the Framework Agreement the parties may agree to enter into good faith negotiations to determine whether the timeline should be extended or any

provisions related to the process for creating reserves should be amended. However, the agreement stipulates “...if the parties are unable to agree on or before the expiration of the fifteen year period, the Entitlement Reserve creation procedures shall continue for a further period of three years. Thereafter, Canada's then current policy on reserve creation shall be substituted for this procedure unless otherwise agreed in writing between the parties.” Clearly, for Entitlement bands interested in creating any ‘entitlement reserves’ either in urban or rural areas there are some important timelines that have either just past or are approaching. Unless such bands and INAC agree to extend the application of the TLEFA provisions for reserve creation within the next three years, by 2010 they will no longer be in force.

Despite some differences in detail between them, the reserve creation procedures outlined in the ATR and the TLEFA entail three major phases—the documentation phase, the consultation and negotiation phase, and the granting or rejection of reserve status phase[See Figure 6.1]. These three phases are explicated both in the body and three appendices of Chapter 11 of the ATR. This includes, Appendix B which outlines the criteria and processes for what are legally deemed to be additions to existing reserves, and Appendix C which outlines the criteria and processes for what are legally deemed to be the creation of new reserves, and Appendix D which outlines the general process that must be following in requesting and approving either an addition to an existing reserve or a new reserve [FNALM, 2003e].

The first phase requires the band to produce documentation on an array of matters, including: the policy justification, the land use, the legal description of the land that is being considered for reserve status, the anticipated contentious issues, the communication plan, and the band council resolution endorsing the proposed conversion of the property to reserve land. For all intents and purposes of this report it is useful to briefly explain the requirement for documentation regarding the policy justification provision. The ATR policy requires that the reserve creation proposal fit into one of the policy justification categories. The first category, referred to as a ‘legal obligation’, entails the creation of new reserves or additions to existing ones resulting from a treaty or land claim settlement, a court order, or the legal reversion of land back to a First Nations band. The second category, referred to as a ‘community additions’, involves additions to existing reserves resulting from normal community growth where a need for additional land for housing, schools, churches, community economic projects and other community purposes can be demonstrated, useful adjustments to boundaries and road rights of way to enhance the physical integrity of the reserve, and the return of unsold surrendered land. The third category, may be referred to as ‘social or commercial needs’, entails the creation of new reserves for purposes such as addressing social (i.e., housing, schools, churches, community governance buildings, and recreational areas) or commercial needs which cannot be addressed under a form of land holding other than reserve land, and the need for land either for a landless First Nations community or the relocation of a First Nations community. The justification for a residential urban reserve could, and probably should, be made in accordance with this third category of justification as well as one or both of the other two if they apply in any given case. Making a good case for the creation of residential urban reserves under any or all of those categories of justification will require considerable care and attention to ensure that they can withstand any objections that might be raised.

The second phase of the reserve creation process requires First Nations band councils to undertake consultations and negotiations with the provincial and municipal governments, and possibly also with school boards if they deem it necessary. The first step in this phase is for the First Nations band council to inform the provincial government and any affected municipal government in writing of the proposed land acquisition, its intended use, and any other relevant matter. Moreover, where appropriate it must also undertake negotiations for one or more agreements with any affected neighbouring municipality on several key issues, including: (1) whether compensation will be paid for the loss of municipal and school taxes once the land acquires reserve status; (2) the type and financing of municipal services to be delivered to the new reserve; (3) bylaw compatibility between the municipality and the reserve, particularly where reserve development has the potential to affect neighbouring municipal lands and residents; and (4) a joint consultative process, especially a dispute resolution mechanism, for addressing matters of mutual concern [Tota, 2002]. Both the TLEFA and the ATR stipulate that such matters must be negotiated in good faith and that where a municipal government is unwilling to do so, the reserve will be created regardless of its views or interests. In the case of school boards, the ATR explicitly states that they have already been compensated for the operational and capital costs of providing educational services to First Nations students. Consequently, a band council need not undertake negotiations for any payment to school boards unless the former deems it necessary.

The third phase of the reserve creation process entails the deliberations by federal officials on the proposal submitted by a band council. The deliberations begin at the regional level of INAC and work their way to INAC's national headquarters, to the Minister's office, and to the Office of the Privy Council. At the regional level the proposal is reviewed by a committee of federal officials who make a recommendation to the Regional Director General (RDG) either for approving it in principle (with or without conditions) or rejecting it. The RDG then reviews that recommendation and makes a recommendation to a committee of federal officials located at headquarters in Ottawa either for approving it in principle (with or without conditions) or rejecting it. That committee reviews it and then makes a recommendation to the Deputy Minister either for approving it in principle (with or without conditions) or rejecting it. The ATP is very clear that if there is concern that the conditions attached to any approval in principle are unlikely to be fulfilled, then the proposal should not be forwarded for approval. The final stage in the process for the creation of an urban reserve is for the preparation or signing of either a Ministerial Order or an Order in Council. The wording of this part of the process in the ATR suggests that the Minister has the choice of approving or rejecting the proposal or the creation of a reserve, or referring the matter to the cabinet for its decision. If the decision of the Minister or Cabinet is to approve the creation of the reserve, then the Ministerial Order or the Order in Council is registered with the INAC's Indian Lands Registry, and notification of the same is sent to all of the relevant governmental and non-governmental stakeholders. Whereas a Ministerial Order suffices for reserve addition or creation proposals undertaken pursuant to various treaty land entitlement agreements, for all other such proposals a Governor in Council Order is required.

6.3 Policies and Processes for Developing Residential Subdivisions

The creation of an urban reserve for residential purposes, and the actual development of any one or more residential subdivisions therein are not one and the same. The development of a residential subdivision is a relatively distinct process that has its own set of authorities and processes. The objective in this subsection is to answer the following questions regarding the policies and processes for developing residential subdivisions either on existing or new reserves which have not been designated for residential purposes:

- ◆ What statutes impinge on the development of a residential subdivision?
- ◆ Who may develop a residential subdivision?
- ◆ What is the process for developing a residential subdivision?

These questions are addressed, in turn, below.

6.3.1 What Statutes Impinge on the Development of Residential Subdivisions?

The development of residential subdivisions on any reserve may be governed by one of two federal statutes—the Indian Act or the First Nations Land Management Act (FNLMA). Which of these two statutory regimes applies on any reserve is a function of a negotiated agreement between the band and the Minister. In addition to provisions in those two statutes, the development of residential subdivisions is generally guided by the principles and procedures outlined in various chapters of INAC’s Land Management Manual. Moreover, for band councils managing their lands under the FNLMA, some of the principles and procedures related to the development of subdivisions are also contained within their respective Land Management Codes, which they are required to adopt as one of the major conditions for operating under that particular statute.

For the majority of First Nations the decision-making process for the development of residential subdivisions is governed by at least three sets of provisions contained in the Indian Act. The first set consists of the provisions contained in sections 37-41 which deal with the powers and processes for using designated reserve land which has not been allocated for creating residential subdivisions [FNA4LM, 2003c]. The second set of provisions are those contained in section 58 which deal with the process for creating residential subdivisions using land that is held by band members either through a certificate of possession or locatee ticket. The third set of provisions is those contained in sections 53 and 60 of the Indian Act. Under section 60 band councils can be authorized by the Governor in Council to control and manage their lands, and under section 53 they can be authorized by the Minister to manage their designated lands. More specifically, section 53 authorizes them to make decisions regarding the assignment of designated lands and to send the assignments directly to the Indian Land Registry, rather than having to seek prior approval from INAC’s regional office [Adkin, 2003].

For some band councils, however, the decision-making process related to the creation of residential subdivisions is now governed by the FNLMA. Although only a few bands are currently operating under this statutory regime, the probability that many more will be doing so in the future is relatively high, given the penchant for increased authority and autonomy as part of the self-governance movement that is becoming quite pervasive among First Nations [FNA4LM, 2003b]. The key provisions in

the FNLMA related to the creation of subdivisions are contained in subsections 20(1) and 20(2) which deal with the power of band councils operating under that statute to enact laws in accordance with their land code regarding several matters related to the development, management, and zoning of lands. Subsection 20(1) states that they may enact laws regarding the following matters: “(a) interests in and licences in relation to first nation land; (b) the development, conservation, protection, management, use and possession of first nation land; and (c) any matter arising out of or ancillary to the exercise of that power.” Subsection 20(2) of the FNLMA stipulates that without restricting the generality of subsection (1), band councils may also enact laws regarding the following matters:

- (a) the regulation, control or prohibition of land use and development including zoning and subdivision control;
- (b) subject to section 5, the creation, acquisition and granting of interests and licences in relation to first nation land and prohibitions in relation thereto;
- (c) environmental assessment and environmental protection;
- (d) the provision of local services in relation to first nation land and the imposition of equitable user charges for those services; and
- (e) the provision of services for the resolution of disputes in relation to first nation land.

The fundamental difference between the FNLMA and the Indian Act regarding the development of residential subdivisions has to do with the degree of authority and autonomy that band councils are afforded under the former as compared to the latter. The FNLMA devolves authority from the Minister and the Governor in Council to First Nations to make decisions related to the development of residential subdivisions and the allocation of any lots therein. The precise degree of authority that is devolved hinges on the nature and scope of the so-called ‘individual agreement’ between any First Nations and the Minister. To acquire that authority the First Nations must adopt a ‘land code’, a ‘land management regime’, and enter into an ‘individual agreement’ between the band council and the Minister to deal with the level of operational funding for land management and to set out the specifics of transition to the new regime. These three matters are explicated in the following three subsections of the FNLMA: subsection 6(1), which deals with the land code; subsection 6(2), which deals with the land management regime; and subsection 6(3), which deals with the bilateral agreement between the band council and the Minister on land management matters. [See Figure 6.3]

The FNLMA was enacted in 1999 pursuant to the federal government’s overarching goal of facilitating a greater degree of First Nations community self-governance by increasing the level of authority and autonomy of First Nations to deal with various matters of importance to their community, including land and resources management. The basis of the FNLMA was the signing of Framework Agreement on First Nations Land Management (FAFNLM) in June 1998 by representatives of the federal government and fourteen First Nations [Canada, 1998b]. As of 2004 the following thirty-four First Nations have signed the Framework Agreement and thirteen of them have completed the community ratification process for their land management code, including two from Saskatchewan (i.e., Muskoday and White Cap Dakota Sioux). To date, there are three other Saskatchewan First Nations which are signatories to the FAFNLM and are in the process of completing their community ratification process for the land code (i.e., Cowessess, Kinisten

and Muskeg). It is anticipated that those three communities will complete their ratification processes in 2005. Any First Nations can opt into the FNLMA system at any time. For its part the federal government has undertaken to deal with a maximum of thirty of them at a time on a rolling basis across the country.

The FNLMA requires First Nations bands to establish a land management administrative regime and land management codes that deal with matters such as land use and occupancy, leasing and licenses, transfer or disposition, and revenues from natural resources. To operate under the FNMLA, First Nations band councils must meet two conditions: first, they must put the matter to a referendum vote of the community, and receive at least 25% of voters/band members; and second, all third party interests must be noted and any land disputes must be resolved.

The main benefit of the FNLMA is that it provides First Nations the opportunity to eliminate some of the barriers that they faced under the Indian Act for managing their reserve lands and resources which impeded their ability to deal efficiently and effectively with various economic development opportunities. The FNLMA provides them with extensive authority to deal directly at the local level with various aspects of the management of their lands and resources, including the development and management of residential subdivisions. [See Figure 6.3] The scope of the power of the First Nations operating under the FNLMA is evident in Section 14 of the Muskoday First Nation's Land Code which states that, subject to the approval of the band members, the band council has the authority to manage lands extends to grant "(1) interests and licences in community lands, including leases, permits, easements and rights-of-ways, subject to section 14.3; and (2) permits to take resources from community lands, including cutting timber or removing minerals, stone, sand, gravel, clay, soil or other substances, subject to section 14.3." Ministerial approval is not required for such grants to be made. The authority and autonomy of First Nations operating under the FNLMA is explained cogently in the following sections from an official executive summary of the key provisions in the FNLMA legislation [Canada, 1999b]:

Legal Status and Powers: The Framework Agreement provides these First Nations with all the legal status and powers needed to manage and govern their lands and resources. While First Nations will not be able to sell their land, they will be able to lease or develop their lands and resources, subject to any limits imposed by their own community in laws and Land Codes.

Law-Making Powers: A First Nation managing its lands under a Land Code will have the power to make laws in respect of the development, conservation, protection, management, use and possession of First Nation land. The Land Code does not authorize laws relating to the taxation of real or personal property. Such laws must be made separately pursuant to section 83 of the Indian Act. The First Nation's Council can continue to make by-laws under section 81 of the Indian Act.

Section 38(1) of the FNMLA states that for First Nations who opt to operate under that particular statute for purposes of land management, the following elements of the Indian Act would not apply to them, their members, and their lands:

- (a) sections 18 to 20, 22 to 28, 30 to 35, 37 to 41 and 49, subsection 50(4) and sections 53 to 60, 66, 69, 71 and 93 of the Indian Act;
- (b) any regulations made under section 57 of that Act; and
- (c) to the extent of any inconsistency or conflict with the Framework Agreement, the land code or first nation laws, any regulations made under sections 42 and 73 of that Act.

The foregoing should not be interpreted to mean that the authority of First Nations operating under FNMLA is in no way circumscribed or encumbered with respect to matters which for them were covered under these particular sections of the Indian Act. After all, the FNLMA has provisions which, in their own way, circumscribe and encumber the authority and autonomy of First Nations although, arguably, not to the same extent as was the case under the Indian Act. It must also be underscored that First Nations operating under the FNLA are not operating entirely outside the scope of the Indian Act for all purposes. After all, the following sections of the Indian Act continue to apply to them as well as to all other First Nations along with their members and lands: Sections 1-17, 21, 29, 36, 42-48, 50(1)(2)(3), 51, 52, 61-65, 67-68, 70, 72-92, and 94-122. There are two notable exceptions in the application of these particular sections to First Nations operating under the FNLMA. Both of them have to do with the degree to which there is inconsistency or conflict between the regulations enacted by the Governor in Council under the Indian Act and the provisions of the First Nations Land Management Framework Agreement, the FNLMA, or a First Nation's land code and land-use bylaws [e.g., Westbank First Nation, 2002]. In the case of Section 42 of the Indian Act those are regulations related to the estates of deceased Indians. In the case of section 73 of the Indian Act this can potentially apply to an array of regulatory matters enumerated therein for which the Governor in council is empowered to enact regulations, namely:

- (a) for the protection and preservation of fur-bearing animals, fish and other game on reserves;*
- (b) for the destruction of noxious weeds and the prevention of the spreading or prevalence of insects, pests or diseases that may destroy or injure vegetation on Indian reserves;*
- (c) for the control of the speed, operation and parking of vehicles on roads within reserves;*
- (d) for the taxation, control and destruction of dogs and for the protection of sheep on reserves;*
- (e) for the operation, supervision and control of pool rooms, dance halls and other places of amusement on reserves;*
- (f) to prevent, mitigate and control the spread of diseases on reserves, whether or not the diseases are infectious or communicable;*
- (g) to provide medical treatment and health services for Indians;*
- (h) to provide compulsory hospitalization and treatment for infectious diseases among Indians;*
- (i) to provide for the inspection of premises on reserves and the destruction, alteration or renovation thereof;*
- (j) to prevent overcrowding of premises on reserves used as dwellings;*
- (k) to provide for sanitary conditions in private premises on reserves as well as in public places on reserves;*
- (l) for the construction and maintenance of boundary fences; and*
- (m) for empowering and authorizing the council of a band to borrow money for band projects or housing purposes and providing for the making of loans out of moneys so borrowed to members of the band for housing purposes.*

The enactment of the FNLMA does not change either the terms or conditions for any reserve land that was held through leasehold prior to the coming into force of a First Nation's land code. Subsection 38(2) of the FNLMA states that: "Subsection 89(1.1) of the Indian Act continues to apply to leasehold interests in any first nation land that was designated land on the coming into force of a first nation's land code." In fact, subsection 30(3) adds that the land code may extend the application of subsection 89(1.1) of the Indian Act, or any portion of it, "...to other leasehold interests in first nation land". The importance of this is that whereas subsection 89(1) states that "...the real and personal property of an Indian or a band situated on a reserve is not subject to charge, pledge, mortgage, attachment, levy, seizure, distress or execution in favour

or at the instance of any person other than an Indian or a band,” subsection 89(1.1) states that “Notwithstanding subsection (1), a leasehold interest in designated lands is subject to charge, pledge, mortgage, attachment, levy, seizure, distress and execution.” The Lands Management Act provides mechanism to develop more types of forms of occupancy and value. The benefits of the FNLMA are contingent on the quality of the land code developed by band councils who chose to operate under that statute. The experience of the Westbank First Nation reveals that some elements in its Land Code have helped to increase the degree of efficiency and local preference in managing their lands. Evidently such improvements stem from the fact that the Land Code has permitted the following [Westbank 2003b; Arsenault, 2003]:

- the Director of Lands at the West Bank First Nation to approve documents and transactions on that previously had to be approved by the Minister,
- the Director of Lands at the West Bank First Nation to approve the transfer of subleasehold interest or a mortgage of a subleasehold interest which previously had to be approved by the band council;
- the expropriation an interest in Westbank Lands for a “community purpose” once the Council has passed a law setting out the expropriation method, the method of determining fair compensation, and a procedure for an arbitration to resolve disputes;
- the establishment of special procedures to be followed for issuing leases or permits for community lands; and
- the registration of financial claims against interest in Westbank Lands such as judgments, certificates of pending litigation, caveats, liens, options and rights of first refusal.

Another benefit of the FNLMA for First Nations is that it authorizes them to designate any reserve land for development or leasing for any of the conventional purposes (e.g., residential, institutional or commercial). Indeed, it also authorizes them to re-designate any land that was designated for a specific purpose by the Minister under the Indian Act prior to the enactment of the First Nations Land Code, provided that all third party interests such as those embodied in leases with leaseholders or those embodied in any service or bylaw compatibility agreements with municipalities are addressed legally and appropriately.

6.3.2 Who May Develop a Residential Subdivision?

In answering the question regarding who may develop a residential subdivision, it is useful to begin with an observation regarding the fundamental nature of the creation of a residential reserve. The creation of a residential subdivision either on an existing reserve or on any reserve created in the future is essentially a decision of designating a parcel of reserve land for the specified use of providing lots primarily for housing purposes and to some extent also for a limited number of institutional or commercial purposes deemed to be an integral and essential part of that residential subdivision. Before being designated for that purpose such land may have been under the control of the band council, a band member through one of the landholding instruments (e.g., certificate of possession, certificate of occupation, or permit), or a non-band member through a lease or a permit. When that land is designated for a residential subdivision it will be assigned to the subdivision developer through a head lease [e.g., Canada, 2004h].

A residential subdivision can be developed by any one or more of the following four potential developers: the band council itself; a property development agency of the band council; a property development company owned by one or more band member; a property development company owned by

non-band member. The development of a residential subdivision could involve a special business partnership between any such potential developers. However, landholding regulations would require clarity on which of them would hold legal title to the land and the form of that legal title.

Although individual band councils are generally the ones responsible for making various types of land management decisions, including those regarding the development of residential subdivisions, they may appoint tribal councils to manage their lands. The authority of band councils to appoint tribal councils for land management services for any reserve or subdivision therein, subject to the approval of the majority of all band members (rather than just the majority of those voting), is acknowledged in Chapters 10 and 11 of the 2001 Land Management Manual. This potential role for tribal councils should be borne in mind by anyone considering the creation of either a residential urban reserve or a residential subdivision therein. The issue to consider is whether involvement by a tribal council would enhance the ability to create and operate residential subdivisions within urban reserves in an effective, efficient and culturally appropriate manner for the benefit of a broad cross-section of the Aboriginal population with and without core housing needs in Saskatoon, or in any other urban centre in which such reserves may be created.

6.3.3 What is the Process for Developing Residential Subdivisions?

The process for developing residential subdivisions is similar to the creation of new reserves or additions to existing reserves. It is essentially a two phase process (i.e., the land designation phase, and the lease and agreements negotiations phase) which, to a varying extent, involves the band council, its members, federal officials, any property developers who may be participating in developing the land for residential purposes, and in many cases also municipal governments who are likely to be involved in providing some municipal services to such subdivisions. The processes for each of those two phases are explained, in turn, below. Before explaining those processes, however, it is useful to note that, as alluded to in a previous subsection of this report, there is a difference in the residential subdivision development process depending on whether First Nations are managing their lands pursuant to the provisions in the Indian Act or the FNLMA. The major difference is that the role of the federal Minister and officials is much more limited under the FNLMA in negotiating and approving various aspects of the residential development.

6.3.3.1 Land Designation Phase

The first of the two phases in creating a residential subdivision on a reserve is the 'land designation for leasing phase' [FNA4LM, 2003e]. The objective of the designation phase is to designate land for leasing for any special use, including the creation of a residential subdivision. The designation of land for leasing may include either a specific lease or at least a statement of the process that will be used to approve a desirable lease in the future. For band councils who are managing their lands pursuant to sections 53 and 60 of the Indian Act, this phase involves several major stages which are outlined in sections 37-41 and in Chapter 5 of the 2001 Land Management Manual.

The first stage consists of the drafting of a land designation document. The basic requirement is that the document specifies several important matters related to the terms and conditions of the designation. The level of detail of such a document varies somewhat depending on whether the proposed designation

has a lease attached to it or not. A designation that has a lease attached to it must include details regarding matters such as: the legal description of the property; the precise purpose of the designation (i.e., for residential, institutional or commercial purposes such as trailer parks, houses, health centres, shopping malls, etc.); the length of the lease; the conditions of the lease such as payment details, rent reviews, and insurance requirements; and any restrictions to the lease [Adkin, 2003].

The second stage consists of both the identification and removal of any third party or locatee interests that may be encumbering the land that is to be designated for leasing, and an environmental impact assessment of the proposed development. The designation proposal cannot proceed beyond this stage until such interests have been removed and the environmental impact assessment has been conducted.

The third stage consists of the deliberation and voting on a band council resolution. The band council must deliberate and vote on the proposed designation. The purpose of the deliberation and voting by the band council is to determine whether any refinement is required to the proposal and whether there is a consensus among band councilors to proceed with it.

The fourth stage consists of the band membership land designation vote. For the designation to be valid it must be endorsed by members in one of three ways: a vote at a meeting of the band called by the band council; a vote at a meeting of the band called by the Minister for the purpose of voting on the proposed designation; or by a referendum conducted according to the election regulations. In cases where the majority of band members did not vote at a meeting or in a referendum, but the majority of those who did approved the proposed designation, the Minister may call another meeting for another vote, or hold another referendum in an effort to get participation by a majority of the members. If the majority of those voting in the second meeting or a second referendum approve the proposal for the designation of land, then it shall be deemed to have been assented to by a majority of the members of the band.

The fifth and final stage consists of the deliberation and decision on the proposal by the Governor in Council. The Governor in Council's decision is likely to be influenced by the recommendations made by various federal officials as the proposal moves through INAC's regional and national offices, and through the Minister's office.

6.3.3.2 Lease and Agreements Negotiations Phase

The second major phase of the process for developing a residential subdivision is what might be termed the 'lease and agreements negotiations phase'. This includes at least four distinct but interrelated sets of negotiations, namely: negotiations of the terms and conditions of the head lease (which as noted above may or may not be attached to the designation proposal), negotiations of the subdivision master development plan, negotiations of any service agreements, and negotiations on bylaw agreements. The key aspects of each of these sets of negotiations are explained below.

6.3.3.2.1 Negotiations on the Head Lease

The first major set of negotiations relates to the head lease between the developer and the Minister. This set of negotiations may not occur if the developer is the band council and chooses not to create a property development agency because it has no intention of sub-leasing any portion of the proposed subdivision. The head leases are not standardized; they are site specific. Nevertheless, most of them have provisions the terms and conditions which must be observed by the signatories. This includes, the land use, the length of the term of the lease, and the payment schedule for leasing fees, and the eligibility of subleases for mortgages. There are many ways to configure head leases, including the following which were identified in a relatively recent publication [Arsenault, 2003]:

- (a) a long-term head lease with five-year review period;
- (b) a long-term fully prepaid head lease;
- (c) an unprepaid head lease with a trust fund set up to secure payment of rent under the head lease;
- (d) a series of head leases, one for each phase of the development, which are fully prepaid as each phase is developed;
- (e) a long term head lease of a single parcel, which permits development in blocks; and
- (f) a long term head lease which is prepaid as each parcel is subleased.

6.3.3.2.2 Negotiations on Subdivision Master Development Plan

The second major set of negotiations relates to the production and adoption/approval of the subdivision master development plan and also a development agreement between various stakeholders involved in the project [Adams, 1999; UBCM, 2000]. The master development plan encompasses the configuration or design of the subdivision, its various types of infrastructure, and the location and design of its residential, institutional, and commercial structures. The development agreement outlines various contractual arrangements between the various stakeholders involved in the development regarding an array of issues such as [Arsenault, 2003]:

- ◆ zoning
- ◆ jurisdictional issues
- ◆ the development approval process
- ◆ services and facilities
- ◆ parks requirements
- ◆ access requirements
- ◆ heritage matters
- ◆ cost contributions
- ◆ latecomer charges
- ◆ property taxes
- ◆ rights of way
- ◆ discrimination
- ◆ dispute resolution

The negotiation and adoption of both a subdivision master plan and a development agreement are valuable for at least two reasons. First, they ensure greater clarity among the principals involved in the project regarding various matters of mutual interest or concern. Second, evidently they are valued by financial lending institutions who want as much clarity as possible regarding the nature of the development and terms and conditions of agreement among the principals involved in the project. They are particularly interested in terms and conditions of development agreements between the Crown, the First Nation, the

developer, and even themselves so as to ensure that they have 'privity rights' with respect to certain covenants and processes which are in the head lease or sublease. Evidently, before they are willing to provide mortgages either for the head lease or any sublease, financial institutions also want confirmation that CMHC has approved the form of the head lease and sublease produced by the First Nation and the developer for use in a residential subdivision development project [Arsenault, 2003].

6.3.3.2.3 Negotiations on Servicing Agreements

The third major set of negotiations relates to the production of servicing agreements [Townsend, 1997; Adams, 1999]. This includes servicing agreements between the band council and the subdivision developer regarding their respective roles and responsibilities for hard and soft services. It also includes agreements between one or both of them and any neighbouring municipalities for the provision of hard services such as trunk lines for water and sewers, garbage collection, and soft services such as recreation. Generally, these agreements take the form of a contract between them for the municipality to provide such services to the proposed subdivision on the reserve [Manitoba, 2004]. Such agreements are already in existence and should serve as useful models for those negotiating comparable agreements in the future. Such agreements can be very important for receiving Ministerial approval for the creation of any residential subdivision on reserves. The reason for this is that one of the first considerations in judging the viability of a residential subdivision is whether the band is able to provide certain services either on its own or through service agreements with the neighbouring municipalities.

6.3.3.2.4 Negotiations on Bylaw Agreements

The fourth major set of negotiations is related to bylaw compatibility agreements between the First Nation and the neighbouring municipality [Townsend, 1997; Adams, 1999]. The purpose of such agreements is to increase the likelihood that the bylaws of a reserve and those of the municipality that either encircles it or is adjacent to it are compatible [FNA4LM, 2003d]. The operative word is compatible; they need not be identical. The importance is that they provide a regulatory framework that will contribute to an improvement in the quality of life and community development both within the reserve and the municipality. This may include bylaws regarding an array of matters such as zoning, land use, health, and safety. Such agreements are encouraged by the federal government and are generally considered beneficial both for the purposes of the band and municipal councils. Naturally, the quality and value of such agreements depend on the level of care and commitment that the two parties devote both to producing and enforcing them. Such agreements are already in existence and should serve as useful models for those negotiating comparable agreements in the future.

6.4 Policies and Procedures For Allotting Residential Lots

If residential reserves are created in urban areas, it is imperative that the extant policies and procedures for allotting residential lots are understood and, if necessary, improved. The reason for this is that sound policies and procedures for allocating residential lots are essential for ensuring the value and viability of a residential urban reserve. The objective in this subsection is to answer the following two questions regarding extant policies and procedures for allotting residential lots:

- ◆ Who may allot residential lots and to whom?
- ◆ What are the processes for allotting residential lots?

6.4.1 Who may allot residential lots and to whom?

In discussing the allotment of residential lots on a reserve, a distinction must be made between band land *per se*, and land that has been designated to a developer through a head lease. Whereas in the case of the latter the allotment of lots is at the discretion of the developer who holds the head lease subject to any criteria that may be specified in the head lease; in the case of the former the allotment of lots for residential purposes is the prerogative of the band council, subject to approval by the Minister. Regardless of who controls the land, however, lots may be allocated both to band members and possibly also to non-band members. The reason for this is that, notwithstanding the fact that the Indian Act stipulates that reserves are set aside for the use and benefit of band members, non-band members can also live on reserves, provided that a valid band council bylaws permit it [Hanna, 2003]. Under the Indian Act, band councils have the right to enact bylaws which either allow or prohibit non-band members to reside within their respective reserves. For First Nations operating under the Indian Act, to be valid such bylaws must be approved by the Minister, but for those operating under the FNLMA Ministerial approval is not required.

6.4.2 What are the processes for allotting residential lots?

In discussing the allotment of residential lots on reserves it is important to begin by noting that there are at least two types of allotments. The first type is an allotment of lots which are being allocated for the first time. The second type are lots which have been allocated at least once and are now effectively being reallocated either because the lots have reverted to the band council or because they are being transferred from one person to another on a willing buyer willing seller basis [Hanna, 2003; Reynolds, 2003]. In discussing the allotment of such lots it is also useful to note that the process under the Indian Act is slightly different than the process under the FNLMA. The major difference in the two processes is that, unlike the Indian Act, the FNLMA merely requires band council approval for the allotment, but not ministerial approval.

Under the Indian Act the allotment or re-allotment of reserve lands to band members and non-band members, for any purpose is governed largely by sections 20, 22, and 28 which deal with the role of the band council and the Minister in, and the legal mechanism that are to be used for, such decisions. Procedural guidelines related to this function are contained in several chapters of the Land Management Manual. The general process for the allocation or reallocation of land to band and non-band members is essentially the same, and involves two major stages which are explained in turn below.

The first stage consists of a band council resolution on the lot allotment. Section 20 of the Indian Act stipulates that band councils can allocate parcels of land to individual band members who have the exclusive right to use it for the stated purposes. Subsection 20(1) stipulates that no Indian is lawfully in possession of land in a reserve unless, with the approval of the Minister, possession of the land has been allocated lawfully, formally and fairly by the band council. The lawful allotment and possession of such parcels of land requires a valid band council resolution adopted by a majority of council members at a formal council meeting attended by a majority of the band councilors.

The second stage of the land allotment process under the Indian Act consists of Ministerial approval. The band council resolution is referred to the Minister to make a decision on whether to approve such land allocations by issuing one of the following: certificate of possession or a certificate of occupation. Subsection 20(2) stipulates that the Minister may issue a certificate of possession to any band member who is in legal possession of land. Subsection 20(3) recognizes the continuation of the validity certificates of possession issued to any person holding a so-called 'location ticket' issued in some provinces prior to 1951 under the Indian Act, of 1880. However, this instrument is no longer used for any new allotments. Subsection 20(4) empowers the Minister to delay or even deny the allotment of reserve land via a certificate of possession to a band member by the band council. Furthermore, subsection 20(5) empowers the Minister to grant what are known as certificate of occupation which allows the holder of such a certificate to occupy the land for up to two years, before the Minister decides on whether and to whom to issue a certificate of possession. Moreover, subsection 20(6) empowers the Minister to extend the term of a certificate of occupation for a further period not exceeding two years, and may, at the expiration of any period during which a certificate of occupation is in force approve or refuse to grant a certificate of possession. In addition to the two principal modes of allotting lands to members of First Nations bands noted above (i.e., certificate of possession and certificate of occupation), there is one other way that lands can be allocated either to them or even to non-band members. Subsection 28(2) of the Indian Act allows for the use of reserve land either by a band member or even non-band members through leases or permits granted by a valid band council resolution that is approved by the Minister. That subsection states that the "...Minister may by permit in writing authorize any person for a period not exceeding one year, or with the consent of the council of the band for any longer period, to occupy or use a reserve or to reside or otherwise exercise rights on a reserve." Once again, for First Nations operating under the FNLMA such allotments do not need such Ministerial approval.

6.5 Policies and Processes For Allotting Housing Units

Another important set of policies and processes are those related to allotting various types of housing units (e.g., single dwelling and multiple dwelling units) built on various types of reserve land (e.g., land held by the band, land held by band members, and land that has been designated for leasing) either through a sale system or through a rental system. Such policies and processes have important implications for anyone considering the merits of using residential urban reserves as a means of providing adequate and affordable housing for Aboriginals and non-Aboriginals with and without core housing needs.

The allotment of housing units on reserves is contingent both on the nature of ownership of the housing units and the nature of the landholding on which the housing unit is located. In the case of the ownership of housing units it is contingent on whether they are owned by the band council, by a band member, a non-band member, or a property development or management corporation. In the case of the landholding it is contingent on whether the housing units are located on land held by the band, land held by band members under by various means, land held by a non-band members under a lease, land held by a developer under a head lease, and land held by a band or non-band member under a sub-lease.

The right to allot housing units owned by the band council on its reserve rests either with that band council or with any housing authority/committee which it establishes. In such instances the band council or its housing authority/committee has substantial authority to determine the precise terms and conditions (e.g., the selling price, rent, use, etc.) of such an allotment to any individual or corporate entity. In exercising their authority, ideally band councils or their housing authority/committee should ensure that they do it in legal, fair, equitable, transparent and accountable manner. Decisions of the band council and any such housing authority/committee the Minister related to the allotment of housing may be reviewed by the Federal Court on grounds such as non-recognition of rights or unfair administrative practices. The right to allot housing units owned by band members or non-band members which are located on reserve land that is legally assigned to them through a certificate or possession or through a lease in the case where a First Nations band is allotting land through a sub-lease pursuant to a head-lease, rests with such owners. They have the right to make decisions regarding the allotment of such units either by selling, renting or transferring them by any other legal means to any other person or corporate entity. However, their decisions are subject to any terms and conditions contained in the legal instrument by which the land was assigned to them, and any restrictions resulting from any membership or residency criteria embodied in a band council's housing policy or bylaws. Similarly, the right to allot housing units owned by any person or corporate entity on reserve land which they hold under a sub-lease pursuant to a head lease that is held either by a band controlled development corporation or a private development corporation rests with the owners of those units. Thus, any decisions regarding the allotment of such units either by sale, lease, rent, or any other legal means rests with that person or corporate entity. However, their decisions on allotting such housing units are subject to the terms and conditions specified in the sub-lease.

Regardless of whether First Nations operate under the Indian Act or under the FNMLA, band councils have substantial authority and autonomy regarding housing matters. Arguably, there are no major

insurmountable jurisdictional obstacles for First Nations providing adequate and affordable housing units for band members and even non-band members with and without core housing needs. More specifically, they have extensive authority and autonomy for, among other things: deciding the number and types of privately owned units that they will permit to be built on reserve; the number and types of housing units that they will construct and operate for families and any special needs group (e.g., elderly and persons with disabilities), and the type of housing supports or subsidies that they will provide for band members who have core housing needs. For many band councils, therefore, the major obstacles for providing adequate and affordable housing for their members on reserve are not jurisdictional; instead, they tend to be largely financial. Such financial obstacles stem from the dual effect of the lack of adequate financial capital within the community and the reticence of financial institutions to provide mortgages for housing on reserves without the standard level of down payment, security for repayment of the mortgage, or repossession. Evidently, the 1988 amendment to section 89 of the Indian Act, which made leasehold interests on reserve lands subject to charge and seizure by creditors, has not provided all financial institutions with the requisite degree of comfort to provide either mortgages or commercial and personal loans for developing residential and commercial properties. Moreover, some band councils find it hard to obtain financial resources which could be made available to them through any program established pursuant to subsection 73(1)(m) of the Indian Act which authorizes the Governor in Council to make regulations "...for empowering and authorizing the council of a band to borrow money for band projects or housing purposes and providing for the making of loans out of moneys so borrowed to members of the band for housing purposes."

6.6 Conclusion

The objective in this section has been to provide an overview of the policies and processes for creating urban reserves, creating residential subdivisions therein, and allocating land and housing in such subdivisions. The overview suggests that a complex set of policies and processes deal with such matters. It has also revealed that such policies and processes are largely embodied in the Indian Act, the FNLMA, the Saskatchewan TLEFA, INAC's Land Management Manual, and the policies and bylaws of band councils. The overview has also revealed that the major governmental actors involved in decisions related to those three matters are the following: the band councils; the band members; either or both the federal Minister and the Governor in Council; and to a much lesser extent the provincial and municipal governments whom First Nations are obliged to consult and possibly also enter into agreements related to the creation of such reserves and residential subdivisions therein [O'Neill, 1997]. Finally, this overview has also revealed that there seems to be a trend to increasing the level of authority and autonomy of First Nations band councils and their members to deal with land management matters. This is occurring largely as part of the self-government initiative that is manifested in a significant way in the FNLMA, and the increased use of sections 53 and 60 of the Indian Act, both of which may be used to transfer decision making authority for many land management matters from the Minister to the band councils [FNA4LM, 2003c; Westbank First Nation 2003a].

FIGURE 6.1

Three Phases for Addition of Land to Reserves

Indian and Northern Affairs Canada

Overview

The Additions to Reserve (ATR) policy was developed by Indian and Northern Affairs Canada (INAC) as a national policy. It was reviewed in partnership with the Assembly of First Nations and a clarified version was released in 2001. The policy sets out the criteria and issues that must be addressed before the land can be given reserve status.

All ATR proposals are reviewed by INAC to ensure that the requirements of the policy are met. A recommendation is then made that the proposal be approved, either by an order in council from the Governor in Council or by an order from the Minister of INAC.

Policy Justifications

The ATR policy requires that the proposal fit into one of the policy justification categories: legal obligation, community addition, or new reserve/other.

1. **Legal Obligation – This category includes additions to existing reserves and the creation of new reserves resulting from:**
 - a. a treaty or claim settlement or agreement
 - b. a court order (uncommon)
 - c. a legal reversion, for example, where land taken under the section 35 of the *Indian Act* is being returned or exchanged for other land to be added to reserve

2. **Community Additions – This category includes additions to existing reserves resulting from:**
 - a. normal community growth where a need for additional land for housing, schools, churches, community economic projects and other community purposes can be demonstrated
 - b. geographic enhancements such as small adjustments to road rights of way and in-filling where the addition would enhance the physical integrity of the reserve
 - c. the return of unsold surrendered land (land surrendered for sale by a First Nation but not sold)

3. **New Reserves/Other – This category includes the creation of new reserves resulting from:**
 - a. social or commercial needs which, for example, cannot be addressed under a form of land holding other than reserve land
 - b. provincial land offerings or the return of unsold surrendered land
 - c. requirement for land for landless First Nations/communities or relocation of a First Nation/community

and the creation of new reserves or additions to existing reserves resulting from:

 - d. the proposal being beyond the commitment set out in a legal agreement (e.g., in terms of funding, land selection)
 - e. community additions with unresolved questions of community need, funding sources, etc.

Process

The First Nation and INAC should meet as soon as possible to discuss and prepare an action plan. They should also consult with each other as needed throughout the process.

Phase 1

The First Nation should provide the following information, with copies of appropriate documents, to INAC:

- policy justification category (i.e. legal obligation, community addition or new reserves/ other)
- current and proposed use for the land
- whether the land is located in a rural or urban setting
- legal description of the land
- the name of the registered owner(s) of the land shown on the legal title/deed if mineral rights are to be included, the name of the registered owner(s) of the rights shown on the legal title/ deed
- any offer(s) of purchase made
- any agreement in place that apply to the proposal (e.g. a specific claim to treaty entitlement agreement)
- any third party interest (e.g. leases, permits, rights of way) affecting the land and agreements required or in place
- identification of any costs and anticipated resource(s) of funding
- any available environmental information
- any expected contentious issues
- initial communications plan to inform the First Nation community of the proposal
- results of any communications and negotiations with the local community, municipality and province

Further information may be required depending on the issues particular to each proposal.

When the First Nation has gathered the required information, it should be sent to INAC with a band council resolution requesting that the land be set apart as reserve.

Phase 2

The First Nation will ensure, in consultation with INAC, that the following steps are completed:

- development of a communications strategy, where required, to inform the community at large of the proposal
- environmental assessment to identify any concerns and clean-up required
- land appraisal to determine fair market value, if required
- communications with the municipality and province regarding, where applicable, such issues as tax loss compensation, zoning, by-law application, provision of and payment for services such as roads, sewers, water, etc. and negotiation of any service agreements required

Although the municipality and province do not have a veto over the proposal, the First Nation must make all reasonable attempts to identify and address their concerns.

Written confirmation from the municipality and province stating that consultation has occurred must be provided to INAC. If the municipality or province does not respond to the First Nation, the First Nation must provide documentation showing that reasonable attempts have been made to consult with them. This step may take considerable time to complete but is important to the processing of the proposal.

- legal survey, if the land has not yet been surveyed or is not shown on a plan suitable for deposit in the Canada Lands Survey Records

INAC will complete the following steps:

- review of all documentation to ensure that the policy requirements have been met
- review of any third-party interests (e.g. leases, permits, rights of way) to ensure all concerns and the manner in which they will be addressed have been identified. The interests could be terminated or replaced with the *Indian Act* documents at the time that the land is set apart as reserve. INAC will prepare any replacement documents required.
- review by regional additions to reserve committee and either approved in principle or forwarded to the Minister of INAC for approval in principle. The approval in principle may be granted with conditions which must be satisfied before the proposal can receive approval from the Governor in Council or the Minister of INAC.
- ensure the transfer to INAC of administration and control to the land and, where applicable, the subsurface rights. INAC will work with the appropriate authority/owners of the land to ensure the proper title search and transfer documents are completed.

Further steps may be required depending on the issues particular to each proposal.

Phase 3

Order in Council or Ministerial Order:

INAC will prepare a submission requesting either an order in council from the Governor General in Council or an order from the Minister of INAC setting the land apart as reserve.

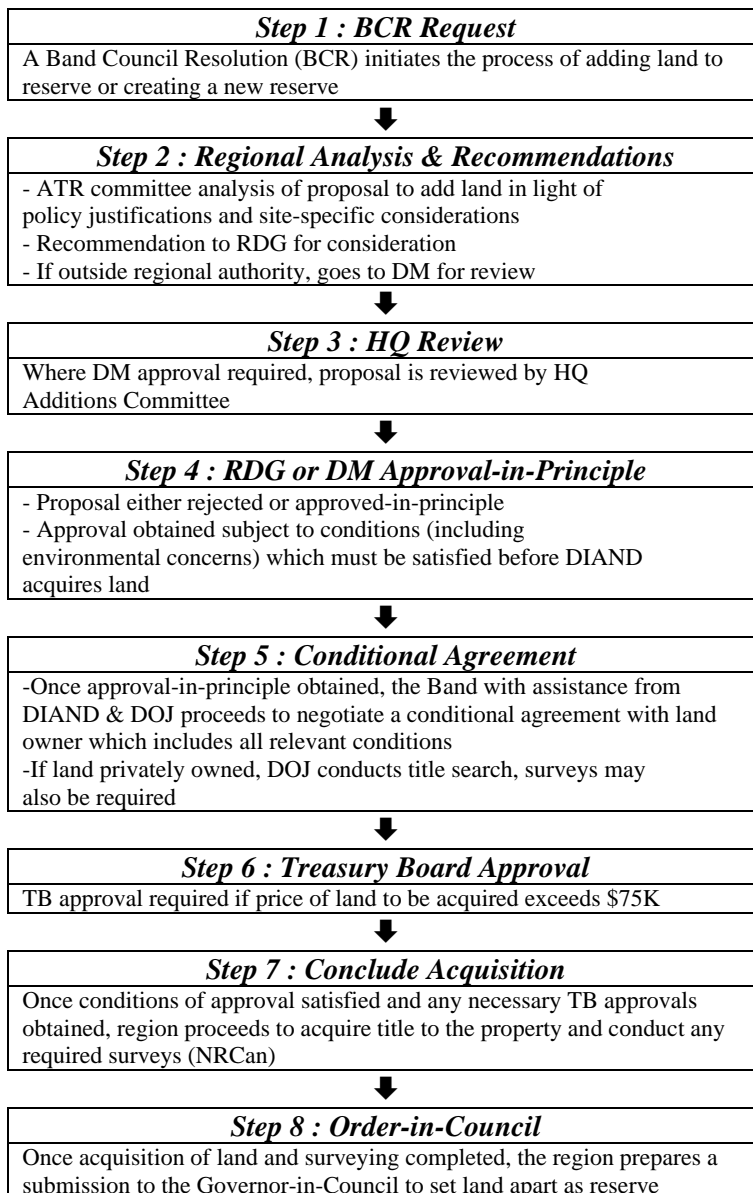
(Orders from the Minister of INAC are only possible for those provinces and types of ATR proposals that fit into legislation that has been passed, e.g. claim implementation acts in the Prairie provinces. All other ATR proposals require an order from the Governor General in Council.)

After approval, the order will be registered in the Indian Lands Registry in Ottawa.

Source: INAC, *Expanding the Reserve Base: An Overview of the Three Phase Process to Add Land to Existing Reserves or Create New Reserves.*

FIGURE 6.2

**Additions to Reserves Process
(Land Management Manual, 1991)**



Source: Canada. *Evaluation of the Additions to Reserves Policy*, page 9.

Based on the process outlined in Chapter 9 of the *Lands Management Manual, 1991*

FIGURE 6.3
ESTABLISHMENT OF LAND MANAGEMENT REGIME UNDER FNLMA

Land Management Code

6. (1) A first nation that wishes to establish a land management regime in accordance with the Framework Agreement and this Act shall adopt a land code applicable to all land in a reserve of the first nation, which land code must include the following matters:
- (a) a legal description of the land that will be subject to the land code;
 - (b) the general rules and procedures applicable to the use and occupancy of first nation land, including use and occupancy under
 - (i) licences and leases, and
 - (ii) interests in first nation land held pursuant to allotments under subsection 20(1) of the Indian Act or pursuant to the custom of the first nation;
 - (c) the procedures that apply to the transfer, by testamentary disposition or succession, of any interest in first nation land;
 - (d) the general rules and procedures respecting revenues from natural resources obtained from first nation land;
 - (e) the requirements for accountability to first nation members for the management of first nation land and moneys derived from first nation land;
 - (f) a community consultation process for the development of general rules and procedures respecting, in cases of breakdown of marriage, the use, occupation and possession of first nation land and the division of interests in first nation land;
 - (g) the rules that apply to the enactment and publication of first nation laws
 - (h) the rules that apply to conflicts of interest in the management of first nation land;
 - (i) the establishment or identification of a forum for the resolution of disputes in relation to interests in first nation land;
 - (j) the general rules and procedures that apply in respect of the granting or expropriation by the first nation of interests in first nation land;
 - (k) the general rules and procedures for the delegation, by the council of the first nation, of its authority to manage first nation land;
 - (l) the procedures that apply to an approval of an exchange of first nation land; and
 - (m) the procedures for amending the land code.
- (2) For greater certainty, if more than one reserve has been set apart for the use and benefit of a first nation, the first nation may establish a land management regime for any or all of its reserves.
- (3) A first nation that wishes to establish a land management regime shall, in accordance with the Framework Agreement, enter into an individual agreement with the Minister describing the land that will be subject to the land code and providing for
- (a) the terms of the transfer of administration of that land;
 - (b) a description of the interests and licences that have been granted by Her Majesty in or in relation to that land, and the date and other terms of the transfer to the first nation of Her Majesty's rights and obligations as grantor of those interests and licences;
 - (c) the environmental assessment process that will apply to projects on that land until the enactment of first nation laws in relation to that subject; and
 - (d) any other relevant matter.

First Nation Powers

Power to manage

18. (1) A first nation has, after the coming into force of its land code and subject to the Framework Agreement and this Act, the power to manage first nation land and, in particular, may

- (a) exercise the powers, rights and privileges of an owner in relation to that land;
- (b) grant interests in and licences in relation to that land;
- (c) manage the natural resources of that land; and
- (d) receive and use all moneys acquired by or on behalf of the first nation under its land code.

Legal capacity

(2) For any purpose related to first nation land, a first nation has the legal capacity necessary to exercise its powers and perform its duties and functions and, in particular, may

- (a) acquire and hold real and personal property;
- (b) enter into contracts;
- (c) borrow money;
- (d) expend and invest money; and
- (e) be a party to legal proceedings.

Exercise of power

(3) The power of a first nation to manage first nation land shall be exercised by the council of a first nation, or by any person or body to whom a power is delegated by the council in accordance with the first nation's land code, and that power shall be exercised for the use and benefit of the first nation.

Management body

(4) A body established to manage first nation land is a legal entity having the capacity, rights, powers and privileges of a natural person.

First Nation Laws

Power to enact laws

20. (1) The council of a first nation has, in accordance with its land code, the power to enact laws respecting

- (a) interests in and licences in relation to first nation land;
- (b) the development, conservation, protection, management, use and possession of first nation land; and
- (c) any matter arising out of or ancillary to the exercise of that power.

Particular powers

(2) Without restricting the generality of subsection (1), first nation laws may include laws respecting

- (a) the regulation, control or prohibition of land use and development including zoning and subdivision control;
- (b) subject to section 5, the creation, acquisition and granting of interests in and licences in relation to first nation land and prohibitions in relation thereto;
- (c) environmental assessment and environmental protection;
- (d) the provision of local services in relation to first nation land and the imposition of equitable user charges for those services; and
- (e) the provision of services for the resolution of disputes in relation to first nation land.

7. RECOMMENDATIONS AND CONCLUDING OBSERVATIONS

7.1 Introduction

To reiterate, the central objective of this report has been to explore whether the creation of residential urban reserves constitutes a potentially valuable and viable option for providing housing to Aboriginal persons with and without core housing needs in Saskatoon. Toward that end this report has provided overviews of the following: (a) housing needs of Aboriginals in Saskatoon; (b) some selected residential reserves in other provinces; (c) the issues related to the value and viability of reserves; and (d) the challenges and choices facing any band councils considering creating residential urban reserves. The objective in this concluding section is twofold. First, to proffer some recommendations for initiatives needed to assist those responsible for addressing the housing needs of Aboriginals in urban areas both in making sound policy and program choices and in acting on them appropriately, efficiently and effectively. Second, to underscore some important points already noted in the report and to note some additional ones related to the value and viability of residential urban reserves.

7.2 Recommendations

There are many initiatives that may and should be undertaken by governmental and non-governmental stakeholders alike who are interested or involved in the creation of residential urban reserves as a means of providing housing for persons with and without core housing needs. The objective in this section is to outline some of the more important initiatives. Collectively, these recommendations, are intended to help First Nations think about whether they are adequately ‘strategically positioned’ to create and operate residential urban reserves, and if they are not how they may achieve such positioning [Dion, et al., 1997].

7.2.1 Assessing Housing Needs and Preferences

The first major initiative is to clarify the needs and preferences of their own band members, other Aboriginals and even non-Aboriginals. This includes not only their current needs and preferences but also future ones. Band councils who already have a substantial number of their members living in the Saskatoon region or may do so in the future should have a clear sense of what their current needs and preferences are and how those may change over time based on projected population and migration trends. Such assessments should be done on a rolling five or ten year basis. Some band councils [Ledoux. 2004] and other Aboriginal organizations [Chenew Holdings Inc. 2004] have already undertaken such assessments and others should do the same.

7.2.2 Identifying and Clarifying the Goals(s) of Reserves

The second major initiative, and closely related to the first, that should be undertaken by any First Nations contemplating creating and operating a residential urban reserve is to identify and clarify the goal(s) of doing so. In undertaking such an initiative special consideration must be given to whether any reserve that is created is to serve social goals, commercial goals, or both. More specifically, it is imperative that they identify and clarify both for themselves and for others whether any such reserves would be created primarily to advance either a social goal such as alleviating the needs of individuals and communities or a

commercial goal such as accumulating capital either for the band council or for investors [NAFTF, 1996]. These two sets of goals are not and need not be mutually exclusively; it is possible to reconcile social and commercial goals. For this and other reasons, band councils will want to think about the optimal mix of land use for residential, commercial and institutional purposes on a reserve. Sorting out the issues regarding why a reserve will be created at the outset will help to them make the right choices regarding, among other things, its proper configuration, the appropriate level of investment, the anticipated rate of financial returns on that investment, and the uses of such financial returns.

7.2.3 Assessing and Developing Consensus

The third major initiative for band councils considering creating residential urban reserves is to assess and, if necessary, develop the degree of consensus on the matter. This includes the level of consensus not only among their band members, but also among federal, provincial and municipal officials, and among influential persons and the general public within the urban areas where the reserve will be created [FNA4LM, 2003a]. Such a consensus is an important, though not necessarily the only, determining factor for their governance, planning, administrative and financial capacity. This is particularly true of consensus among their band members. Without the requisite level of consensus among their band members, they may not have the requisite political legitimacy and resources to undertaken strategic initiatives needed to plan, develop and operate a residential urban reserve. As part of the effort to create such a consensus it may be useful to use the types of committees and conferences recommended below to create a better understanding of the value and viability of residential urban reserves as a an option for providing adequate and affordable housing in a culturally appropriate community context for Aboriginals in Saskatoon.

7.2.4 Assessing and Developing Capacity

The fourth major initiative is for band councils to assess and, if necessary, develop their governance, planning, administrative, and financial capacities [Canada, 2001c]. Such assessments should be objective. It is imperative that they recognize that although such capacities are sufficiently developed for operating their existing reserves is not necessarily a guarantee that they will suffice for operating any residential urban reserve that they choose to create. After all, apart from the fact that they would be governing, planning, managing, and financing another reserve with all of the attendant tasks and problems, they would be doing so for a reserve that would likely have to deal with a larger and more complex set of governance, planning, administrative issues and relationships than normally exist for many reserves in rural and remote settings. This is especially true if the creation and operation of residential urban reserve were to involve various types of potential partnerships and residency were not limited to band members only. Faced with such situations, therefore, band councils contemplating the merits of creating and operating a residential urban reserve should consider whether they require either additional or at least different types of human and financial resources for that purpose. In doing so, they should consider how they may acquire those resources. Two major choices facing them are whether they will attempt to do so either on their own or, as discussed below, through partnerships with other band councils or even other potential governmental and non-governmental partners.

7.2.5 Developing and Maintaining Strategic Partnerships

The fifth major initiative for band councils is to develop and maintain strategic partnerships [Abbot, 2001]. Such strategic partnerships should be considered and developed for at least three basic purposes: (a) the acquisition of land needed to create a residential urban reserve; (b) the development of lands and subdivisions, (c) the management of lands and housing units. In developing such strategic partnerships band councils should consider whether they want to establish them with any of the following: (a) one or more bands who are members of their particular regional tribal council; (b) with one or more bands from other regional tribal councils; or (c) and private land developers and property management agencies. Band councils in Saskatchewan should consider whether, given the diaspora of their members to more than one urban centre, they should establish such partnerships in each of the urban centres in which they have a critical mass of members. In developing such partnerships they should consult the partnership and co-management literature which identifies a wide range of issues and options for that purpose [Anderson, 1995; Larbi, 1998; Canada, 2001b; CMAR, 2002]. Some of that literature is devoted to creating both intergovernmental partnerships between Aboriginal governments and other orders of government, and public-private partnerships involving any or more of those orders of government and private business entities [Kignundu, 1999; Langford, 1999; Ferazzi, 2001; Abbott, 2001; Hanselmann 2002a and 2002b; FCM, 2002].

7.2.6 Acquiring Land in or Near Urban Areas

The sixth major initiative is the acquisition of land in or near urban areas. In acquiring such land band councils should undertake professional assessments of current, projected and prospective community and subdivision development initiatives both within the boundaries and also in any of the surrounding municipalities, federal crown lands or provincial crown lands, within a short commuting distance to the central urban area. In selecting potentially valuable land for conversion to reserve status they should focus both on what they may need and will prove to be valuable in the near future and what they need and may prove to be valuable in the more distant future. Similarly, they should think of which land they would want to convert to reserve and to develop in the near future and which land they would want to convert to reserve and develop in the longer term. They should also think of how to use the land between the time that they acquire it and the time that they create any residential subdivisions on it. Many band councils in Saskatchewan still have the opportunity to avail themselves of the favourable terms and conditions both for acquiring the entitlement land and for converting it to an 'entitlement reserve' under the TLEFA before that agreement expires.

7.2.7 Identifying Existing and Best Practices for Residential Urban Reserves

The seventh major initiative is to identify models and best practices both for creating, operating and financing residential urban reserves, and also for providing adequate and affordable housing that is culturally appropriate both on-reserve and off-reserve in urban areas for Aboriginals with and without core housing needs.

7.2.7.1 Models and Best Practices for Creating, Managing and Financing Reserves

In the case of models and best practices for creating, managing and financing residential urban reserves it would be useful for band councils to undertake more detailed research on some of the topics covered in this report, as well as others that may be of importance for a particular type of reserve that they may want to create identified in other studies [Dust, 1995; Mountjoy, 1999; Canada, 2004g; Dalhousie University 2000 and 2002]. This includes the following aspects of existing residential reserves: (a) the creation, configuration, and management practices; (b) the arrangements with neighbouring municipalities for providing various types of services and for developing and enforcing various bylaws; and (c) the strategic alliances for developing, financing, and managing residential subdivisions. Some useful resources on arrangements with neighbouring municipalities are found in various papers prepared by various organizations during the past decade or so [FSIN/SUMA, 1993; UBCM 1994; UBCM, 2000; UBCM, 2003a; UBCM 2003b; UBCM, 2004a; UBCM 2004b].

7.2.7.2 Models and Best Practices for Providing Housing in Urban Areas

In the case models and best practices for providing adequate and affordable housing for Aboriginals and possibly also non-Aboriginals on-reserve and off-reserve in urban areas, research should be undertaken to identify potentially valuable policies and strategies by which band councils build, sell, lease, and rent housing units on reserves both to band members and to others with and without core housing needs. Such research would be valuable for providing band councils with information that will help them weigh the relative merits of providing adequate and affordable housing to their members with and without core housing needs on-reserve versus off-reserve in urban areas.

Given that a substantial body of research related to models and best practices both for creating, funding, and managing urban reserves, including residential urban reserves [Dust, 1995; Redl, 1996; CMAR, 1998; Garcea and Barron, 1999; CMAR, 2002] and also for providing adequate and affordable housing in urban areas both on and off reserve already exists [Brant, 2000], the first step would be to glean as much as possible from that research. Whatever information is gleaned from that research could then be supplemented with some additional research on specific topics that require further exploration. For this purpose, interested First Nations should avail themselves of funds available through the Aboriginal Urban Strategy program which has been expanding in scope since it was established in 1998 [Canada, 2004d] and the National Homelessness Initiative program. As noted in the federal government's description of the National Homelessness Initiative [Canada: 2004e]:

A portion of the NHI's Urban Aboriginal Homelessness (UAH) funding will be linked to the Privy Council Office's (PCO) Urban Aboriginal Strategy (UAS) pilot project. The UAH/UAS coordination will explore new ways for federal departments to work in a complementary fashion to better meet the needs of urban Aboriginal people in eight cities in greatest need (i.e., Vancouver, Edmonton, Calgary, Saskatoon, Regina, Winnipeg, Thunder Bay and Toronto). Emphasis of this coordination will be placed on culturally appropriate Aboriginal community planning processes where priorities will be identified in each of the eight pilot cities, to guide investments.*

Although, the existing residential urban reserves and housing development off-reserve in urban areas provide potentially useful models and best practices to emulate, band councils and their analysts should also consider creating new models and practices. It is unlikely that the possibilities for innovation in such matters have been exhausted. There is room for band councils to change existing models and practices either on a unilateral or on a negotiated basis to render them more appropriate in serving their particular social and commercial goals.

7.2.8 Reviewing and Revising Statutory, Regulatory and Policy Frameworks

The eighth initiative is to review and, if necessary, revise the most relevant parts of the extant statutory, regulatory and policy frameworks that impinge not only on the creation, management and financing of urban residential reserves, but also on the provision of adequate and affordable housing for their band members and other Aboriginals in urban areas. Such reviews are essential for eliminating some of the problems in providing housing for Aboriginals in urban areas that have persisted in the past [Fiscal Realities, 1999; Hanselmann, 2001, 2002a, and 2002b].

7.2.8.1 Land Management Regimes

The first of those frameworks that band councils should review is the one that impinges on their authority to manage their lands. If they have not already done so, they should examine the relative merits of managing their lands either under the Indian Act which is relatively restrictive or under the FNLMA which is relatively permissive. For that purpose they may wish to monitor the types of land management regimes that various band councils in Saskatchewan and other provinces have been developing pursuant to the FNLMA and the ways that they are using them to manage their lands. At a broader level all governmental stakeholders should consider reviewing land management practices in cities and city regions to determine whether there are institutionalized biases in land management practices which prevent the efficient and effective sharing of geographic space by Aboriginal governments and the communities they govern and municipal governments and the communities they govern. In doing so, such stakeholders would be well advised to review literature that discusses relative merits of various options for collaborative planning in sharing of geographic space for mutual benefit and those two types of communities [Tota, 2002].

7.2.8.2 Taxation and Service Fee Regimes

Another major set of statutory, regulatory and policy frameworks that they should review and seek to revise, if necessary, are the existing and emerging ones related to taxation and service fee regimes that apply to any urban residential reserve [Canada, 1997b; Jules, 1997]. This includes tax exemptions for Indians as well as band imposed taxes and service fees for anyone living, working or operating on reserve.

Equally important are the service fees that may accrue to the band councils as a result of any services that they may contract from the urban municipality. As noted in a previous section of this report, such taxation and service fee regimes have important implications for the value and viability of residential urban reserves.

7.2.8.3 Residency Based Rights and Entitlements Regimes

Band councils should also review the implications of provisions in existing and emerging federal and provincial statutory, regulatory and policy regimes that confer differential rights and entitlements to band members by virtue of whether they live on-reserve or off-reserve. Indeed, they should also review the implications of such provisions in their own existing and emerging band bylaws. In both cases, they should consider what implications they have not only for their band members but also for them as governments. In terms of potential implications for their band members they should consider what rights such individuals have in the governance affairs of the reserve (e.g., voting), and the rights and entitlements which they are afforded as band members (e.g., access to housing lots on reserve and financial support for housing either on-reserve or off-reserve).

7.2.8.4 Housing, Training and Income Support Regimes

Another set of statutory, regulatory and policy frameworks that they should review and, if necessary, seek to revise are those related to three sets of financial supports that federal, provincial and band governments may use for assisting band members with and without core housing needs who are living either on-reserve or off-reserve [Canada, 2004c]. This includes various types of housing, training and income support programs. In reviewing those frameworks, it is prudent for them to bear in mind what seems to have become the conventional wisdom in recent years that focusing only on housing subsidies as a means of assisting those with core housing needs may not be appropriate or beneficial for all individuals or families. For some individuals and families, an optimal mix of housing subsidies, employment training supplements, and employment income supplements may be more appropriate and beneficial. Finding the optimal mix of such subsidies and supplements have major implications not only for individuals and families involved, but also for the value and viability of any residential reserve that is created either exclusively or partly to serve the housing needs of band members with core housing needs.

7.2.9 Committees and Conferences on Housing and Reserves

The ninth initiative that band councils should undertake is the establishment of at least two committees to deal with various issues and options related to housing and residential urban reserves. For that purpose it may be useful to create a multi-stakeholder committee mandated to produce discussion paper and materials and to convene conferences on two interrelated topics: (a) the alternative strategies for providing adequate and affordable housing in a culturally appropriate community context for Aboriginals in Saskatoon; and (b) the value and viability of residential urban reserves for providing adequate and affordable housing in a culturally appropriate community context for Aboriginals in Saskatoon.

7.2.10 Establish One Residential Urban Reserve as a Demonstration Pilot Project

The tenth initiative that one or more band councils should undertake is the establishment of one residential urban reserve as a demonstration pilot project in or adjacent to Saskatoon. For that purpose they may want to establish a reserve and residential subdivision(s) that is not unduly ambitious and costly and which would require too many years to develop. Here again they may want to see if they can access funds from the federal government's Aboriginal Urban Strategy and the National Housing Initiative programs discussed above at least for a feasibility study and to develop some preliminary conceptual plans. In undertaking such a demonstration pilot project, special care must be taken to ensure that it does become an example of how valuable and viable such development can be for everyone involved.

7.3 Concluding Observations

A central theme in this report has been that the creation of residential urban reserves is a potentially valuable and viable option for providing adequate and affordable housing in a culturally appropriate setting for Aboriginals, and possibly also non-Aboriginals, with and without core housing needs. Several points must be underscored regarding that theme.

First, it is important to underscore that it is an option, but not the only option, for that purpose. Many other options exist for providing housing to meet those housing needs. Second, it is potentially valuable and viable, but not automatically so. There are many contingencies that have to be dealt with effectively and efficiently to ensure that all or part of any residential urban reserve is valuable and viable. Third, insofar as it is a valuable and viable option, it is not necessarily a panacea. As with any option, this particular option has advantages and disadvantages. Moreover, as with any option, it is bound to resolve some problems and create others. In addition to practical problems, it is likely to create political ones. The reason for this is even preliminary discussions of creating any such reserves are bound to be politically sensitive. It is worth bearing in mind that today such political sensitivity is not limited to this particular option. There does not seem to be a widespread social consensus on anything that is done by governments or markets within urban areas either to urban communities or to the urban landscape. Even if there is a relatively high degree of consensus on goals, there is not likely to be a comparable degree of consensus on means. In the case of the subject of this report, the goal is adequate and affordable housing, the creation of residential urban reserves is one of the many possible means by which to achieve that goal. Invariably, the bulk of the political discourse in the urban context is bound to be in favour of adequate and affordable housing but, not of creating residential urban reserves for that purpose [Melting Tallow, 2001; Simard, 2003; Black and Silver 2003; Wilmont 2003; Winnipeg Social Planning Council, 2004; Niigonwedom, 2003]. This position in the discourse would not necessarily be restricted to the non-Aboriginal component of urban communities; it is also likely to prevail to some extent within the Aboriginal component of the urban community. Indeed, a comparable discourse is likely to prevail among the non-Aboriginal and Aboriginal components of rural communities.

Within that discourse there are likely to be many valid reasons for band councils, band members, other potential stakeholders, and members of the general public to question the value and viability of residential urban reserves. For example, band councils and band members should give serious consideration to the financial and social benefits that are likely to be generated by such reserves, and the extent to which such benefits will be distributed or redistributed equitably among band members regardless of where they live in urban or rural areas on-reserve and off-reserve [Gertler, 1999]. Similarly, all governmental stakeholders should weigh the advantages and disadvantages of fragmenting governance, planning and development systems in an urban region. Care must be taken, however, to ensure that any potentially positive residential urban reserve creation initiatives are not derailed by prejudicial presuppositions that they are neither laudable nor legitimate development initiatives because they will either create new problems or aggravate those that already exist in the form of ‘segregated urban ghettos’, ‘uneven playing fields’, and social conflict. Where such problems already exist in the absence of residential urban reserves, clearly other factors have created them. Where such problems exist in the presence of residential urban reserves, it is unlikely that the mere existence of such reserves is either their only or their primary cause. There is no evidence to suggest that reserves, in any form, automatically create or contribute to any of those problems. Nevertheless, to preclude or at least mitigate any potential problems, it is imperative that the central goal in creating any reserve is the development of healthy, safe and inclusive communities for the benefit of those who live in and near them [Clutterbuck and Novick, 2003]. It is in no one’s interest to simply shift problems from one part of an urban community to another. If a shift of people from one part of a community to another is to occur, every effort should be made to ensure that it will produce healthy and safe communities with adequate and affordable housing for people with and without core housing needs.

Nevertheless, care should be taken not to dismiss the importance of the benefits of changing the nature of the neighbourhoods in which people live. Some of the literature on urban poverty suggests that poor urban neighbourhoods have in their own right an influence on how people perform in the educational and labour market sectors. Some of the literature on urban ghettos in Canada and the United States notes that “neighbourhoods” and “neighbours” matter [Richards, 2001]. They suggest that “poor urban neighbourhoods and ghettos” are not merely the products of problems, they are problems in their own right. They are independent variables which have a negative effect on the ability of people to achieve their full potential and to liberate themselves and their children from the prison of poverty. In the words of one such author [Jargowsky 1996, 3-4]:

[T]here are many reasons to be concerned with high-poverty neighbourhoods in addition to the poverty of individuals. First among them is the premise that neighbourhoods matter, that the economic and social environments of high-poverty areas may actually have an ongoing influence on the life course of those who reside in them. That is, poor neighbourhoods have an independent effect on social and economic outcomes of individuals even after taking account of their personal and family characteristics, including socioeconomic status. Of greatest concern are the effects that harsh neighbourhood conditions have on children, whose choices in adolescence have lifelong consequences.

Increasingly, even the most liberal minded individuals are discussing the benefits of creating special relatively segregated governance and service entities for minorities that are designed to achieve certain social goals [Richards, 2001; Kymlicka, 1998]. Their point is that some people seem to be willing to tolerate existing segregationist practices that clearly perpetuate harm for poor members of minorities, but they are not willing to tolerate innovative segregationist practices that may actually help such individuals. This point is made cogently in a short article on urban reserves produced by the Frontier Centre of Public Policy in relation to proposals for urban reserves in Winnipeg [FCPP, 2003]:

- *The City of Winnipeg's endorsement of urban reserves has racist overtones, but so do existing laws that harm aboriginal economies..... Diversified centres of wealth creation have great potential for lifting native populations out of poverty. Urban reserves are not the final answer, but a temporary expedient until other harmful laws are reformed.....*
- *Arguably Indian reserves represent the most deficient public policy model in Canadian history, so the idea that we should replicate that model in our cities seems distasteful. The ultimate answer is to bring this community back into the economic mainstream by ending all special reserves. In the interim, to people who are fleeing a framework biased in favour of poverty and failure, the urban reserve is a temporary leg up, in the other direction.*

It is noteworthy that whereas certain types of communitarian based housing projects for the affluent are readily accepted (e.g., 'gated communities' and 'condominiums'); and other projects for the less affluent are accepted with relatively little concern (e.g., social housing for the disabled, the elderly, and the abused); housing projects for Aboriginals either off-reserve or on-reserve are often opposed relatively strongly. Indeed, the only other types of housing projects that are opposed with comparable fervor tend to be half-way houses for criminals. This suggests that in Canadian cities, as in cities in other countries, there is a hierarchy of acceptable and unacceptable forms of communitarians [Bennett, 1998]. Everyone should reflect on the merits of the existing hierarchy and consider its moral and practical value.

Finally, it is important to reiterate a point made in the introduction to this report. None of the foregoing is intended to make a case for the creation of residential urban reserves as a means of providing adequate and affordable housing for Aboriginals and possibly also for non-Aboriginals with and without housing needs. Instead, it is intended to make a case for thinking about it in a serious, systematic and sustained manner before making a choice on whether to create one, and if the choice is to do it, to ensure that it is done properly. Doing it properly is imperative and in everyone's interest. After all, the decision to create or not to create residential urban reserve is a multi-valued choice involving and impinging on many Aboriginal and non-Aboriginal stakeholders directly, and multitudes of other stakeholders indirectly of current and future generations.

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