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In Support of Ngai Tahu Tribal Economies Strategy – Some Possible Lessons from the First Nation Experience

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BACKGROUND

In response to the trauma of European colonization many indigenous groups in Anglo settler states have reorganized their communities and societies and established development strategies that have facilitated cultural revival and significant improvements in economic opportunity and social well-being. However, the strategies used for achieving these ends are often different across countries, which is in part attributable to the specific institutional context of the settler state in which the indigenous group is responding. In the New Zealand context, we find a strong emphasis on co-governance and partnership between Maori and the national, regional, and local governments as a mechanism for achieving indigenous aspirations. Furthermore, we see the formation and growth of the corporate-beneficiary model as means to increase tribal wealth and economic opportunity. Although in the Canadian context there are examples of co-governance, there is significantly more emphasis placed on self-determined and independent governance as a development strategy. This strategy entails the formation of territorial jurisdiction, where an indigenous group gains the ability to regulate activities and raise taxes on the lands they own. These areas might be thought of as semi-autonomous indigenous states within Canada.

The difference between the approaches can to some extent be explained by the different histories and institutional settings of the Canadian and New Zealand settler states. New Zealand was settled under the 1840 Treaty of Waitangi – an agreement that made Maori subjects of the Crown and that supposedly gave them the same status as other British subjects. It also guaranteed Maori tribes the right to self-govern their territories according to Maori lore and custom as long as the territory was not converted from Native title into a Crown title through either the sale of territory or through court processes. If converted from Native title to Crown title the territory, and people within that territory, would become governed by Crown law. In short, Maori tribal autonomy and self-government was directly linked to maintaining native land title.

Once the Treaty of Waitangi was signed, the New Zealand settler government rapidly set-out on a vigorous land buying campaign. When land was not being made available at the rate needed to meet the insatiable demands of investors and settlers, the Crown put in place legal structures and processes that made it virtually impossible for Maori tribes to maintain their territories in Native title. This is why the colonization of New Zealand is often referred to as the 'conquest by contract.' In addition, Maori military resistance to land 'sales' also resulting in Crown confiscations that in turn hurried the conversion of tribal territories from Native title into Crown title. As a result, virtually all territory in New Zealand moved into Crown title quite early in New Zealand's history meaning that the territory and the people within it became governed by Crown law, and consequently most Māori soon became tax-payers of the New Zealand state. This included land held in *Maori land* title. *Maori land* is a Crown-derived title which refers to land that is owned by Maori kinship groups but is regulated by Crown laws that specify how the land is to be owned and managed. *Maori land* was regulated in such a way as to make it difficult to retain and to encourage its sale to settlers.

The outcome of this colonial history is that Maori tribes do not possess any territory that may be autonomously self-governed according to Māori custom and law. Given that this situation emerged very early on in New Zealand's history it is very difficult for most Pakehā, and many Māori, to conceive of tribal territories with some level of autonomous self-governance. In addition, the transfer of nearly all Māori territory into Crown title makes it legally controversial to argue for the transfer of territory back into Native title, or perhaps other forms of title that provide greater self-determination. This situation is amplified by the institutional structures of New Zealand's parliamentary democracy. As a unitary democracy since 1876 the country has had no experience of federalism, where particular territories within a nation-state have some level of independent self-governance. Even the roles and functions New Zealand's regional and local governments are tightly legislated by New Zealand's central government. Consequently it is very difficult for most people in New Zealand to imagine territorial areas that possess a level of political autonomy outside of central government.

First Nations in Canada were removed from their traditional lands and placed on reserves. In much of Canada this was accomplished through historical treaties but in British Columbia there were very few historical treaties. Once placed on reserves, First Nation jurisdictions were removed by the constitution, policies and most notably the Indian Act and replaced by the federal and provincial governments. In particular, the federal government created the Department of Indian Affairs to implements control and jurisdiction on reserves. The Indian Act says how reserves and bands can operate, setting out rules for governing Indian reserves. It also defines who is, and who is not recognized as an "Indian". This is important as a key difference from Māori, who were made British citizens by the Treaty of Waitangi, as First Nations have a different relationship with the state from non-First Nation citizens because of inherited legal arrangements, including exemption on property tax on reserve land.

The New Zealand situation is further complicated by land alienation process that led to the vast majority of Māori-owned territory, whether in native title, or Maori land title, being broken up into small fragmented land blocks. As outlined previously, this land was systematically sold due to regulations aimed at alienating Maori from their land. The result is that land that might be considered to be in Maori territory only exists in fragmented scatted blocks often in remote areas. This means that there are very few, if any, areas of land, which might provide coherent and contiguous areas on which self-governing territories might be established. Furthermore, the vast majority of Maori are settled in urban areas, away from traditional lands, where they are largely intermingled with New Zealanders from other cultures. Consequently there are few contiguous areas of Maori majority populations where self-governing territories might be established. This situation also makes it difficult to imagine Māori self-governing territories. First Nations have retained a greater territorial and demographic coherence and remain exempt from some taxes by other governments on their reserve lands

It is for these reasons that most Maori tribes have not sought independent self-governance as a development strategy to facilitate cultural revival and improvements in economic opportunity and well-being. Instead, in the New Zealand context, the emphasis has been on co-governance with the New Zealand unitary government, and working on legislation to require local and regional co-governance. Treaty of Waitangi. In comparison, in part because of the federal system in which they operate, First Nations have sought to create autonomous areas within Canadian Provinces. Once successful First Nations have then passed laws to occupy these areas, where First Nation institutions are established including title and tax jurisdictional control. Thus, the different forms of regime, the different means of land alienation, and the different demographics have seen Māori and First Nations adopt different strategies that suit their specific context.

Purpose

Despite the lack of familiarity among Māori of jurisdictional control as a strategy for mana motuhake it is an approach that should not be ignored given the manner in which it has achieved significant success in Canada and the USA. Within these contexts it has generated economic opportunity and improved capacity for self-determined governance. With this in mind the purpose of the paper is to explain the way in which a jurisdictional control strategy is implemented. Fundamentally it is built upon the two central pillars of most governments – title and tax jurisdiction. A case study is used from Canada to illustrate the concepts, and furthermore a Ngāi Tahu case study is provided as a comparison and to explain how a jurisdictional control strategy might be implemented in New Zealand.

The paper begins by providing a brief introduction to First Nations history in Canada, followed by an explanation of how these nations have brought land under their jurisdiction. This discussion is followed by a description of the Muskeg Lake Cree Nation's (MLCN) urban reserves, outlining the manner in greater jurisdictional control led to economic and social transformation. The strategy used in the urban reserve development is then investigated, while the many challenges and constraints experienced are studied. The MLCN case study is followed by an exploration of the Ngāi Tahu Wigram Skies development - outlining the economic benefits generated by this development, first to Ngāi Tahu, and second to the broader economy. This approach is compared to a jurisdictional control strategy so as to provide insight into how Ngāi Tahu might go about applying this strategy within their context to increase economic, social, and cultural opportunity.

A Painfully Brief Introduction to First Nations

There are 633 First Nation communities in Canada. These communities are dispersed throughout the ten provinces of Canada. There is great diversity with at least 50 distinct language groups with unique cultures. The greatest amount of language and cultural diversity is in BC with 200 First Nation communities and over 30 distinct languages.

The First Nation land base for almost all communities across Canada is inadequate and in most cases uneconomic. First Nation economic, health, education and social outcomes are all well below national averages and the progress towards closing gaps is mixed. Generally, those living off reserve communities and those communities with more access to resources and economic opportunities are closing the gaps more quickly.

First Nations does not include Inuit (northern Canada) and Metis (French and First Nation ancestry). These three groups together are considered aboriginal peoples. The 2016 Census reports about 1.7 million aboriginals in Canada or about 5% of the population. Since 2006, the aboriginal population has grown by 42% in Canada which is more than four times the growth rate of the non-aboriginal population. The First Nation population has grown by 39% in the last ten years. Among First Nations, 44% live in their reserve communities[1].

[1] For a complete statistical overview from 2016, see https://www.statcan.gc.ca/daily-quotidien/171025/dq171025a-eng.htm?HPA=1

Despite the significant diversity, a common strategic bond among almost all First Nations is the restoration of their traditional lands and jurisdictions. Three broad strategies have emerged in the last 50 years. These strategies emerged because of (a) a failed proposed federal policy in 1969 to repeal the Indian Act and make First Nations subject to provincial jurisdictions and (b) some 1070s legal victories.

Rights and Title – This strategy has focussed on court cases associated with aboriginal title and rights, changing the constitution and creating and implementing the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). It has been largely successful on all fronts. Recently, there has recognition of aboriginal title in traditional areas, and the federal and some provincial governments have committed to implementing UNDRIP and inherent aboriginal rights and title contained in s. 35 of the Canadian constitution. The challenge for this strategy is now to identify practical methods to implement these victories.

Legislation, Taxation and Institutions – This is the strategy to practically implement First Nation jurisdiction and title. It has three broad elements. Enabling, legislation is passed so that other governments vacate jurisdictions as requested by First Nations. If they choose, First Nations pass laws to occupy these jurisdictions. First Nation institutions are established to help interested First Nations implement these jurisdictions. This strategy has been successful for some tax and land jurisdictions applied to reserve lands. Approximately 250 First Nations are now participating in this strategy through institutional and legislative frameworks.

Modern Treaties and Agreements – Some First Nations have reached agreements and modern treaties with respect to their rights and title. These either resolve land claims to traditional territories, clarify jurisdictions or both. A little over 30 First Nations have reached these types of agreements including the Nisga'a Nation. The average length of time to negotiate these comprehensive agreements is near 20 years.

All these strategies have relevance and possible lessons to the Ngai Tahu, but this section of the paper focusses on the First Nation practical institutional development strategy for two reasons. First, the Ngai Tahu already have a comprehensive settlement. Second, the Ngai Tahu tribal economies strategy contemplates the practical implementation of their title and jurisdiction. There are four sections.

Adding Urban Lands to First Nation jurisdiction – This section briefly discusses some case studies of how First Nations added lands to their jurisdiction in urban areas. It also summarizes the economic and fiscal benefits realized by First Nations, regional economies and local governments from adding urban lands to their jurisdictions.

The Economic Rationale and Strategy – The main reason that First Nations are restoring title and jurisdiction is to increase economic opportunities and improve outcomes for their tribal members. This section presents the economic basis for the practical institutional strategy and summarizes the potential economic and fiscal benefits that could be realized by implementing the strategy.

Challenges – Change is hard. If It were not, then gaps between First Nations and the rest of Canada would have closed long ago. Some of the institutional strategy has been implemented but much remains. This section summarizes the main challenges to implementing this strategy.

Lessons – The practical elements of the modern institutional development strategy are about 30 years old. Its strategic and political origin can be traced to well over a 100 years ago. The final First Nation section summarizes all the lessons that have learned to address each of these challenges.

Adding lands to First Nation jurisdiction:

First Nations can add lands to their jurisdiction through one of four processes. They can apply through the additions to reserve process (ATRs). They can purchase and then add lands through the Treaty Lands Entitlement process (TLEs). They can add lands through a specific or comprehensive claims or agreement negotiations process. And most recently, they can win an aboriginal title case and enter a negotiations process.

Each one of these processes takes longer than adding lands to municipal boundaries. A review of 8 First Nation parcels converted to reserve status in urban areas revealed a reasonable estimate to be at least 8.6 years[2]. The comparable average length for a municipal boundary expansion is about 9 months[3] or about 11 times shorter.

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[2] Based on 70 applications under active review (at the time), the typical urban ATR-related delay may be *at least* 7.82 years. According to a National ATR Tracking System report provided by AANDC, there were 117 urban ATR applications under active review at the time. The report includes start dates for 70 applications. The average length of time these applications have been in the ATR process is 8.57 years. If all 70 applications were approved today, the average ATR-related delay, relative to the typical MBE, could be estimated at 7.82 years.

[3] . It is common for a municipal council to be able to approve a boundary extension within six to twelve months. This estimate is from a Metro Vancouver Position Paper on the Federal Additions-to-Reserve Process, attached to the minutes of the March 2012 meeting of the Aboriginal Relations Committee, available at metrovancouver.org.

The main reason for these delays the jurisdictional complexity that results when lands are moved from provincial jurisdiction to federal jurisdiction and then converted into an Indian reserve. This involves a series of considerations related to third party interests on the lands, institutional differences, liability considerations and service agreements with the previous tax authority. Resolving these issues to facilitate moving lands into First Nation jurisdiction explains the delays. There have been several legislative and policy suggestions to reduce the time including a new First Nation land registry, tax jurisdiction based service agreements and the Indigenous Land Title legislative proposal to address third party interests and liabilities.

Hopefully, these solutions are implemented soon future because the benefits of adding lands to First Nations near or in urban areas are considerable for First Nations members and other governments. For reference purposes, we present two examples of First Nations who created urban reserves and then estimate the economic and fiscal benefits that resulted from adding lands to First Nation jurisdiction.

Muskeg Lake Cree Lake Urban Reserve Example

One of the Muskeg Lake Cree Nation's (MLCN) urban reserves, Asimakaniseekan Askiy I.R. #102A, is shown in the Google Street View image below. The reserve is located within the municipal boundaries of the City of Saskatoon.

The land was designated (for 86 years) in March 1991 and the MLCN leased (for 85 years) the land to Aspen Developments Inc. (a development company wholly owned by the MLCN). Muskeg Lake members can vote on subleases of the land.

In 1993, the City and the MLCN completed a municipal services agreement. Under the agreement, the City provides municipal services, such as garbage collection, snow removal, and fire and police protection, and direct services, such as water and sewer. The reserve is the site of a significant level of commercial investment, including the McKnight Commercial Centre.

There are three commercial facilities managed by Muskeg Lake Property Management on the urban ATR, including the McKnight Commercial Centre (35,000 sq ft of leasable area), which includes Veteran's Plaza (an office complex), Cattail I (44,000 sq ft of leasable area), and Cattail II (11,000 sq ft of leasable area). All three facilities currently have 100% occupancy rates. Primary tenants include: Federation of Sovereign Indigenous Nations (FSIN), Saskatchewan Indian Gaming Authority (SIGA), the Saskatoon Tribal Council (STC), Peace Hills Trust (PHT), Indian Gaming Regulators (IGR), Saskatchewan Indian Equity Foundation (SIEF), and Saskatchewan Indian Institute of Technologies (SIIT). In addition, there are numerous other tenants, including a medical practice, three law firms, a dry cleaner, a printer, a framing shop, a restaurant / café and catering company, a large trucking / transport company (with 80 employees), management firms, three insurance brokers, several retail stores, a computer training company, a film production company, and a travel agency.[1] In addition, in 2001, a Petro-Canada Gas Bar and Convenience Store (known as CreeWay Gas East) was established on the urban ATR.

Peter Ballantyne Cree Nation Urban Reserve Example

One of the Peter Ballantyne Cree Nation's urban reserves (PBCN), Kistapinanihk I.R. #231, is shown in the Google Street View image below. The reserve is located within the municipal boundaries of the City of Prince Albert.

[1] Muskeg Lake Cree Nation, Business, Muskeg Lake Property Management, available at http://www.muskeglake.com/business/muskeg-property-management/.
Saskatchewan: Geographic Perspectives, Bernard D. Thraves, Table 11.9 – Land use on urban reserves and additions in cities, University of Regina Press, 2007.

In 2005, Petro-Canada partnered with the PBCN. A gas station and convenience store were built and began operations in 2007. The PBCN owns and operates the gas station and convenience store, which has become one of the busiest retail locations in the city.

Benefits from Urban ATRs

In 2015, Fiscal Realities completed a study for the National Aboriginal Economic Development Board on Improving Economic Success of Urban ATRs. Among the study results were the economic and fiscal benefits generated by investment on eight urban ATRs. Economic benefits included:

- Employment Benefit – The number of jobs generated by investment on reserve, per acre of land intended for economic development purposes.
  Estimate – Based on the cases examined, the study estimated 35.9 jobs, on average, per acre of land intended for economic development purposes.

- Spending Related Economic Benefit – Increased off reserve spending, attributable to on reserve employment, per acre of land intended for economic development purposes.
  Estimate – Based on the cases examined, the study estimated $283,901 annually in additional off reserve spending per acre of First Nation land used for economic development purposes.

The study also looked at fiscal benefits, resulting from First Nation ATRs which included:

- Tax Revenue – First Nations can choose to assert local revenue jurisdiction under the authority of the First Nations Fiscal Management Act on these lands. Based on the case studies it was estimated that annual local and property tax revenues and payments in lieu or grants in lieu of taxes generated about $11,265 annually per acre.

- Service agreements – Several service agreements have been negotiated between First Nations and local governments for the provision of water, sewer and other local services. Based on the average results from these negotiations, it is estimated that approximately $5600 per acre is spent on service agreements with local governments.

- Employment Related Fiscal Benefit – The off-reserve tax base is larger owing to off reserve residents employed on each urban ATR. Some portion of those city residents will also own property off reserve and pay property taxes to the City.
  Estimate – Based on the urban ATRs examined, it was estimated that investment generated about $29,042 annually in additional municipal property tax revenue per acre of First Nation land intended for economic development purposes.

The table below summarizes the benefits from converting lands to First Nation jurisdiction near urban areas. These benefits have been converted from a "per acre basis" to a "per hectare basis."

Benefit Type	Estimated Benefit (per hectare of land intended for economic development purposes)
Employment	88.6 jobs
Spending-Related Economic Benefit	$701,534 annually
Tax Revenue	$27,837 annually
Tax Based Service Agreement	$14,475 annually
Employment-Related Fiscal Benefit	$71,764 annually

Source: National Aboriginal Economic Development, 2015– *Improving Economic Success of Urban ATRs*

The Economic Rationale and Strategy

Indigenous leaders and development economists and other academics are all asking a similar question – what is the best way to decolonize? For First Nations, the question may be more specifically about the best way to restore title and jurisdictions, but it is fundamentally about decolonization. Authors such as Hernando De Soto in the Mystery of Capital and Robinson and Acemoglu in Why Nations Fail provide an important insight into this question from developing and decolonizing countries – build an economic environment where all individuals (tribal members) can succeed. This is the goal of the First Nation strategy discussed briefly below.

Twenty year ago, two separate leakage studies were conducted for a group of Secwepemc First Nations in BC[4] and Waubetek First Nations in Ontario[5]. The BC study investigated households, governments and business and Ontario study focussed on households and governments. These studies concluded:

- Expenditure by Secwepemc households were made off reserve about 95% of the time
- The lowest Secwepemc multiplier was 1.003 and the highest was 1.04 – this led to the term bungee economics as almost every dollar invested on reserve bounced off reserve immediately
- Every dollar invested on a Secwepemc reserve generated 25₵ of taxes for other governments
- Every dollar invested on a Secwepemc reserve generated much more than a dollar off reserve
- It was estimated that one Secwepemc community contributed almost $750 million a year to the regional economy
- The Waubetek communities had lower leakages depending on their location – highest was close to 90₵ per dollar and lowest was 70₵ per dollar

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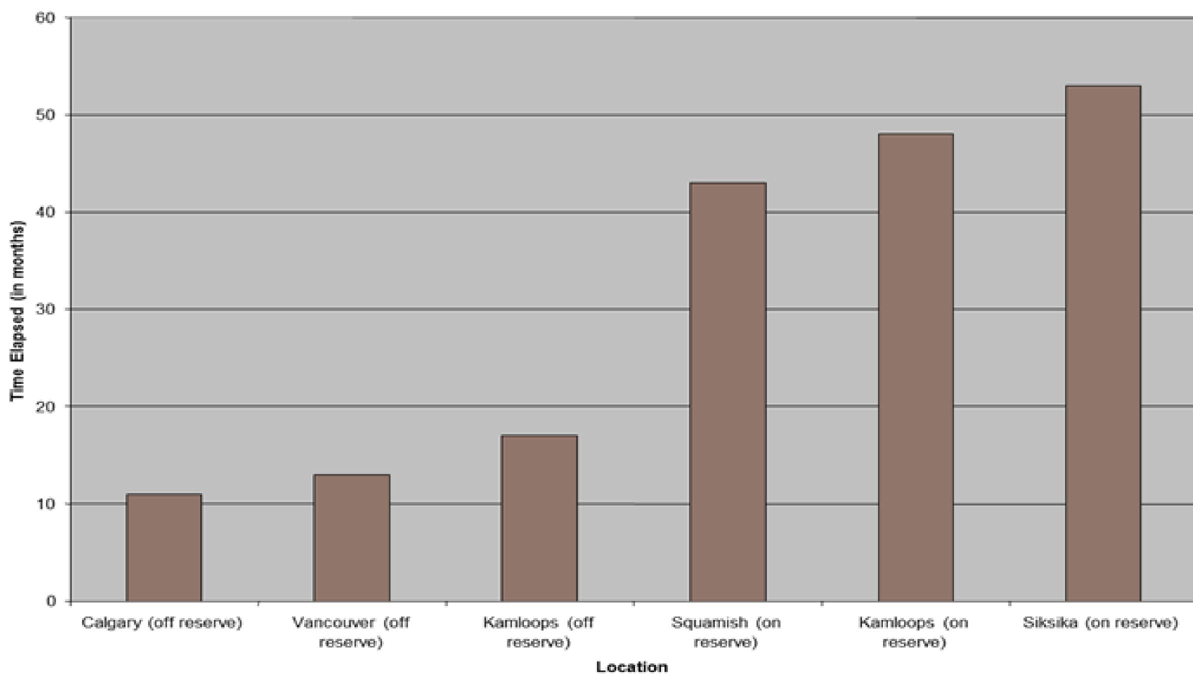
[4] See Le Dressay, PhD Dissertation, Some Economic Impacts from Settling Treaties in BC, 1996

[5] See Waubetek Leakage Study results of 14 Ontario First Nations, Waubetek Group of First Nations, 2001.

The policy conclusion for the BC study was that if there were a capital payment resulting from a treaty that it would result in a large economic benefit for off reserve residents and fiscal benefit for other governments. It would have provided little benefit to the communities. This is because it was assumed that much of that capital would be disbursed directly to members and without tax powers other governments would recoup many times their initial tax investment.

Many First Nations recognize this economic challenge and have begun to look at ways to reduce leakages. Another study conducted twenty years ago, identified why it is so hard to close the gaps between on and off reserve business presence. In 1998 a series of case studies were conducted comparing investment projects on reserve to similar ones off reserve. The results were that it took 4 to 6 times longer to complete an investment on the best First Nation lands[6].



The reasons for the higher costs of doing business were simple. Because of the Indian Act, First Nations had forgone 140 years of institutional development. They lacked the legal, fiscal, property rights and administrative framework to build business grade infrastructure and facilitate investment competitively. This result applied equally to First Nation members and non-members. Stated differently, even if an entrepreneurial First Nation member wanted to start a business, the costs of start up would likely be prohibitive. This meant fewer on reserve businesses and higher leakages.

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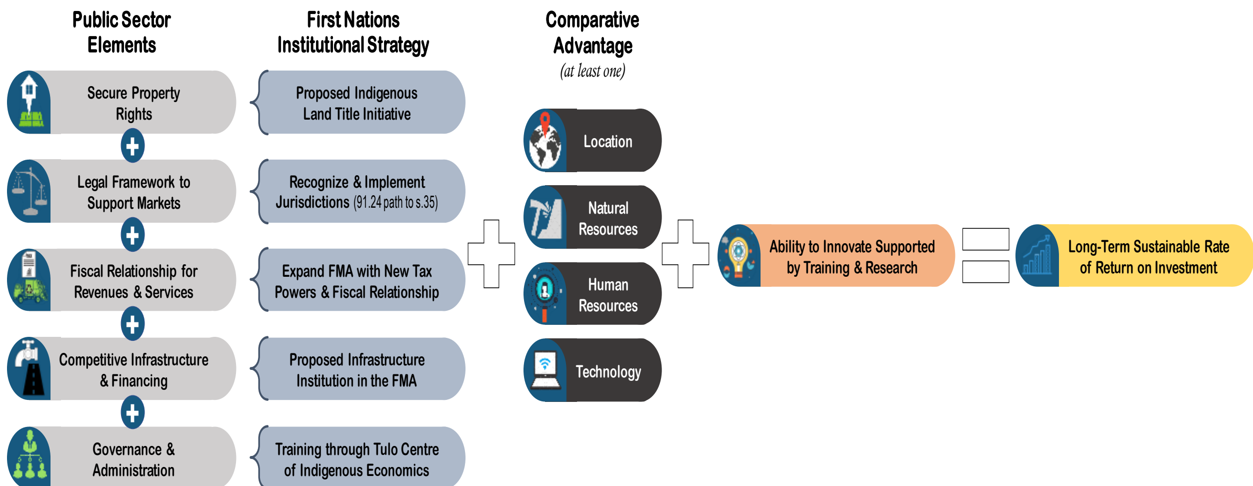
[6] See http://www.fiscalrealities.com/uploads/1/0/7/1/10716604/expanding_commercial_activity.pdf

This recognition has supported the First Nation led agenda to address the institutional gaps and improve the investment climate. As illustrated below there are two main elements of any investment climate and a third requirement for a sustainable economy. The first column contains the public-sector requirements for an investment climate. The third column presents the competitive (and sometimes comparative) advantages and investment opportunities for individuals (tribal members). If the public requirements in the first column are well designed, then individuals are more likely to successfully implement economic opportunities. Together these two columns represent a competitive investment climate. As is illustrated, if there is an innovation strategy it becomes a sustainable competitive investment climate.



The second column in this graphic presents the First Nation strategy to address these requirements. The column represents the specific initiatives that have been implemented or those that have been proposed to establish the intuitional framework for First Nation title and tax jurisdiction. The Indigenous Land Title initiatives is intended to improve property rights. The necessary legal framework is emerging from legislative recognition and restoration of First Nation jurisdiction. Tax powers are being expanded in existing legislation and a new jurisdiction based fiscal relationship is proposed. A new First Nations infrastructure institution is being advanced to build business grade infrastructure for interested communities. Finally, the Tulo Centre of Indigenous Economics[7] is being expanded to provide training for the necessary administrative capacity.

[7] The implementation and elements of this strategy is the subject of the Tulo Centre's online text book, Building a Competitive First Nation Investment Climate, http://www.tulo.ca/textbook/

The benefits from this strategy are significant to First Nations and other governments. A case study of a representative sample of 10 First Nations interested in implementing this framework for a better investment climate was recently completed. This case study has been extrapolated to 78 similar BC First Nations where comparable property assessment data was available, and these extrapolated results are reported below.

Improving the First Nation Investment Climate – 78 British Columbia First Nations Benefits - 10 Years after Implementation	
Increase in Property Values	$6,549,625,526
New Investment on First Nation	$9,012,490,196
New Investment Induced Employment	93,874
Increase in Annual Property Tax Per Year	$94,987,811
Increase in Annual Taxation for the Provision of Services Per Year	$36,643,355
Increase in Annual First Nation Goods and Services Tax Per Year	$148,845,918
New Annual Revenues for Canada	$8,249,735,865
Increase in First Nation Infrastructure Financing	$2,438,180,268
Increase in Housing Units for First Nation members	5,580
Drop in First Nation Income Assistance Beneficiaries	6,515

These results are speculative but the experience of two First Nations who have implemented many elements of this strategy is instructive. In 1996, an acre of land in the Sun Rivers Development on the Tk'emlups to Secwepemc lands cost $8000. Today that same acre would be $750,000. In 1991 an acre of land along the highway on the Westbank First Nation cost $10,000 per acre. In both cases, the First Nations used different strategies with the same objective; build a competitive investment climate based on the simple formula. In addition to dramatically increasing property values, Tkl'emlups increased quadrupled their tax revenues and Westbank revenues increased by 14 times. Westbank and Tk'emlups developments support thousands of jobs, represent over a $1.5 billion of Canada's GDP and generate over $200 million a year in tax revenues for other governments.

The First Nation Challenges to Change

If the benefits from change are so large for so many parts, why hasn't change happened more quickly? For the past forty years, First Nations, as well as various governmental actors, have sought to repeal the Indian Act and remove the Department of Indian Affairs.

During this time, there have been some important legal victories recognizing First Nation rights and title and existing aboriginal and treaty rights and inherent powers were recognized in the constitution. There have been at least four major national studies, Royal Commissions or enquiries that have resulted in numerous recommendations about how to improve outcomes by implementing First Nation jurisdiction. The United Nations Declaration on the Rights of Indigenous Peoples has been adopted and supported. Despite this progress, the Indian Act and gaps in services, infrastructure, income and social indicators remain. Some jurisdictions have been implemented but many more remain on the drawing board. Moreover, despite the recognition of aboriginal title, it has not been practically implemented. Clearly, change is hard. First Nation efforts are best summarized by Clarence Jules Sr. "you can't fix a flat tire by yelling at it." The first step to fix a flat tire or to advance a First Nation policy change is to identify all the barriers:

1. Both First Nations and other governments must have political will and determination to support proposed changes.
2. The land base for many First Nation communities is either inadequate, uneconomic or both. Changes are less likely to be economically sustainable until this challenge is addressed.
3. The fiscal powers (tax base) for almost all First Nations are insufficient to support expanded jurisdictions because there are insufficient tax revenues, inadequate economic bases or both.
4. The legislative and institutional framework to support First Nation jurisdictions has been stagnating because of 140 years of the Indian Act. There is a large legal and administrative gap to fill.
5. First Nations have been mainly focused on Indian Affairs service delivery so there are management capacity gaps to support restored jurisdictions.
6. Explicit recognition of First Nation title and tax jurisdiction requires a difficult to achieve constitutional amendment. The strategy to achieve implicit constitutional recognition of First Nation jurisdiction through federal and provincial legislation vacating their jurisdictions in favor of First Nations can be difficult to communicate.
7. Switching costs from the Indian Act and Indian Affairs are high for both First Nation members and administrations and other governments. These switching costs have to be reduced to facilitate and policy changes.
8. Any proposed change must deliver and maintain economic and other benefits to First Nation communities and members in the short term to be sustainable. Stated differently, although almost all First Nation support change, they are rightly impatient for better results.

9. First Nations are diverse and they have the right of self-determination. In the last 23 years, all efforts to impose a non-optional legislative change on First Nations have failed. Proposed changes must be optional and not universal.

Lessons from the First Nation Legislation, Taxation Institutional Strategy

The following is a list of the lessons based on a number initiatives, proposals and strategies to address each of the challenges to proposed changes. The table matches lessons and strategies to challenges.

Challenge	Lessons and Strategies
First Nation support	Leadership Identify historical-cultural connections (research) Identify economic and fiscal benefits
Other government and public support	Align interests Demonstrate economic and fiscal benefits
Inadequate land base	Provide institutional support for additions to First Nation lands opportunities
Inadequate fiscal base	Expand institutional framework to expand tax powers Focus on tax jurisdiction not revenue sharing
Restoring institutional framework	Create national institutions in legislation to support and expand jurisdictions for both small and large First Nations Base institutional design on strong research and rationale
Building administrative capacity	Accredited practical training for First Nation administrators Utilize First Nation administrative capacity to advance initiatives
Constitutional recognition	Use legislation to facilitate orderly jurisdictional transfers from other governments to First Nations
High switching costs	Use First Nation institutions to support First Nations Use First Nation institutions to replace Indian Affairs
Deliver results in short term	Focus on legislating changes (First Nation and other gov't) Improve credit rating and access to capital for communities and members Access to independent resources
Universal solutions don't work	Advance First Nation led optional legislative proposals

These lessons were gleaned from two sources – experience and reading about the experience of others. The experience was gained from legislative changes to the Indian Act, the First Nations Goods and Services Tax Act (FNGST), the First Nations Fiscal Management Act (FMA), the First Nations Lands Management Act (FNLMA) and the proposed Indigenous Land Title legislation (ILTI). Experience was also gained from the successful institutional development of the First Nations Tax Commission (FNTC), the First Nations Financial Management Board (FMB), the First Nations Finance Authority (FNFA) and the Tulo Centre of Indigenous Economics (Tulo Centre) and the failed institutional development of the First Nation Statistics Institute (FNSI). Significant original and secondary research was conducted in support of historical connections, communications, policy options and institutional and legislative design. A slightly more detailed description of the lessons contained in the table is presented below.

1. Leadership – The role of First Nation leadership in advancing change cannot be overstated. It is probably the single most important element of successfully implemented First Nation policy changes. First Nation leadership is required to assemble the necessary team of experts, manage the policy issues that always arise, obtain and maintain First Nation support, advance the proposal as required as legislation and secure parliamentary support for legislation.

2. Historical and Cultural Connections – The First Nation journey is captured in the historical time lines for taxation and title. These illustrations demonstrate pre-contact jurisdictions, policy decisions to take away title and jurisdiction and the efforts to restore them[8]. This historical and cultural research is important for three reasons. First and most importantly, it reflects that the strategy is First Nation led and inspired by the work of their ancestors and elders. This has been helpful in generating support. Second it demonstrates that these are historical (inherent) jurisdictions that are being restored. This not only supports communications but also the legal and constitutional framework to restore them. Third, it creates research methods and identifies the research sources to expand the strategy to other jurisdictions[9].

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[8] This approach is based the common story arc of popular Hollywood action movies. The hero has something taken from them. There is a strong antagonist they must overcome to regain what was lost. And in Hollywood there is a happy ending. For First Nations, there are several individual and institutional antagonists who either took away or prevented the restoration of First Nation jurisdictions. Communication products associated with this journey have been successful in gaining support for proposed initiatives.

[9] For example, recently the Chinook work t.a.k.s.i.s was discovered which meant taxes. These taxes (taksis) were used to pay for community infrastructure and lawyers to fight for title.

3. Economic and Fiscal Benefits to Members and Communities – The institutional strategy should generate economic benefits (jobs, higher income, more home wealth) to members and fiscal benefits (more tax revenues) to communities. Estimating net benefits to members and communities supports communications and generates broader political support.

4. Align interests – Leading changes to First Nation legislation and creating new institutions has often been compared to multi-dimensional chess. This is because in addition to member support it often requires aligning with the interests of other governments, industry and the public to name a few. To make it more difficult, different governments have different interests and political issues constantly shift. The First Nation strategy to align interests has included appeals to justice, improved processes and efficiencies, implementing court decisions and legislation, better relations and of course the fiscal and economic benefits to other communities discussed next. One of the more successful communication messages was that the income and employment gaps between First Nations and the rest of Canada was causing a drag on GDP and costing billions because poverty imposes higher costs on government. It was estimated that Canada was losing $27 billion a year in GDP because of First Nation poverty. Strategies to reduce that poverty benefit everyone.

5. Fiscal-Economic Benefits to Other Communities – There is a strong interdependence between First Nations and their regional economies. One of the results of the initial leakage study was that the surrounding communities receive largest fiscal and economic benefit from First Nation economic growth. A subsequent study found that the surrounding communities and governments gained almost double the fiscal benefit and economic benefits from First Nation economic development near them. As a result, at least one non-First Nation community is now actively pursuing First Nations to establish their jurisdiction near this city because of the significant economic and fiscal benefits it would generate for them.

6. Adding lands to First Nation jurisdiction – The most effective strategy to improve the First Nation land base has been to add lands to their jurisdiction near economic opportunities. Several First Nations (especially in Saskatchewan and Manitoba) are adding lands that are in or near existing cities. These First Nations are supporting residential, commercial and industrial development on these lands. As these First Nations implement tax jurisdictions they are realizing even more benefits and opportunities for their members and as mentioned previously, also for the regional economies. The institutional-legislative approach helps these First Nations implement their new jurisdictions, negotiate service agreements with local governments and build and finance the necessary infrastructure to support land development projects.

7. Expand First Nation Tax Powers – The FMA has helped generate over $1 billion in tax revenues for First Nations and over $1 billion in new investment. Its success in addressing issues like tax rates, expenditures, infrastructure financing and taxpayer relations has cleared the path for proposals to expand the First Nation tax base. This has included proposals related to the FNGST, tobacco taxation and most recently taxation on cannabis.

8. Tax Jurisdiction vs Revenue Sharing – Because of court decisions recognizing First Nation title and rights to resources there have been proposals from other governments to share resource revenues with First Nations. Several First Nations are supporting a counter proposal to revenue sharing that extend First Nation tax powers off reserve into their traditional territories with the Aboriginal Resource Tax (ART). The ART is considered superior to revenue sharing because it is First Nation jurisdiction as opposed to another government. This means revenues would be more stable and secure and less impacted by other government policy changes.

9. Build National and other First Nation institutions – The FMA directly created the FNTC, FMB and FNFA and for capacity development purposes the Tulo Centre. These national institutions have helped interested First Nations implement their jurisdictions by providing samples laws, standards, policies, software systems, the First Nations Gazette and accredited training. This means both large and small First Nations can implement taxation and get access to cheaper capital. National institutions have meant that participating First Nations have an A2 credit rating, so they can finance their infrastructure at rates comparable to the government of Canada.

10. Research and Rationales – The successful First Nation legislative or institutional changes or proposals almost always proceed along the same continuum – research, policy options, business case (net benefits), legislative proposal, institutional creation (where necessary) and jurisdictional transfer and implementation. The path and time for every proposed change is unique. Some have taken months and other initiatives years. It has been important, however, to complete work on each part of the continuum as soon as possible. In this way when opportunities occur, legislation and institutions can be advanced quickly. A dedicated research facility to support the institutional agenda has been instrumental in its advancement.

11. Local administrative capacity – All First Nation jurisdictions are implemented locally by local administrators. In 2008 the Tulo Centre was established to help interested First Nation local administrators implement their FMA jurisdictions. This required the development of original curriculum, courses, a text book and programs. Over 200 students from over 80 First Nations have attended Tulo Centre courses and many have graduated from one of the two (and soon to be three) programs. This training is supported by original software, sample laws and processes to administer taxation and other jurisdictions. The training and institutional framework have created a stronger First Nation tax system with few disputes and greater member and investor confidence. Improved administrative capacity and systems has also made it easier for First Nations to propose jurisdictional expansion. Perhaps most importantly it has created a cadre of First Nation administrative experts that can advance jurisdictions within their communities and protect and expand these jurisdictions with other governments.

12. Legislation restores and protects jurisdiction – Proposed changes must be codified in either federal or provincial (or both) legislation. This legislative process is important for three reasons. First, it provides an orderly process for other governments to vacate a field in favor of First Nations. This provides the legal and jurisdictional space for the First Nation government to occupy with their own laws. Second, it provides a path to recognize First Nation governments into the federation. It provides the theoretical path to constitutional protection of First Nation jurisdictions. Third, it protects and make First Nation jurisdictions more permanent and stable. Reversing the process to eliminate First Nation jurisdiction would be difficult legally and politically for other governments.

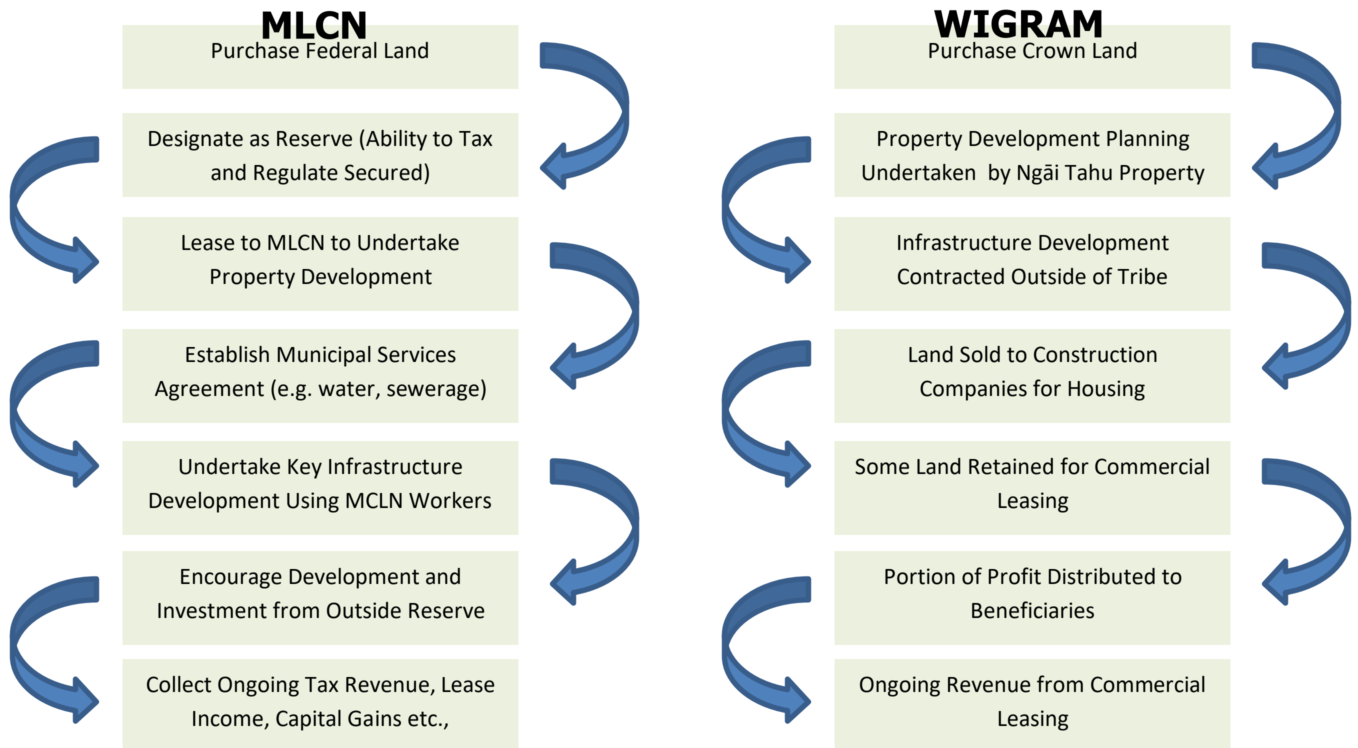
13. First Nation Institutions are the bridge – There are high switching costs moving from the Indian Act and the Department of Indian Affairs to First Nation jurisdiction. These costs are high for other governments, First Nations, members, the public and investors. First Nations institutions have reduced these switching costs by providing sample laws, systems, templates, administrative capacity support and training. As a result, they have helped to implement, protect and expand jurisdiction relatively quickly. They have also provided a means to help First Nation move away from the Indian Act and dismantle the Department of Indian Affairs. For example, a recent First Nation proposal to establish the First Nations Infrastructure Institute would effectively replace a significant section of Indian Affairs with an institution focussed on helping First Nation implement this jurisdiction.

14. Maintain Momentum – This refers to three important lessons. Focus energy and political support on legislative changes because they create the permanent legal framework for implementing First Nation jurisdiction. Second, deliver quick beneficial results to communities and members. The FMA established a First Nation credit rating. This meant the interest rate on loans to First Nations dropped by over 500 basis points (5%) for most communities. The ILTI initiative could eliminate the current First Nation housing discount of 88% versus comparable properties off reserve. Third, grow and use independent revenues to advance initiatives. Tax revenues allow First Nation communities to advance their agenda, their way and on their time line. Writing proposals and raising funds from government and other parties has slowed the First Nation institutional agenda.

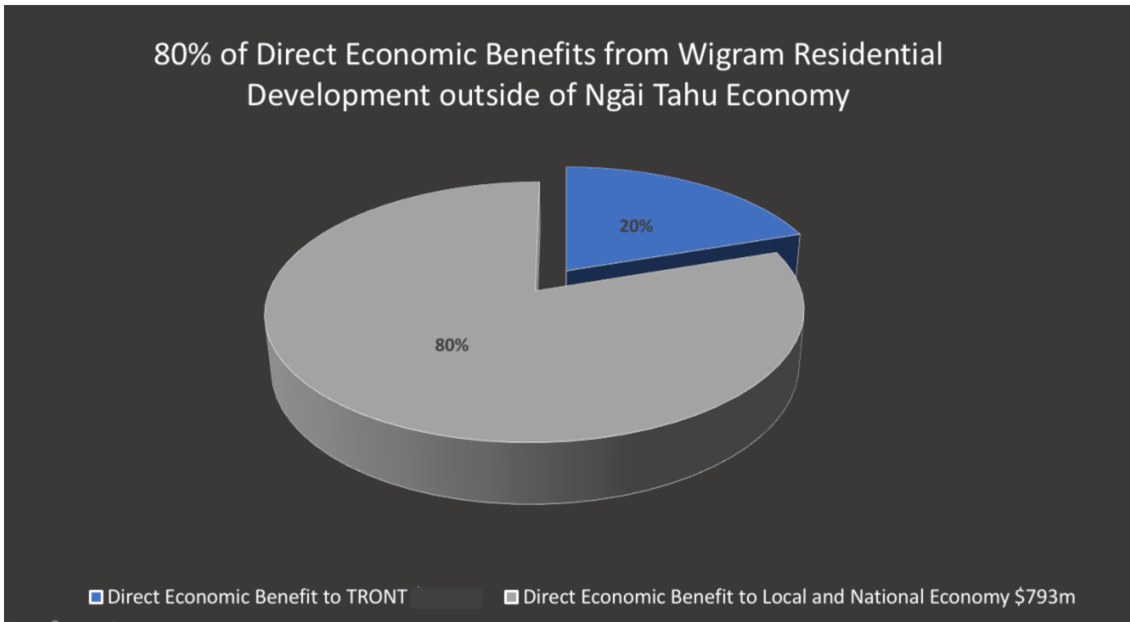
15. Optional – All proposed changes must respect the right of self-determination. Proposed changes must be presented as option so that communities can choose when and if they wish to use them. It also gives communities time to go through their own processes to obtain support for changes. All the successful legislative and institutional strategies have been optional in nature. This means that the legislative and institutional framework only applies with a community's formal consent. Any proposed change that was to apply universally to all communities has been politically rejected by First Nations.

A COMPARISON BETWEEN THE WIGRAM SKIES RESIDENTIAL DEVELOPMENT AND THE MUSKEG LAKE CREE NATION DEVELOPMENT[i]

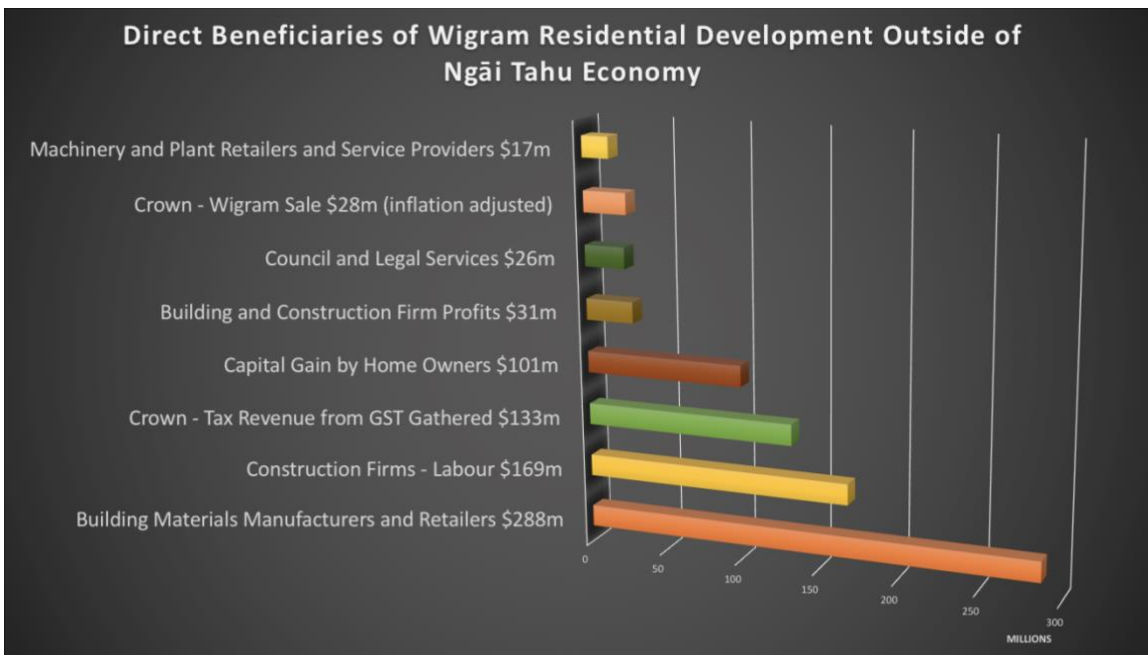
The Wigram Skies development is a Ngāi Tahu residential and commercial property project that may be compared and contrasted with the MLCN urban reserve development. This comparison is intended to provide insight into the differences between the two and how lessons learned from the latter could be applied by Ngāi Tahu. The processes applied in the development of each of each is outlined in the diagrams below:



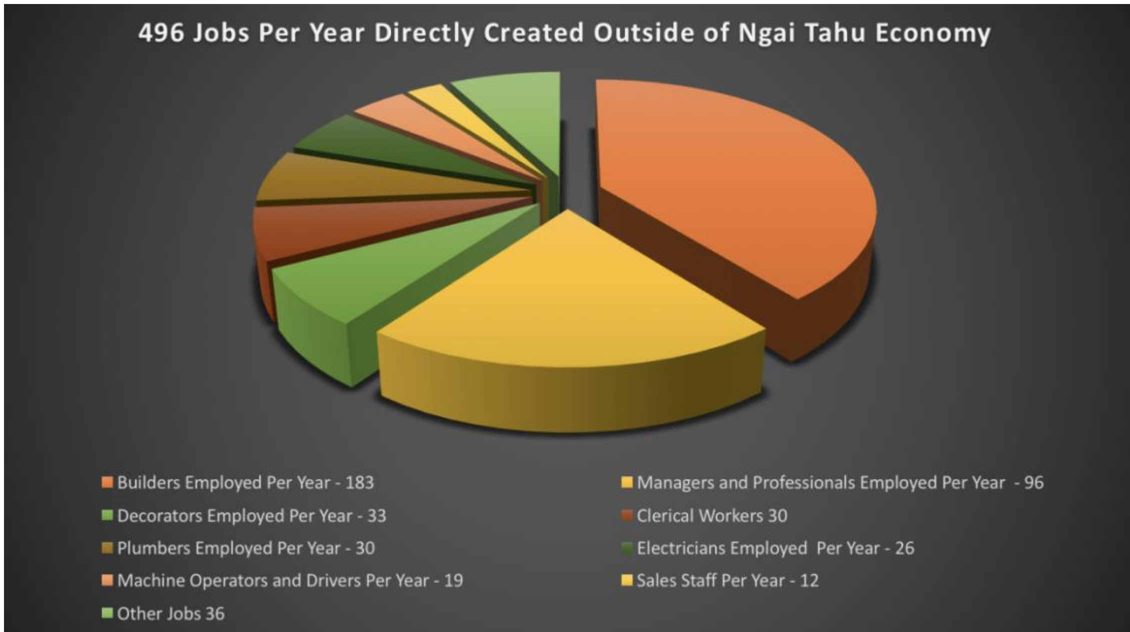
There are some stark differences between the two processes. Although the Wigram Skies development generated a significant economic income to Ngāi Tahu it did not gain as much economic benefit as the Cree approach both because it only focused on one element of the development value chain and because of the institutional restrictions only generated a limited duration income. Analysis shows that Ngāi Tahu obtained roughly 20% of the total economic benefits from the Wigram Skies residential development, but did not see the same 'wraparound' income that the MLCN development has been able to realize.



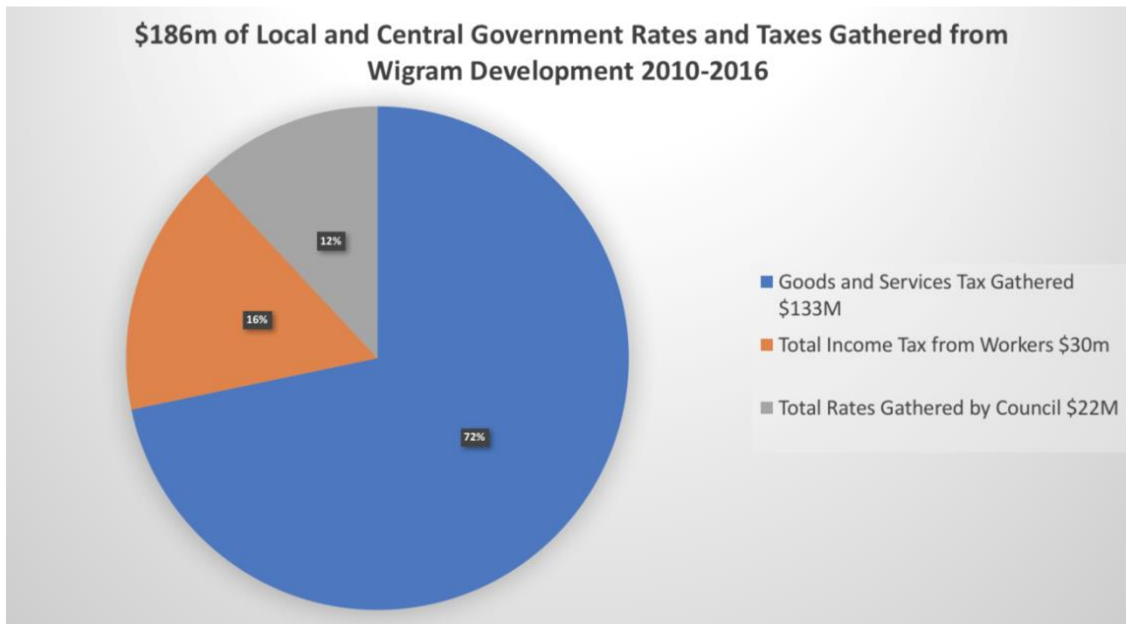
This is demonstrated in the following graph, which shows that the primary economic benefit from the development went to – in descending profit order – building material manufacturers and retailers, construction firm labour, the Crown tax revenue, homeowners, construction firm profits, council and legal services, and machine operators.



This raises the question regarding how more of these economic benefits could have been captured by Ngāi Tahu through a variety of measures. For example, in regards to direct employment some of the $170 million spent on construction labour could been capture. Ngāi Tahu is in a position where measures could be developed for ensuring that at least some of the jobs generated by the development were explicitly targeted toward employing Ngāi Tahu and Māori. The graph below shows the number of jobs created by the development.



In addition, the Wigram Residential development generated, and continues to generate significant tax and rates revenue for local and central government. This is illustrated in the graph below:



Applying MLCN lessons: The Ngāi Tahu scenario

While the following is hypothetical it is insightful to try to apply the MLCN lessons to the Ngāi Tahu context. The overarching process could follow these steps:

1. Ngāi Tahu negotiate with the Crown on the creation of a new form of customary title.
2. Purchase land and convert it to this new customary title, turning it into a semi-autonomous zone akin to a reserve with title and tax jurisdiction.
3. Negotiate with surrounding jurisdictional body regarding service provision.
4. Decide what form of title land within a development will take.
5. Ensure Ngāi Tahu are engaged in the building process.
6. Make sure Ngāi Tahu are involved in the commercial district.
7. Help Ngāi Tahu members purchase housing.

In this Ngai Tahu scenario the most obvious route through which a semi-autonomous zone could be created would be to return the land to Native title, or changes to land title under the Ahu Whenua Māori Act. Obviously, any contemporary arrangement would need to be fully recognized by the settler state with a title and relevant legislation that delineated the rights and responsibilities accorded to that title. Similar barriers to those faced by First Nations – third party interests on the lands, institutional differences, liability considerations and service agreements with the previous tax authority – would need to be overcome but these are not insurmountable and may actually be easier to negotiate in a unitary regime once the initial resistance has been.

Gaining government and public support for this would be difficult, given the history of New Zealand explained in the background section of this paper, however the strong success of the Treaty settlement process and the new government's impending tax review suggest that the time may be right. Furthermore the institutional capacity of TRoNT and the relationship developed with the Crown during negotiations and subsequent dealings suggest that there would be less friction and more common ground between parties. There would certainly still remain many issues, particularly regarding liability considerations and service agreements, but these are all negotiable issues that have clear domestic and international precedents that would help guide deliberation. With regard to service provision there would need to be clear legislation ensuring that the three main dangers – cost shifting, raising the bar and regulatory creep – to local governments do not impact Ngai Tahu.

Success would see Ngai Tahu turning a defined area of land into a form of customary title that enabled both internal land title and tax jurisdiction, achieving a degree of mana motuhake. This offers Ngai Tahu the opportunity to decide what form of title they will create within this semi-autonomous zone. One possibility is that TRoNT create fee simple titles that are sold on the open market just as any other land in New Zealand is traded. However, while Ngai Tahu would still retain the de jure right no matter who bought the land this option also has the greatest potential for increasing loss of de facto authority as in the worst case a single non-Ngai Tahu buyer could eventually purchase all the land. A second option would retain ownership of the land and offer long-term leasehold tenure for sites, where leaseholders own any improvements made. A third option would be for Ngai Tahu to create a new form of property title that blended collective and individual ownership and usage rights in a manner that had a cultural match with pre-contact forms but was also practical in the contemporary context. An example of this could be fee simple residential land with covenants controlling ownership and usage, while commercial areas may be offered as leasehold to Ngāi Tahu owned and run businesses. A key part of gaining taxation authority would be the provision of other core services such as sewage and water and as noted above the ability to develop some form of internal policing is not out of the question - examples already exist in the case of Māori wardens and the marae-based youth courts.

With regard to taxation it seems uncontentious that Ngai Tahu would be able to gain the capacity to charge rates. There are already provisions for this to occur within the Resource Management Act 1991. Across NZ local governments in 2016, 10% of total revenue was spent on roading, 6% on water supply, 8% on waste water, 5% on refuse. The other 69% of expenditure is not directly relevant to basic service provision. Although much of this expenditure is targeted toward meeting central government demands in regard to planning, consultation, permitting, and consenting, increased control of these processes would permit developments that would align with Ngāi Tahu cultural interests. Furthermore, other current council investments into arts, recreation, and parks could be invested into Ngāi Tahu centric approaches to these areas.

Additionally, semi-autonomous zones could be designated as an eco-developments and built to be largely hermetic with regard to various services. By building an 'off-the-grid' development that had environmentally sustainable water, sewage and power capacity, Ngai Tahu could avoid simply paying the surrounding jurisdictional body to connect with their services whilst also embodying the core value of kaitiakitanga. This would enable a premium rates charge that would cover the provision of services. There is also the chance that they could capture some of the GST take. Currently businesses exporting goods and services from New Zealand are entitled to "zero-rate" their products, meaning that effectively, they charge GST at 0%. The semi-autonomous zone could be legislated as an export with regard to goods and services, with Ngai Tahu able to collect GST on any goods or services provided within their zone.

The next aspect of this scenario involves the actual development of the semi-autonomous zone, providing one of the key mechanisms of preventing leakage. While Ngai Tahu would not be able to provide all the tradespeople required to build the necessary infrastructure and housing they could ensure that as many of the firms working on the construction had some form of affiliation. The ideal outcome would be that all the firms involved were both owned and staffed by Ngai Tahu members so that the wider community were involved in preventing leakage but while this may not be possible in the short term ways of reducing leakage are available. There are several options available, which could be used in conjunction. The simplest would be for TRoNT to use building companies owned and/or staffed by Ngai Tahu members as determined through the already operating Te Pou Here tool, though this is an ad hoc solution that requires a relatively high amount of insight and oversight. Another option would be for Ngai Tahu Property to purchase existing firms, or at least a stake in them, who they could then use for the development. This option not only insures that the profit from the construction goes back to the tribe but also provides the ability for Ngai Tahu to employ tribe members. Ngai Tahu already have the He Toki trade training scheme developed in conjunction with Christchurch Polytechnic Institute of Technology and this could provide a pool of future employees. Currently TRoNT is partnered with building industry leaders to provide work experience for the graduates but if they owned their own firms then the multiplier effect would benefit both the NTHC and wider tribal members. While TRoNT see the current situation as creating "a talent pipeline for Māori", ensuring they become employed within Ngai Tahu businesses would go beyond a 'talent pipeline', providing a 'fiscal pipeline' to prevent 'bungee economics'.

The next aspect of this scenario would see Ngai Tahu set up a number of commercial businesses and/or encourage Ngai Tahu owned business into the semi-autonomous zone, helping to further reduce leakage. The best option would probably involve a mixture of direct ownership by TRoNT along with encouraging tribal members to open their own businesses. To encourage businesses to move out to the semi-autonomous zone Ngai Tahu could use its control over title and taxation to provide an array of inducements, particularly if it was able to gain GST control. The most obvious types of business would be those necessary to the zone's ongoing operations, including a supermarket, medical centre, gym, restaurants, appliance store, hairdressers, etc. The Wigram Skies development currently has many of these businesses operating from its commercial sector yet Ngai Tahu receives no ongoing income from them, aside from lease income. The various businesses could serve as work experience for tribal members who have gone through Ngāi Tahu affiliated training schemes.

The final step of this scenario would be Ngāi Tahu helping members to purchase properties within the development. There are a number of mechanisms available to them that could be utilized. First, home ownership could be encouraged through the existing Whai Rawa scheme. The inducement could be that those who are able to save their deposit within the scheme get an extra discount on the home and/or land package. A second alternative, one that could also work in conjunction with the first, is that Ngāi Tahu expand the Whai Rawa scheme to provide mortgages for tribal members at lower rates than the banks. Finally, Ngāi Tahu could act as a collective guarantor for tribal members wanting a mortgage. With the first two options, the tribe would see the multiplier effect at its optimal as not only would the individual members secure the capital gains from their own properties but the tribe would be able to retain the interest on the mortgages.

CONCLUSIONS

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[i] The data provide on the Wigram Skies development in this paper only includes the **residential component** of the development, not the commercial districts. The commercial components were excluded due to data access problems The scale of the Wigram Skies development was determined from data provided on the http://wigramskies.co.nz website.
The value of the Wigram Skies residential development was determined using Quotable Value valuations as of August 30, 2016 using a randomized sample of 150 properties with a sampling accuracy of between + or – 10%.
The breakdown of economic activity within the Wigram Skies residential development was calculated using industry averages obtained from the Building Research Association of New Zealand (BRANZ).
The employment generated by the development was calculated using BRANZ and PayScale data.
The tax generated from the development was calculated using IRD NZ calculators.
The rates generated from the development were calculated using the Christchurch City Council rates calculator.
Inflation rates (the CPI) were determined using the Reserve Bank of New Zealand inflation calculator.
Home value inflation was calculated using the QV calculator.