

ADDITIONS TO TREATY SETTLEMENT LANDS AND
TREATY NEGOTIATIONS
BACKGROUND BRIEFING NOTE TO LMTAC FIRST PRINCIPLE #12:
*Continuation of Local Government Authority over Lands Pre and Post
Treaty**

This Briefing Note includes information on:

1. LMTAC's current related policy;
2. Background: Two Approaches to Additions to Treaty Settlement Land (TSL) in Existing AIPs; and
3. Other related LMTAC interests and concerns.

1. Additions to Treaty Settlement Lands – Existing LMTAC Policy

First Principle #12 – Continuation of Local Government Authority over Lands Pre and Post Treaty

The continuation of Local Government regulatory and taxation authority over lands within a municipality or regional district that may be transferred as part of a treaty settlement is paramount.

Lands received by a First Nation as part of a Treaty settlement should be held in fee-simple and have no new or special status. Lands to be added after the treaty is signed must remain subject to Local Government jurisdiction and taxation unless otherwise agreed to by Local Governments through a community consultation process.

Definition

Treaty Settlement Lands (TSL): the area of land that will be owned and managed by a First Nation pursuant to a treaty. The precise legal status of TSL, and the extent of First Nation jurisdiction on it remains to be determined.

The Tsawwassen AIP uses the terms “Tsawwassen Lands” and “Other Tsawwassen Lands” to distinguish lands that have Tsawwassen jurisdiction (Tsawwassen Lands) from those “Other Tsawwassen Lands” that will form part of the treaty settlement package that Tsawwassen will own in fee simple, without governance jurisdiction.

*This background briefing note was endorsed by the LMTAC Board, September 29, 2004.

2. BACKGROUND: Two Approaches to Additions to Treaty Settlement Lands (TSL) within Existing AIPs

i) Traditional Approach (Default) contained within Existing AIPs

Using this approach...

- The Parties will negotiate provisions in the *Final Agreement* for a process to include lands as TSL after the Effective Date. Post-*Final Agreement* and at the request of a First Nation, when that First Nation acquires ownership of lands off-TSL, Parties agree to engage in a process to consider additions to TSL.
- The process would be outlined within the *Final Agreement*, and would allow for each Party to make a decision independent of other Parties and according to its own conditions.
- A final decision to provide a First Nation with jurisdictional authority over additional lands would require tripartite consent, meaning each Party would hold a veto.
- To provide for greater predictability within a Final Agreement, Parties may list considerations to take into account when deliberating on a First Nation's request. For example, the Province has stated that under this approach, it would require the consent of the municipality where lands are located within its boundaries.

ii) "Specified Lands" Approach Proposed in Tsawwassen AIP (Chapter 3- Lands, clauses 21- 25)

The *Tsawwassen Agreement in Principle* (AIP) contains the following clauses:

Clause 21: *Before the Final Agreement, the Parties will attempt to agree on parcels of land (the "Specified Lands") which, if acquired by Tsawwassen First Nation in fee-simple, will become Tsawwassen Lands.*

Clause 22: *Before the Final Agreement, the Parties will agree on the process required to include Specified Lands as Tsawwassen Lands after the Effective Date.*

Clause 23: *Before the Final Agreement, the Parties will attempt to obtain the consent of:*
a. any municipality within whose boundaries the Specified Lands fall; and
b. any First Nation which claims aboriginal rights or title to the Specified Lands to any proposed inclusion of Specified Lands as Tsawwassen Lands.

Clause 24: *If the Parties are unable to reach agreement on the Specified Lands before the Final Agreement, the Parties will negotiate provisions in the Final Agreement for a process to include lands as Tsawwassen Lands after the Effective Date.*

Clause 25: ***The Parties agree that the consent of municipalities and First Nations to a proposed inclusion of lands as Tsawwassen Lands should not be unreasonably withheld.***

The goal in the *Tsawwassen AIP* is to identify - before the *Final Agreement* - specific parcels that if acquired by the First Nation in fee simple will become TSL post-treaty. If successful, this approach would appear to provide more certainty with respect to the amount of land that will be added and its location. However, unlike all other AIPs, municipal consent is not a requirement where the lands to be added are within municipal boundaries. The *Tsawwassen AIP* is the only such agreement whereby the Parties agree to attempt to obtain the consent of the municipality as a consideration, and which states that the consent must not be unreasonably withheld. Therefore, a municipality loses its veto power.

3. Other Related LMTAC Interests and Concerns

Additions to Treaty Settlement Lands – Local Government Interests

The following list of local government interests have been compiled based upon the expressed views of LMTAC members during Executive and Board discussions and in consultation with LMTAC Table Representatives.

- Local governments prefer no conversion of fee-simple lands to TSL post-treaty. Any fee simple lands acquired by First Nations' governments should remain in fee simple with no change in jurisdiction.
- As an exception, where there is a scarcity of Crown land and adding to TSL post-treaty is the only way to ensure an equitable land package, local governments prefer that certain limiting conditions be placed on additions such as: **location** (where applicable, land should be contiguous to existing TSL to avoid jurisdictional complexity), **time** and **quantity**.
- In addition, prior to any lands being added to TSL, clarification must be provided in the following areas:
 - jurisdictional arrangements, including long term land use planning and compliance with regional context statements;
 - service arrangements and continued access to utility rights-of-way;
 - continued public access for recreational uses;
 - preservation of public transportation corridors;
 - a process for dispute resolution; and
 - public notice requirements.
- Additions to TSL must receive local government approval. Given the unique circumstances for each treaty table, all impacted municipalities must be notified and consulted early in the land selection process and provided with both sufficient information and time to proceed with required public processes. Regional district (including electoral areas) interests must be sought and considered when the land is outside municipal boundaries.
- **Additions to TSL must be dealt with on a case by case basis.**
First Nation communities involved in treaty negotiations within the Lower Mainland region vary in both the number of reserves and their location within municipalities. For example, the Tsawwassen First Nation is unique because it includes one existing reserve located within one municipality (Corporation of Delta), whereas the other Lower Mainland First Nations have multiple reserves located within more than one local government jurisdiction:

Katzie: 5 existing reserves located within 4 different local government jurisdictions
(District of Pitt Meadows, District of Maple Ridge, Township of Langley, and GVRD Electoral Area A (Barnston Island and Pitt Lake))

Tsleil Waututh: 3 existing reserves located with 2 different local government jurisdictions
(District of North Vancouver and the GVRD Electoral Area A)

Musqueam: 3 existing reserves located with 3 different municipalities
(City of Vancouver, Corporation of Delta and the City of Richmond)

Squamish: This community further highlights the complexity of the region - it has 23 existing reserves that span 3 different Regional Districts.

- In the case of the Greater Vancouver region, Squamish Nation has 3 reserves located within 3 different municipalities (District West Vancouver, City of North Vancouver, and District of Vancouver).
- Further, the Squamish Nation has 5 separate reserves located within the District of Squamish alone.

Criteria for assessing additions to TSL must be considered within the unique context of each treaty table. That First Nation communities may include multiple reserves located within different local government jurisdictions, criteria such as contiguity with existing reserves may not be within the interest of all impacted local governments. In the case of the Tsawwassen treaty, local governments prefer contiguous parcels.

- Additions to TSL must also meet the following criteria:
 - Land is within the First Nation's Statement of Intent area.
 - Land is free from overlaps, unless First Nation consent is obtained.
 - Land is owned in fee simple by the First Nation.
 - That there is tripartite agreement, whereby the Province must acquire the consent of the municipality in which the proposed lands are located.
- Local governments are primarily interested in budgetary stability and must be fully compensated for any loss of tax base or infrastructure investments (**LMTAC First Principle #36**). It is essential that lands transferred post-treaty be compensated on the same basis as lands transferred at the time of *Final Agreement*.

Additions to Treaty Settlement Lands (TSL) – Local Government Concerns

In General:

- **Budgetary stability** - Loss of tax base from private property converted into TSL as well as net incremental costs to a region in the longer term as a result of an addition is not adequately addressed. Loss of a portion of the overall tax base results in an increased tax burden for the remaining areas in order to meet the financial costs of regional services. In addition to the loss of tax base for local governments to provide services, consideration must also be given to the loss of school board, hospital and regional district taxes.
- **Influence on Property Values** - The act of designating "Specified Lands" for post-treaty acquisition and transfer to a First Nation is problematic and detrimental to the owners of privately held lands that get "specified". The very act of designating properties both encumbers the properties and creates uncertainty for the property owners. Property sales under such circumstances are not transacted on a "willing seller/willing buyer" basis because the market is skewed by the act of designation.
- **Local Government Approval** - The issue of local government approval as a pre-requisite for post-treaty additions to Treaty Settlement Lands needs to be clarified and re-enforced. Although previous AIPs have included a requirement for local government approval, the Tsawwassen Treaty Table has stipulated that such approval must not be unreasonably withheld. Without a clear definition of what constitutes a "reasonable" basis for withholding approval, such language in the TFN Final Agreement effectively pre-empts the "appearance" of local government approval.
- **Land use planning** - Local government land-use bylaws, zoning and related enforcement would no longer be applicable once the land becomes TSL. As a result, there would be the potential for incompatible land uses and land use conflict.
- **Jurisdictional arrangements and public notification**- Business owners or individuals that lease/rent homes or businesses on occupied fee simple lands which are converted to TSL would be faced with a new jurisdiction and may not have the same representation as they had with local government.

- **Sufficient time for public processes-** Municipalities require sufficient time to consider a proposal for additions to TSL that takes into consideration the various processes required for council reports and public consultation. For example, the time required for municipal Councils to revise an Official Community Plan or approve a boundary extension may range from 6 months to one year. The more contentious the issue, the more is required for public consultation.
- **Jurisdictional uncertainty-** Shared/overlapping claim areas as well as lands held jointly by more than one band and the inconsistent/decentralized manner in which additions may be carried out could lead to overall jurisdictional uncertainties for neighbouring local governments. Consideration must be given to preserving transportation, utility and communications corridors.
- **Servicing-** Infrastructure coordination and supply issues.
- **Timely resolution of third party interests (e.g. water rights, rights-of-way, access for private landowners, infrastructure/utilities, etc.)-** How a third party right is to be specifically dealt with is not clear. Problems of access may arise if lands are already held by third party interests.