

LMTAC POLICY BACKGROUND

The following document is intended to provide background information on policy issues of concern and highlighted within LMTAC's Media Release of December 8, 2006, regarding the *Tsawwassen Final Agreement*.

Specified Lands Approach to Post-Treaty Additions to Treaty Settlement Lands:

LMTAC First Principle #12: Post Treaty Additions to Treaty Settlement Lands

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.

(Additions to Treaty Settlement Lands & Treaty Negotiations — Background Briefing Note to LMTAC First Principle #12, October 2004)

- “Treaty Settlement Lands” refer to the new First Nation land base that will be created through treaty — usually encompassing existing reserve lands and crown lands. However, given the scarcity of crown lands within the Lower Mainland, it may include fee-simple lands purchased on a willing buyer / willing seller basis. It's over this land base that a First Nation government will exercise its jurisdiction concurrently with both federal and provincial laws.
- The intention behind post-treaty additions is to provide First Nations with an opportunity to add to their land base at a future time in order to accommodate a growing population base.
- The *Final Agreements* reached to date contemplate two approaches to address this issue: a standard approach that requires municipal consent and another, that has only been proposed at the Tsawwassen Treaty Table, called the “*Specified Lands*” approach. Under both scenarios, all lands must fall within the First Nation's traditional territory.
- In practice, the *Specified Lands* approach means that for the first 50 years after a treaty is concluded, if *Tsawwassen First Nation* purchases any of the lands that were identified pre-treaty as *Specified Lands* (e.g. Category ‘B’ Brunswick Point Lands) *Tsawwassen* could request the addition of those land parcels to its existing *Treaty Settlement Lands*; however, municipal consent cannot be unreasonably withheld.
- After 50 years, the standard approach requiring municipal consent without any limiting conditions would apply.
- LMTAC has been very vocal about its opposition to the *Specified Lands* approach since it was introduced during the *Agreement-in-Principle* stage. Foremost, LMTAC disagrees with limitations being placed on municipal consent and concerned that this will set a precedent for other urban treaties.
- UBCM supports LMTAC's position against the *Specified Lands* approach and sought a legal opinion on the concept of municipal consent not being “unreasonably withheld” in June 2006 (available upon request).
- The Province stated that the *Specified Lands* approach was used to address the unique circumstances faced by *Tsawwassen*, and is not currently being considered at other treaty tables. LMTAC's stated preference is for there not to be any post-treaty additions to TSL, and that this concept only be explored in exceptional circumstances that must require municipal consent and adhere to strict conditions related to location, time and quantity.

Agricultural Land Reserve:

LMTAC First Principle #19: Agricultural Lands

Local government strongly supports the preservation of viable agricultural land. Treaty settlement land designated as Agricultural Land Reserve (ALR) must remain subject to the jurisdiction of the Agricultural Land Commission (ALC). Any removal of land from the ALR must follow the same procedures as for any other applicant.

(Agricultural Land Reserve & Treaty Negotiations — Background Briefing Note to LMTAC First Principle #19, September 2004)

- LMTAC acknowledges that Lower Mainland local governments vary in their interests with respect to ALR designations. Therefore, LMTAC's policy statement emphasizes an adherence to process to ensure that all First Nation governments who seek ALR exclusions submit applications through the ALC.
- Amendments were made to the *ALC Act* in 2004 that enabled the ALC to rule on applications received directly from First Nations who reached an *Agreement-in-Principle*. The amendments ensured that First Nation applications were considered on the same basis as local government applications, therefore providing neighbouring communities with an opportunity to comment on proposed changes to the ALR designation of the lands in question.
- LMTAC is concerned with *Tsawwassen Final Agreement* provisions to exclude portions of *Treaty Settlement Lands* through provincial settlement legislation. This represents a departure from the *Tsawwassen Agreement-in-Principle* in which Parties agreed that the ALC would be the designated body to oversee and make a final decision with respect to Tsawwassen First Nation's application for exclusions.

Representation for *Non-Member* Residents of Treaty Settlement Lands

LMTAC First Principle #27: Rights of Representation

Treaties must uphold the principle of "no taxation without representation" for all persons residing on Treaty Settlement Lands. Mechanisms need to be developed to ensure that all persons who are living on Treaty Settlement Lands and who are paying taxes or levies to the First Nation have access and a voice in First Nation governance systems.

(Background Discussion Paper to LMTAC First Principle #27 — Rights of Representation, March 2003)

- "Non-Member" is a defined term within the *Tsawwassen Final Agreement* that means an individual who is ordinarily resident on Tsawwassen Lands and who is not a Tsawwassen Member.
- Taxation powers are an essential part of First Nation self-governance and local governments have specific concerns with the taxation and representation of Non-Member residents (such as leaseholders) post-treaty on *Treaty Settlement Lands*.
- Post-treaty, Non-Members will no longer have a municipal vote and will be under the jurisdiction of the First Nation. LMTAC's interest is to ensure that Non-Members will be provided with effective representation post-treaty on matters that impact them.
- Under the *Tsawwassen Final Agreement*, Tsawwassen Institutions will consult with Non-Members in respect of decisions that directly and significantly affect Non-Members, as well as provide Non-Members with a means of participating in the decision-making processes (i.e. to vote and stand for election or be provided a guaranteed seat) of a Tsawwassen Public Institution if the activities directly and significantly affect Non-Members.

Community Adjustment Funding for Loss of Municipal Tax Base

LMTAC First Principle #36: Cost Neutral Agreements for Local Governments

No demand must be placed on local government tax revenues or revenue sources resulting from treaty settlements, particularly on the ability of local government to derive tax revenue from sources such as property taxes, service fees, utility charges and grants-in-lieu from Crown lands. Any revenue loss to local governments arising from treaty settlements must be fully compensated.

(Fiscal Interests and Treaty Negotiations — Background Briefing Note to LMTAC First Principle #36, October 2004)

- LMTAC is primarily interested in ensuring that treaty settlements are cost-neutral to local governments and that local governments fully recover the costs for services and infrastructure.
- Through a 1993 federal-provincial cost-sharing agreement on treaty-related costs, Canada agreed to provide British Columbia with \$40 million for adjustment assistance to be equally distributed among each treaty table on its effective date.
- UBCM and the provincial government (*Ministry of Aboriginal Relations and Reconciliation and Ministry of Community Services*) conducted a joint study entitled: *Treaty Settlement Land - The Fiscal Impacts on Local Governments*.
- A final report was prepared by consultant Peter Adams and released in December 2005.
- Although this paper does not address the matter of compensation for local governments, the consultant makes two key observations:
 - Financial impacts may be mitigated through the development of service agreements between neighbouring local governments and First Nations; and
 - The Province should consider the creation of a *Community Adjustment Fund* to ease the adjustment process for individuals, businesses and communities post-treaty, with the community component including a wide range of eligible costs related to addressing servicing.
- The Province is currently assessing the *Community Adjustment Fund* program that will provide funding to help ease the adjustment process for individuals, businesses and communities post-treaty.
- Based on the findings of the *Fiscal Impact Study*, the Province sought local government input through UBCM on the development of the 'community component' of this program, as it includes local government.
- UBCM awaits details on the outcome of this program submission to the provincial Treasury Board.

Looking for Additional Information?

For additional information on LMTAC, including policy documents, please contact us at:

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