

BREIFING

To: Chief Henderson and Council, Sagkeeng First Nation
From: John Harvie and Kelly Olson, Myers LLP
Date: June 6, 2018
Re: Kapyong Barracks Land Transfer

Background

In 2001, the Department of National Defence announced it was closing the Kapyong Barracks, an armed forces based located on Kenaston Avenue in the City of Winnipeg. This 160 acre property is held by the Department of National Defence. The Department of National Defence initiated a process of attempting to dispose of (sell) the land to Canada Land Company Limited, a federal non-agent corporation that disposes of property for the federal government to third parties.

When Canada approved of the transfer of the Kapyong Barracks from the Department of National Defence to Canada Land Company Limited in 2007, the Treaty 1 First Nations¹ brought forward an application for judicial review in the Federal Court of Canada alleging that the Crown had failed to fulfill its duty to consult the Treaty 1 First Nations by approving the sale of the Kapyong Barracks, federal property in Treaty No. 1 territory, without consultation. After many years in the courts, in August 2015 the Federal Court of Appeal held that the Crown had not fulfilled its duty to consult in relation to the sale of the Kapyong Barracks property. The duty to consult was found to be owed to Long Plain First Nation, Peguis First Nation, Roseau River Anishinabe First Nation and Swan Lake First Nation.

In order to resolve the Kapyong Barracks dispute after the Federal Court of Appeal decision, Canada proposed that a portion of the Kapyong Barracks could be transferred to the seven Treaty 1 First Nations to be held jointly as reserve. Since Canada's initial offer, the Treaty 1 First Nations and Canada have met regularly to negotiate the terms of an agreement to transfer the Kapyong Barracks to the Treaty 1 First Nations.

Agreement in Principle, April 11, 2018

The Treaty 1 First Nations and the Department of National Defence reached an agreement in principle on April 11, 2018 ("AIP") on the terms of the transfer of the Kapyong Barracks. The

¹ Treaty No. 1 was signed by seven (7) Manitoba First Nations, including Sagkeeng First Nation: Brokenhead Ojibway Nation, Long Plain First Nation, Peguis First Nation, Roseau River Anishinabe First Nation, Sagkeeng First Nation, Sandy Bay Ojibway First Nation and Swan Lake First Nation (Treaty 1 First Nations). It should be noted that Brokenhead Ojibway Nation engaged the dispute resolution provision under the Manitoba Treaty Land Entitlement Framework Agreement, but was not a party to the Federal Court litigation.

AIP is a high level agreement between the Department of National Defence and the Treaty 1 First Nations setting out the terms to be negotiated as part of the Comprehensive Settlement Agreement, which will include the specific details of the transfer. The key features of the AIP include:

- The Treaty 1 First Nations will receive 68% of the land at Kapyong Barracks;
- The Treaty 1 First Nations will jointly hold the land as reserve;
- Canada will pay the costs for all required demolition and remediation of the land;
- The Treaty 1 First Nations will negotiate a Municipal Development and Services Agreement with the City of Winnipeg;
- Canada will work to explore options for Treaty 1 members to receive tax benefits when working on the Kapyong Barracks prior to reserve creation;
- Canada will cover a portion of the costs of negotiating the AIP and of negotiating and implementing the Comprehensive Settlement Agreement; and
- Canada and the Treaty 1 First Nations committed to working in good faith to complete the Comprehensive Settlement Agreement.

Going Forward

The legal counsel for the Treaty 1 First Nations and the Department of National Defence are now working to conclude the necessary agreements to allow the Kapyong Barracks transfer to proceed. The following are areas of focus for the Treaty 1 First Nations:

- **Treaty 1 Governance:** It is critical to have a Treaty 1 governance structure and agreement in place to make decisions on the use and development of the lands owned jointly by seven (7) First Nations. Treaty 1 governance will be based on the principles of unanimity and equality of the Treaty 1 First Nations.
- **Comprehensive Settlement Agreement and Reserve Creation:** These Comprehensive Settlement Agreement will set out the terms to provide for an efficient and timely transfer of the Kapyong Barracks to the Treaty 1 First Nations.
- **Municipal Development Services Agreement:** An agreement with the City of Winnipeg for the provision of utilities and services will be critical to a successful development of the Kapyong Barracks land. The lands will be reserve and outside the jurisdiction of the City of Winnipeg, therefore it is necessary to reach an understanding between the parties prior to reserve creation.
- **Development and Planning:** The Treaty 1 First Nations will undertake a planning and development process for their Kapyong Barracks land. This will be a key piece in creating a successful result for the Kapyong Barracks.

The Kapyong Barracks provides a significant long-term opportunity for Sagkeeng First Nation. A successful development of the Kapyong Barracks will result in economic benefits for the First Nation and employment opportunities for Sagkeeng First Nation members.