

Managing Your Own Affairs	Community Management Series	
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Incorporation

Definition

Incorporation is the transformation of a Community Council into a legal entity under *The Northern Affairs Act*.

Comment

Incorporation is the final stage in the legal development of local government under *The Northern Affairs Act*. It involves the creation of a separate legal entity, similar to a municipality, by a Minister's regulation, including the incorporation regulation.

Community Concerns

Benefits and Opportunities

1. An incorporated Northern Affairs community has the authority and the opportunity to sustain its future, ensuring that it meets the needs of the present without compromising the ability of future generations to meet their own needs.
2. An incorporated community operates independently within the powers and responsibilities authorized by *The Northern Affairs Act* and can tailor future development and services for its own needs.
3. An incorporated community can examine all aspects of community life in an integrated way, considering the whole community.
 - Economic - The aim is to stimulate business, generate wealth and help everyone find productive work. Sustainable economic development includes small business, new ideas, co-operatives, credit unions, community enterprise, partnerships, encouraging entrepreneurs and doing the work that needs to be done locally. Economic growth is not sustainable when people's welfare is jeopardized or environmental limits are exceeded.
 - Social - The aim is to ensure a quality of life for everyone living in the community. A healthy community, for example, is based on adequate housing, education, health care and recreation facilities. Equally important are the activities, services and

relationships supporting spiritual, cultural and emotional needs, both individually and collectively.

- Environmental - The aim is to manage natural resources and protect the physical environment, so that future generations will not be denied the benefits and pleasures of a healthy, diverse ecosystem.
- Organizational - The aim is to find new ways of working together and make wise decisions. Organizational development is based on equal opportunity, strong leadership, democratic principles and increasing citizen involvement.

NOTE:

One of the main thrusts of the department over the years has been to develop the organizational structure of Northern Affairs communities. Incorporation will enable communities to work on the other three areas (economic, social and environmental) to complete the holistic approach.

4. An incorporated community has access to funding arrangements, providing the basis for long-term, sustainable operations, a maintenance budget and:

<u>Enhanced Support</u>	<u>Amount/Time Period</u>
Insurance Costs	Based on initial quote per year
Administrative Supplement on Incorporation	\$10.0 per year (unless population under 100, then \$5.0 per year)
Legal Costs	\$5.0 per year
AMM Membership Fees	\$0.25 per year
Economic Development	\$25.0 per year for three years
Infrastructure Audit	Based on initial quote per year
Staff Training	\$2.0 South or \$3.0 North per year for three years
Consultant Fee	\$20.0 per year for three years
Survey Requirements (to facilitate infrastructure transfer)	Actual one time cost
Infrastructure Upgrades (to bring existing infrastructure up to industry standard)	One time cost

5. Council can obtain capital resources through the Capital Approval Process. In addition, an incorporated community may apply directly to other departments for funding under those departments' municipal support programs.

Responsibilities

1. The council of an incorporated community continues to be responsible to the community residents for the achievements of the community.
2. Each council shall remit all reports requested by the Minister as outlined in *The Northern Affairs Act*, including but not limited to the following:
 - Management plan by January 31 as per section 142(1) consisting of:
 - an operating budget
 - a capital budget
 - a five year capital expenditure program; and
 - any other component described by the minister.
 - Year-end financial statement before April 30.
3. A minimum of a “qualified” audit status must be maintained. A copy of the annual financial audit report is to be sent to the Minister through the regional office by August 31 or within 30 days of receiving it from the audit firm, whichever is earlier.

Recommended Community Incorporation Criteria

Community Base Criteria

Population of 75, plus or minus 10% residents (“residents” as defined in section 82 of *The Northern Affairs Act*). Population figure used will be the latest official census.

Administrative Ability

Competent administration of local affairs is a key component for incorporation.

The requirements are:

1. Designation as a community for at least 2 years.
2. Demonstrated management and decision-making skills, shown by having at least two years of qualified financial audit status or better, indicating that proper accounting principles have been followed.
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- Previous infrastructure audit and financial audit deficiencies corrected within six months from date of notice.
- Sufficiently trained administrative staff, or a plan in place to ensure staff are trained to appropriate qualifications.
- Balanced operation and maintenance budgets. Communities that experienced deficits in the past three years must have recovered the deficit in a two-year period.
- Be prepared to establish by-laws covering council organization, procedures, financial procedures and validation of existing by-laws.
- Have in place staff supervision and performance review procedures.

Program Delivery Capability

1. Proven record of operating community services, i.e. fire and emergency, constable and recreation, based on achieving community-set performance goals.
2. Developed and maintained infrastructure and municipal services in the community.
 - Public works/water and wastewater employees trained to operate and maintain the existing infrastructure according to regulations.
 - Planned, estimated, tendered and completed capital projects within 5% of the estimated costs and within estimated time frames.
3. Demonstrate the intent to continue the development process by:
 - Establishing community development plan and zoning by-law within two years of incorporation, if not already in place; and
 - establish a fire protection program [Section 59(1) of the Act].

Departments Role

With the community council taking on more fully the role of a local authority in the community, the role of the Department of Aboriginal and Northern Affairs may be outlined as follows:

Advice and Consultation

1. The council may consult with the department about administrative, financial

management, accounting, organization and operational activities. This advice may be provided at no cost to the community.

2. The council may contract with the department for provision of specific services, such as tax administration, upon terms that both agree to, while the council develops its own resources to operate that service.
3. The department may provide technical advice, including standards, relating to any services, programs or projects undertaken by the council.
4. The department may provide advice in the development of council policies to ensure that they do not contravene government legislation or policies.

Provision of Financial Support

The department will provide funds in each fiscal year (April 1 to March 31), subject to an appropriation from the legislature, in amounts approved for operations and maintenance (O&M) and replacement reserve funds.

Powers of an Incorporated Community Council

An incorporated community council has powers granted to it under Part 3 of *The Northern Affairs Act*. These include many of the powers granted to municipalities. Once a corporation has been created, it is a legal entity separate and distinct from the Minister. Accordingly, an incorporated community council does not merely advise the Minister, but is in a position to make its own decisions.

The powers of an incorporated community council include:

When community is a corporation

- 1 A community that has been incorporated under this *Act* is a corporation and, subject to this *Act*, has the rights and is subject to the liabilities of a corporation and may exercise its powers for community purposes.

General powers

- 2 Without limiting the generality of subsection (1), an incorporated community may for its purposes do the following:
 - a) acquire, hold, mortgage and dispose of land, improvements and personal property, or an interest in land, improvements and personal property;
 - b) construct, operate, repair, improve and maintain works and improvements;

- c) acquire, establish, maintain and operate services, facilities and utilities;
- d) use community equipment, materials and labour to carry out private works on private property.

e) **Power to acquire property**

The power of a community referred to in clause 47(2)(a) of *The Northern Affairs Act* to acquire land, improvements and personal property includes:

- acquisition by purchase, lease, gift or otherwise, on any terms or conditions acceptable to the council;
- acquisition for any purpose, including resale;
- acquisition of options on land; and
- acquisition of land and improvements outside the community.

f) **Exercising power to mortgage**

The power of a community referred to in clause 47(2)(a) of *The Northern Affairs Act* to mortgage land includes:

- subject to the approval of the minister, mortgaging land as security for part of the purchase price or for any other purpose; and
- accepting and registering a mortgage on land sold by it as security for the whole or part of the purchase price.

g) **Powers respecting works, services, utilities**

A community exercising powers in the nature of those referred to in clauses 47(2)(b), (c) and (d) of *The Northern Affairs Act* may set terms and conditions in respect to users, including:

- setting the rates or amounts of deposits, fees and other charges, and charging and collecting them;
- providing for a right of entry onto private property to determine compliance with other terms and conditions, to determine the amount of deposits, fees or other charges, or to disconnect a service; and
- discontinuing or disconnecting a service and refusing to provide the service to users who fail to comply with the terms and conditions.

h) General authority re: agreements

An incorporated community may enter into agreements with the Government of Manitoba or the Government of Canada, or an agency of either of those governments, with a band as defined in the *Indian Act* (Canada), with a local authority or another community, or with any person

- to obtain property or services required for the operations of the community;
- to provide property or services in the community or outside the community; or
- to do any of those things jointly with the other parties to the agreements.

i) Expropriation for community purpose

Subject to the approval of the minister, a community may, by expropriation in accordance with *The Expropriation Act*, acquire land and improvements that the council considers necessary or advisable for a community purpose.

Authority to enter upon land

A council may, for the purpose of determining whether to expropriate, authorize an employee or other person to enter upon land to conduct surveys, appraisals and tests, and a person so authorized may enter the land for that purpose.

j) Acquire land in a municipality

Where a community acquires land in a municipality, the land remains in all respects subject to the jurisdiction of the municipality in which the land is situated unless the community and the municipality otherwise agree.

A community may not assert any of the following in respect of its dealings with a person, unless the person has or ought to have knowledge to the contrary:

- a) that the community did not follow its own procedures;
- b) that a person held out by the community as having the authority to carry out certain powers or duties was not authorized to carry them out;
- c) that a document that is issued by an employee who has the authority to issue it is not valid or genuine.

k) Encouraging economic development

A council may encourage economic development in any manner it considers appropriate and, for that purpose, may enter into an agreement with a person, with an agency of the Government of Manitoba or the Government of Canada, or with another community, including a community in another province.

l) **Strategic plan**

A council may adopt a strategic plan for economic development in the community.

m) **Condition of grant**

A council may make a grant for the purpose of economic development in the community, but the grant must not be used directly or indirectly to reduce the amount of community or school taxes payable to the community or to reimburse a person for community or school taxes that are paid or payable to the community.

n) **Tax sharing agreements**

A community may enter into an agreement with another community or a municipality to share taxes or grants in lieu of taxes paid or payable to them or any of them.

o) **Power to make grants**

A council may make a grant to or otherwise assist

- a charitable or non-profit organization, association or corporation;
- another community; or
- a municipality or local authority;

If in its opinion the purpose for which the grant is made is in the interest or to advantage of the community or its residents.

- a council may make a grant under this section even though only a part of the community or only some of the residents may benefit from the grant.
- a council may make a grant under this section even though the recipient, or any of its facilities, programs or activities, is primarily or solely located or carried on outside the community, if the residents of the community, or some of them, will or could benefit from the grant.
- a community may enter into an agreement with a community or regional development corporation for the making of a grant to the community or regional development corporation, but such an agreement must not provide for
 - a) a grant to be made after the council's term of office expires; or
 - b) any renewal or continuation of the agreement by reason of the failure of a party to give notice.

The Process of Incorporation

Overview

To transform your existing community into an incorporated community, a streamlined process is provided. The process involves the following basic steps:

1. A council passes a resolution requesting a change in corporate status, of the community from unincorporated to incorporated.
2. Any change in a community's corporate status must be initiated by a proposal either by council or by the Minister.
3. The proposal can be developed, with the assistance of departmental staff, and submitted to the Minister (through the Regional Office).
4. The Minister must refer the matter to the Northern Manitoba Community Consultation Board. (The Board)
5. The Board must provide a copy of the proposal to the community.
6. The Community must post notice of the proposal received.
7. The Board must hold at least one public meeting concerning the proposal.
8. The Board must provide a report to the Minister as outlined in Section 21(2) of *The Northern Affairs Act*:

Content of report

21(2) The board's report must contain

- a) a summary of the public consultations that were held, including the dates and locations of the public meetings;
 - b) a summary of the submissions, questions and objections received;
and
 - c) the recommendations of the board respecting the proposal.
9. The Minister after reviewing the report may, by regulation, incorporate the community.

The Formal Process (Legislative)

The provisions of *The Northern Affairs Act* are as follows:

Part 2 Settlements and Communities

Corporate status

8 The minister may by regulation incorporate or unincorporate a community.

Change to be initiated by a proposal

11(1) A change in designation or corporate status must be initiated by a proposal.

Initiating changes – community

11(4) A proposal to change the designation, boundaries or corporate status of a community may be initiated

- a) by the minister, if he or she is satisfied that the proposal is in the best interests of the residents of the community; or
- b) by a resolution of the council of the community.

Public consultations required

12(1) Subject to subsection (2), before making a regulation under this Part, the minister must

- a) refer the subject matter of the regulation to the board;
- b) receive the board's report and recommendations in respect of the matter; and
- c) consider the principles, standards and criteria established under section 9.

Board to conduct public consultations

13 Only the minister can refer a proposal to the board, but the minister is not obligated to refer every proposal he or she receives to the board.

Board established

15 The Northern Manitoba Community Consultation Board is hereby established.

Appointment of board members

16(1) The board is to consist of three members appointed by the minister, one of whom must be the nominee of the Northern Association of Community Councils.

Staff

16(6) The minister may provide the board with any staff that it requires to carry out its functions under this *Act*.

Board may add residents as members

17(1) Despite subsection 16(1), to assist it in its consultations regarding a specific proposal, the board may, with the written approval of the minister, appoint one or two residents of the area, settlement or community affected by the proposal.

Powers of board appointees

17(2) A resident appointed by the board has all the powers and duties of a member of the board for the proposal that affects his or her area, settlement or community.

Referral to include description of proposal

18(1) When referring a proposal to the board, the minister must include a general description of the proposal and the reasons for it.

Copies of proposal to be provided

18(2) The minister must give a copy of the proposal to the following:

- a) if a community is affected by the proposal, the community's council;
- b) if a settlement is affected by the proposal, the settlement's contact person.

Notice of proposal must be posted

18(3) The council or contact person must post notice in the following places that a proposal has been received:

- a) in the case of a community,
 - (i) in the community office,
 - (ii) the place of the regular meetings of council, if other than the community office, and
 - (iii) at least one other location in the community designated by council;
- b) in the case of a settlement, in at least one location in the settlement that is accessible to the public.

Content of notice

18(4) The notice must state that interested persons may obtain access to the proposal by contacting the following persons:

- a) in the case of a community, the community administrative officer;

- b) in the case of a settlement, the contact person.

Proposal must be made available on request

18(5) The community administrative officer or contact person must, on the request, provide access to the proposal within a reasonable time.

Board to give notice and hold meeting

19(1) Upon receiving a proposal from the minister, the board must hold at least one public meeting about it.

Notice of public meeting

19(2) The board must give public notice of the meeting at least 30 days before it is held.

Location of public meeting

19(3) The board may hold the public meeting at any location that is suitable and, in its opinion, convenient for residents who may be affected by the proposal.

Public meeting re proposal

20 The board must

- a) at the time and place set out in the notice that was posted, begin the meeting;
- b) hear any person who may be affected by the proposal and who wishes to make a submission, ask a question or register an objection on his or her own behalf or on behalf of others;
- c) keep a record of its proceedings; and
- d) prepare a report.

Board to submit report to minister

21(1) Unless otherwise specified by the minister, not earlier than 30 days or later than 120 days after all the public meetings in respect of a proposal are completed, the board must give its report to the minister.

Content of report

21(2) The board's report must contain

- a) a summary of the public consultations that were held, including the dates and locations of the public meetings;
- b) a summary of the submissions, questions and objections received; and
- c) the recommendations of the board respecting the proposal.