



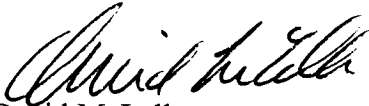
To: Richmond City Council **Date:** January 9, 2003
From: David McLellan **File:** 0152-01
General Manager, Urban Development
Re: **Tsawwassen First Nation Agreement In Principle**

Staff Recommendation

That the Provincial and Federal negotiators as well as the Lower Mainland Treaty Advisory Committee be advised of the following concerns regarding the draft Agreement in Principle with the Tsawwassen First Nation:

- The schedule for conclusion of an agreement does not allow sufficient time for meaningful public consultation
- The integrity of the Agricultural Land Reserve should be maintained and undiminished through any agreement
- The notion of an exclusive aboriginal fishery rights should be abandoned
- Any agreements should provide clarity and finality regarding the extent of aboriginal rights

That the City's concerns be conveyed to the Members of Parliament and Members of the Legislative Assembly for Richmond.


David McLellan
General Manager, Urban Development

Att. 1

Staff Report

Origin

The Tsawwassen Treaty Negotiations have been underway since 1995 and have now reached the stage of a joint BC/Canada offer of an Agreement In Principle (AIP) (see **Attachment 1**) with the hope of concluding an Agreement In Principle by the spring of 2003. The Senior government offer is based on the following:

- **Land Offer:** A total land transfer of 397 hectares of “Category A” provincial Crown lands. Of the 397 hectares, 315 hectares are adjacent to the current Indian Reserve, and 82 hectares are located in Boundary Bay;
- **Land Offer Conditions:** The proposed lands would be transferred with the ALR designation, excluding public roads and statutory rights of way. Provisions for access requirements, namely for infrastructure maintenance, are presently being developed. The existing Reserve and the proposed adjacent 315 hectares would become “treaty settlement land,” would be under the Tswawwassen First Nation (TFN) governance authority, and would include ownership of subsurface resources. In response to TFN’s interests regarding the ownership of submerged lands, Canada and BC are looking to address this interest through other means, such as tenures. In addition, the parties are now considering provisions that would enable the TFN to acquire land post-treaty as “treaty settlement land” (i.e. TFN jurisdiction);
- **Capital Transfer:** Capital transfer of \$10 million; and,
- **Unresolved Areas:** Areas that remain to be resolved include lawmaking authority, application of laws, taxation, certainty, fish, as well as the overall quantum of the land and cash offer.

Analysis

The City of Richmond has been involved in these treaty negotiations through the provincial negotiating team and is also a member of the Lower Mainland Treaty Advisory Committee which coordinates and represents the collective interests of local governments. The issues of acute interest to our City include the following:

Public Consultation and the Approval Process

The current process anticipates only 3 months from the release of the Senior Governments’ proposal to the adoption of an AIP. This tight time line will limit the opportunity for meaningful public consultation.

Agricultural Land Reserve

The Province has made a commitment to the TFN to have the Land Reserve Commission work with them to potentially remove some parcels from the Reserve. In addition, as Federal Crown lands these areas are not subject to provincial or municipal land use regulation. The likelihood is very high that these lands will be permanently lost to agricultural uses. In addition, this may

result in additional services being required as redevelopment takes place on those lands removed from the ALR despite regional growth strategies currently in place. Municipalities have been very vocal on maintaining the existing agricultural land use framework and these concerns should be reiterated given the somewhat vague terms implied in the draft AIP.

Fisheries

The Province has been silent on the issue of fisheries until today's quotes from the Attorney General which indicate that specific allocations of the fishery would be provided through the AIP, based upon commitments given earlier in the process. The very strong views of local fishing interests will be compromised under the current proposal and concerns should be reiterated by the City on this issue given the prospective impacts upon the already diminished and struggling fishing industry. The current proposal sets the stage for even more confusion and frustration in the industry.

Lack of Certainty and Finality

It was understood by many that the benefit of entering into treaties would be the clarity and definition to aboriginal rights as they affect other interests in the province. For the sake of expediting agreements it appears that many issues will be deferred for future consideration, including:

- relationship to adjacent municipalities
- the ability to add lands to settlement lands (and the associated impact on adjacent areas)
- rights of the TFN off the treaty settlement lands (i.e. harvesting wildlife, food gathering , archaeological sites).

It remains unclear whether the implications of any of these issues upon local government (e.g. changes in governance, any as yet undetermined associated costs, infrastructure requirements, revenue adjustments, implications of any future additional commitments) will be addressed.

Financial Impact

No budgetary impact.

Conclusion

The parties to a treaty are moving very quickly to achieve an agreement. The proposals to date have generated a number of concerns which should be articulated to all those impacted by this process.



David McLellan
General Manager, Urban Development

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ATTACHMENT 1

INTRODUCTION

A great deal of work has continued since the last public Chief Negotiators' meeting held in April this year. The parties have been working hard to build towards the tripartite goal that was set at that meeting of an Agreement in Principle (AIP) by spring 2003. A summary of the status of that work is contained in this document, to be discussed at the Main Table being held today.

A. Status of negotiations:

- 2001: Proposals by all three parties on quantum for land and cash are on the table for discussion and substantive negotiation. Canada and TFN have also tabled proposals on fisheries.
- Spring 2002: Parties confirm at a public Chief Negotiators' meeting their tripartite goal of draft Agreement-in-Principle (AIP), to be ready to seek approval by principals, by spring 2003. Canada and Tsawwassen attempted to enter into an interim fisheries agreement for the 2002 salmon fishing season. That interim agreement was intended as a vehicle to "test-drive" some of the elements of Canada's August 2001 fisheries proposal. Unfortunately, Canada and Tsawwassen could not come to agreement on issues related to the salmon allocation formulae and the resources necessary to support the First Nation's involvement in the activities contemplated under the interim agreement. An outline of a draft AIP is prepared by the parties as the basis for negotiations. Copies of the draft outline, will also be made publicly available today.
- Summer/Fall 2002: Parties continue work on issues, including treaty-related measures (TRM's), technical land matters, and incremental approaches, and trial chapter drafting on land and access topics.
- Fall 2002: Chief Negotiators meet, assess level of table work done to date, and re-confirm goal of March 31 for completion of a draft AIP. Noting that the draft AIP, once complete, will then be taken to the parties' respective principals to seek approval, Chief Negotiators acknowledge the immediate need to assess prospects for success of agreement on the prospective contents of a draft AIP, and to seek instructions from principals.
- As a first step, Chief Negotiators set a series of meetings to determine whether they can reach agreement among themselves on the prospective contents of a draft AIP, or whether the remaining gaps in agreement are too wide to make further progress.

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- September/October 2002: Chief Negotiators:
 - Identify key topics on which they consider it crucial for the parties to reach agreement in order to conclude a draft AIP;
 - Each put up options to resolve the issues on those topics;
 - Come to an understanding amongst themselves on a combination of the options that they are prepared to support and take to their respective principals for review and to seek instructions (see Section B below);
 - Acknowledge where agreement on topics has not yet been reached among Chief Negotiators, but identify and agree upon processes to move towards resolution as part of the combination of viable options.
- November 2002: Chief Negotiators agree to seek instructions from principals on the options discussed and discuss a work plan for completion of a draft AIP by a target date of March 31, 2003. As part of the work plan, Chief Negotiators discuss undertaking focused consultation activities and how best to update the public on progress towards a draft AIP, including the scheduling of public Main Tables in December, 2002, and in January and February 2003.

B. Topics under consideration for proposed draft AIP:

The Tsawwassen treaty settlement as a whole will consist of detailed agreements on land, resources, rights off treaty settlement land, governance, economic development, a financial component, fiscal relations, and implementation, as well as general provisions related to certainty, relationship of laws, eligibility, enrolment, ratification, dispute resolution and amendment.

The AIP is a document that will set out the agreements of the parties on these fundamental components of the treaty. It will identify the detailed work and ongoing negotiations that need to be completed in order to conclude all aspects of the treaty. It will also identify on what topics, if any, agreement has not been reached, and the agreed process for resolution of the outstanding issue.

Once a draft AIP is completed and has then been approved by the principals of each party (see Section D below) it is signed. It is not however binding on the parties, because of the further detailed work required. Rather, it signals that the parties have sufficient consensus on essential issues to take the next step: and it becomes the basis on which the parties proceed towards a comprehensive Final Agreement.

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The following sections summarize the topics under consideration by the parties for inclusion in a draft AIP.

From time to time discussions take place at the BC Treaty Process Principals' level (e.g., regarding certainty, cooperative management, revenue sharing, and negotiation support funding). The negotiators at the Tsawwassen table have acknowledged that, to the extent that those discussions are taking place, as well as discussions at other treaty tables on these and other topics, the outcomes of such discussions will continue to be considered as options for resolving outstanding issues at the Tsawwassen table.

Land

Modifications to the land package proposed by British Columbia and Canada in 2001 and the corresponding impact on the "land/cash balance" as the basis for settlement have been discussed, including:

- Exchange of some parcels of existing proposed Crown lands for different Category A Crown lands
- Potential inclusion of a heritage site on Crown land;
- Potential inclusion of Crown land or purchase of available fee simple land enabling direct access to the Fraser River
- Access to available water lot tenures in front of future Treaty Settlement Lands as well as Fraser River access property which Tsawwassen may own.

The right of second refusal over Brunswick Point lands (contained in the governments' 2001 proposal) will be set out in the draft AIP. Funds contained in the financial component may be utilized in the exercise of the right of second refusal.

Submerged Lands

As part of the governments' proposal to Tsawwassen in 2001, a commitment was made to explore Tsawwassen's interests in long term secure access to submerged lands through options other than ownership. The draft AIP can address this interest in a number of ways, including considering access to tenures and jurisdiction.

Subsurface Rights

The parties are agreed that Tsawwassen will own the subsurface rights beneath treaty settlement land. Between AIP and Final Agreement, the detailed terms and conditions of ownership and jurisdiction will be negotiated.

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Additions to Treaty Settlement Land (TSL)

All three parties have agreed to negotiate a process for the Tsawwassen government to add lands that it has acquired in fee simple to the lands within its jurisdiction, post-treaty.

The parties consider that the draft AIP should address the matter of post-treaty additions to Tsawwassen TSL in a way sensitive to both the urban context and Tsawwassen's concern that any requisite consent not be unreasonably withheld. One possibility is the potential for a process before Final Agreement of identification, the seeking of any requisite consents, and agreement on specific parcels which, if acquired by Tsawwassen, could become additional treaty settlement land post-treaty. Post-Final Agreement, the dispute resolution mechanisms in the Final Agreement will apply.

Shellfish Aquaculture

Availability of and feasibility of access to tenures will be considered as a means to address some of Tsawwassen's interests in submerged lands.

Expropriation

The draft AIP may include provisions that have the objective of minimizing the impact of residual expropriation powers of British Columbia on Tsawwassen TSL.

Coast Salish Cultural Sites

The preservation, protection, and management of Coast Salish cultural sites within the Tsawwassen Statement of Intent Area (SOI) are significant matters to Tsawwassen. Topics under consideration for inclusion in the draft AIP include:

- Identification and listing of Tsawwassen sites between AIP and Final Agreement
- Tsawwassen to have designation and management authorities on TSL
- Options regarding designation or management of sites on Crown lands
- Relationship to ongoing operational (either provincial or local government) initiatives regarding identification, designation and management of archaeological sites.

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Agricultural Land Reserve

The parties do not yet have an agreement on how to deal with this issue. The 2001 joint proposal of the governments specified the continuance of any existing land use designations, including the Agricultural Land Reserve (ALR), at the time of transfer of provincial Crown land. However, Tsawwassen's objective with respect to its ability to use and benefit from its lands, which the other parties have acknowledged, is: "Over the long term, to be able to use TSL to support the growth and development of the Tsawwassen First Nation as a viable community."

In the meantime, the draft AIP may contain provisions and/or processes to assist in resolving the issue, including proposals by British Columbia that would provide for:

- Clarification that British Columbia would not propose to re-impose an ALR designation on TSL if an application undertaken by Tsawwassen post-treaty for exclusion was successful; and
- A process to engage with the Reserve Land Commission between AIP and Final Agreement to assess prospects for successful removal of the ALR designation from specific parcels of TSL once Tsawwassen owns them.

Financial Component

The 2001 joint proposal by Canada and British Columbia included a proposed capital transfer of \$10 mm. Modifications may be made to this proposal. The parties will consider the impact of any changes to the land/cash balance.

Fisheries

British Columbia must respond to federal fisheries proposals in order to conclude negotiations on the draft AIP. All three parties continue to have a strong interest in the future health and viability of the overall fishery. Subject to that, the topics under consideration for inclusion in the draft AIP are:

- A treaty right to fish for food, social, and ceremonial purposes; and
- Access to economic opportunities in the fishery.

Priority topics that will need to be addressed include:

- Allocations for food, social, and ceremonial purposes;
- Possible options for providing TFN with access to economic opportunities in the fishery;
- Relationships between management bodies (regional, local);

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- Definition of harvest area;
- Stewardship and enforcement.

B.C. Fisheries

The draft AIP will need to include provisions relating to access to fish under provincial jurisdiction, including aquatic plants, for domestic purposes.

Governance

The parties will have to agree on the objectives, principles, and characteristics of Tsawwassen government as well as the range of functions that it would exercise, as set out below. The draft AIP will include the specific mechanisms that would be required to bring such governance into effect, or a process to reach agreement on the mechanisms.

The objectives, principles, and characteristics of Tsawwassen government include:

- a legal entity with the powers and capacity of a natural person;
- democratically elected;
- based on a Tsawwassen constitution;
- politically and financially accountable;
- defined powers and jurisdictions;
- clear jurisdictional relationships with other governments;
- a defined geographic boundary;
- measures for non-member representation;
- revenue and expenditure authority;
- functions – programs and services.

Certainty

Certainty should be dealt with through an agreement on the objectives of the parties at AIP and an agreement on the legal mechanism prior to Final Agreement.

Litigation

Before the draft AIP is finalized, the parties must agree on how the current litigation by Tsawwassen against Canada and British Columbia relative to the construction and

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operation of the B.C. Ferry terminal and the Roberts Bank will affect negotiations at the treaty table.

Rights off Treaty Settlement Land

The sub-topics under consideration below deal with Tsawwassen interests both off TSL and within the Tsawwassen SOI. Subject to any outcome of Principals' discussions on the matter, treaty rights off TSL are not intended to include Tsawwassen jurisdiction off TSL. Tsawwassen will have authority over internal management of agreed-upon rights associated with the sub-topics listed below.

Topics under consideration:

i. Wildlife (including migratory birds): Right to harvest for domestic purposes.

Priority questions to be addressed in the draft AIP include:

- where conservation is an issue, the quantification of the right for priority species (and any post-treaty allocation process required)
- scope and extent of trade and barter
- participation in wildlife management processes and options to address Tsawwassen's objective of capacity to participate in such processes.

ii. Forestry: ownership and management by Tsawwassen of forest resources that may exist from time to time on TSL. Off TSL, priority questions to be addressed include:

- Contractual mechanisms for accessing domestic-purpose timber;
- A process for acquiring log salvage permits.

iii. Gathering: a non-exclusive right to gather traditional foods and natural objects for domestic purposes in provincial and federal parks within the Tsawwassen SOI, subject to park management plans, is being considered by the parties.

iv. Land Use Planning: Tsawwassen authority for land use planning processes on treaty settlement lands consistent with provincial laws related to land use planning processes. Provincial authority will be retained for land use planning off treaty settlement lands, with provision for participation by Tsawwassen, including possible roles for Tsawwassen in regional land use planning processes (including Regional District processes).

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v. Environment: A draft AIP will deal with the existence on TSL of Tsawwassen, Canada, and British Columbia jurisdiction, together with conflict of laws rules, and agreement on the standards for environmental management. With respect to lands owned by Tsawwassen that are not treaty settlement lands, the parties are considering Tsawwassen participation in provincial environmental processes that impact on those lands both as landowners, and through receipt of referrals on the same basis that local government receives referrals.

Off TSL, Tsawwassen will have the right of participation in all federal environmental assessment processes that impact on treaty rights or treaty settlement lands

vi. Parks and Protected Areas: A draft AIP will deal with participation in future park and protected area designation; consultation on park management plan provisions involving TFN treaty rights; and opportunities to compete for:

- Delegated park management opportunities;
- Economic opportunities in parks.

A priority question to be addressed regarding rights off TSL generally includes defining "participation" and "consultation" clearly.

vii. Culture and Heritage: Priorities include issues related to the identification and repatriation of Tsawwassen cultural materials and an agreed process and criteria to consider changes in place names, supported by a TRM to proactively raise awareness and identify Tsawwassen cultural materials. The parties also plan to discuss Tsawwassen requirements for facilities to store and display cultural materials.

Services/Water

Access to services is a vital issue for any self-governing community, and is a critical issue for Tsawwassen. There are a number of ways to accomplish this, including:

- contracting for services on a business basis
- participation in the GVRD
- self-servicing, including municipal authorities regarding water supply
- access to programs of general application through the payment of provincial taxes and/or through intergovernmental agreements.

The parties are also discussing establishing an intergovernmental relations table to address First Nation/local government matters and are considering a TRM supporting development of intergovernmental relationships.

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Fiscal Relations

Agreement is required around the objectives, factors, considerations and principles of fiscal relations at the time of the draft AIP. Assuming this can be accomplished, fiscal arrangements would be negotiated outside of the treaty pursuant to the principles within the treaty. A fiscal relations working group has been formed to work on these issues.

Taxation

The parties will need agreement at the time of the draft AIP on the following matters:

- the tax powers of the Tsawwassen government;
- the tax treatment of the capital transfer (see Financial Component);
- the tax treatment of Tsawwassen citizens, Tsawwassen government, and Tsawwassen government corporations; and
- tax sharing and collection.

Constitutional Status of Settlement Lands

There is no agreement on this issue. Canada and British Columbia have proposed that the lands will not be Section 91(24) lands, but otherwise that the draft AIP be silent on their status, allowing the attributes of the land to speak for themselves.

Overlap

The draft AIP provisions need to address resolution with overlapping First Nations before the Final Agreement, and other risk management measures that may be included in the Final Agreement.

Economic Development

The parties are considering:

- Potential establishment of an economic development fund
- Agreement on early implementation of AIP provisions that provide access to economic assets and economic resources (see Early Implementation).

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Implementation

Options for early implementation under consideration include:

- a commitment to negotiate an Implementation Plan and Implementation Agreement;
- TRM's for early access to assets and processes set out in the finalized AIP;
- other agreements for early implementation of treaty components;
- the fast tracking of Final Agreement negotiations.

GENERAL

Apart from the specific items described above, the Chief Negotiators also envisage including in the draft AIP agreements on all other topics set out in the draft outline.

C. Process to draft the AIP:

Chief Negotiators have also discussed strategies for work planning and proceeding with drafting of AIP chapters, ready for principals' approval by March 31 2003, given the number of topics to deal with and the amount of work involved. The issues covered included the form of the draft AIP, as well as how to tackle the drafting.

With respect to the form of the draft AIP, the parties agreed on the need for all constituencies and principals to be able to read the contents of the document easily and understand both the status of the documents and the clauses within it. Tools to address this include:

- plain and unambiguous language
- an Introduction section in the draft AIP to describe the agreement and its status
- reaching a "high level" agreement on as many topics as possible, but being prepared to state clearly where agreement has yet to be reached and indicate how the parties propose to resolve the lack of agreement
- defining for each topic in the draft AIP a list of the matters and issues, both technical and substantive, that have to be negotiated and concluded between AIP and Final Agreement, and specifying those matters at the end of the relevant chapter so that readers of the chapter (a) understand that the parties have not "forgotten" those important issues, (b) understand how the parties propose to move forward on them, and (c) understand the stage of agreement that has been reached very clearly on each topic.

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D. Approval processes of parties:

If the parties are successful at table level in completing a draft AIP in the spring of 2003, Chief Negotiators will recommend to their principals that they proceed to approve the draft AIP and sign it. First Nation approval processes differ slightly from table to table as they are designed to meet the needs of the specific community. Some form of majority approval by eligible Tsawwassen members will be sought through a structured information, consultation and voting process led by TFN. The parties have not yet discussed the approval process in detail but will need to do so before a draft AIP is completed.

Provincial approval is obtained when the Minister Responsible for Treaty Negotiations takes the draft AIP to Cabinet to recommend that it be signed on behalf of the Province. Canada follows a similar process via the federal Minister of Indian Affairs.

Once all three parties have approved the draft AIP – a process that can take some months – it is signed by the parties' principals.

The AIP then becomes the basis for concluding the outstanding issues requiring negotiation and completion before a legally binding Final Agreement can be concluded. It also becomes the basis for consideration by the parties of incremental implementation of any topics prior to Final Agreement, if agreement has been reached on that topic.

E. Summary:

A great deal more work is required in order to reach a draft AIP. However, the parties are committed to the process of attempting to reach agreement. While each of the parties is seeking instructions from its respective principals, work will continue on drafting the necessary language to be incorporated in the draft outline. The Main Table Working Group is recommending that several draft chapters, concerning amendment, approval of the Agreement in Principle, dispute resolution and ratification be made available for public release today.

The parties also intend to hold further Main Tables on January 30 and February 27, with subsequent dates to be arranged soon. Details of those meetings will be advertised in advance.

DRAFT OUTLINE
FOR TSAWWASSEN AGREEMENT IN PRINCIPLE

Readers' Notes:

- *The Tsawwassen treaty settlement as a whole will consist of detailed agreements on land, resources, rights off treaty settlement land, governance, economic development, a financial component, fiscal relations, and implementation, as well as general provisions related to certainty, relationship of laws, eligibility, enrolment, ratification, dispute resolution and amendment.*
- *The Agreement in Principle is a document that will set out the agreements of the three Parties (Canada, BC and Tsawwassen First Nation) on these fundamental components of the treaty. It will identify the detailed work and ongoing negotiations that need to be completed in order to conclude all aspects of the treaty. It will also identify the topics, if any, on which agreement has not been reached, and the agreed process for resolution of the outstanding issue.*
- *Once a draft Agreement in Principle is completed and has been approved by each Party, it is signed. It is not however binding on the Parties, because of the further detailed work required. Rather, it signals that the Parties have sufficient consensus on essential issues to take the next step: and it becomes the basis on which the Parties proceed towards a comprehensive Final Agreement.*
- *This draft outline was prepared in spring, 2002 as a basis of discussion about the contents of a comprehensive Agreement in Principle. It does not and is not meant to represent specific positions or points of view, but to identify key topics and lists of issues to be negotiated among the Parties. The Tsawwassen Framework Agreement was a key source document.*
- *The outline has helped the Parties develop their understanding of the format for an Agreement in Principle. For example, the Parties are aiming for plain and unambiguous language in each chapter.*
- *The Parties are now beginning to document their agreements in draft chapters. The elements charts may continue to be utilized as a tool for recording interests and eventual agreements;*
- *The parties are continuing to explore an incremental approach to treaty negotiations, including early implementation of specific agreements. They may also consider provisions in the Agreement in Principle in relation to specific topics that could provide for a process to address those topics prior to concluding the Final Agreement, as agreed to by the Parties.*

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22. Parks and Protected Areas

¹ Working list; to be determined by the Parties

1. *General Provisions*

Nature of the Agreement in Principle

- Not legally binding.

Nature of the Final Agreement

- A treaty within meaning of sections 25 and 35 of the *Constitution Act*, 1982; and
- Legally binding when ratified.

Assurances

- Tsawwassen's assurance that it represents all people who may have aboriginal rights and title as Tsawwassen people; and
- Each of the three parties provides assurance that it has the authority to enter into the Final Agreement.

Indemnity

- Post-treaty, status of any other claims relating to aboriginal rights and title.

Constitution of Canada

- Relationship of the Final Agreement to the Constitution (e.g., division of powers, identity of Tsawwassen people, Charter of Rights and Freedoms, human rights legislation).

Character of Lands

- Status of lands when treaty is in effect.

Application of Federal and Provincial Laws

- Clarification about the broad legal framework applying to Tsawwassen members, government and lands; relationship between final agreement settlement legislation and other federal and provincial legislation.

Relationship of Laws

- Which law (that enacted by Canada, BC or Tsawwassen) prevails in case of a conflict.

Application of the *Indian Act*, Other Rights, Benefits and Programs

- Clarification of application of the *Indian Act*, ability of Tsawwassen members who are Canadian citizens to enjoy rights and benefits extended to other Canadian citizens.

Transition from *Indian Act*

- Either within general provisions or as a separate chapter, there could be principles setting out how transitional mechanisms will be established and how the post-treaty Tsawwassen government will assume the assets, obligations and liabilities of the former Tsawwassen Indian Band.

Certainty

- Principles for shared understanding; need not contain precise legal technique (as a matter for Final Agreement).

Other Aboriginal People

- Understandings regarding effect on other aboriginal people or their treaty rights (overlaps).

Amendment

- Provisions for amending the Final Agreement.

Interpretation

- Principles for interpreting the Final Agreement, relationship to information and privacy legislation, etc.

Judicial Determination in Respect of Validity

Freedom of Information and Privacy

Official Languages

2. *Lands*

Definition

- Quantum, location/boundaries, characteristics, terms and conditions of interests in, rights in and ownership of land, including in, as examples:
 - foreshore and marine areas including submerged lands;
 - subsurface resources and any specific terms and conditions applying to them;
 - lands that provide direct access to the Fraser River;
 - dikes including responsibility/liability for flood management;
 - roads and rights of way through or adjacent to TSL;
 - existing reserve interest such as certificates of possession; and
 - Provisions to ensure services;
- Legal status and designation, i.e., title and registration of treaty lands.

Right of Refusal

- Process for implementing rights of refusal with respect to additional lands .

Additions and Removals

- Provision and mechanisms for future additions to TSL and removals from TSL; and
- Jurisdiction over future additions to TSL and removals from TSL.

[Non-TFN tenures and rights

Resolution of any issues with respect to non-TFN linear or nonlinear land tenure or rights on Crown or Indian Reserve lands that become TSL. What does "linear" mean?]

Existing Reserve

Expropriation

Existing Interests

Legislative Jurisdiction and Authority

[Note: there may be transitional or interim provisions to enable incremental implementation, or an associated implementation contract.]

3. *Access (including Crown corridors and roads, as applicable). This topic has been more thoroughly discussed.*

Public Access

- Consider the concept of TSL as private land;
- Residents on TSL who are not Tsawwassen will have access to their homes and businesses without fee or charge*;
- Holders of existing legal interests on TSL will continue to have access without charge or fee; and
- Address public access roads and corridors on TSL.

* Note these are other than municipal type charges.

TFN Access

- Confirm TFN access rights to non-TSL.

Crown Access

- Temporary Crown access (and those authorized by Crown) to TFN treaty lands and waters to deliver and manage programs and services, carry out inspections pursuant to law, enforce laws, carry out the terms of the treaty, and respond to emergencies and natural disasters; and
- Address notice requirements.

Access to Tenures

Navigable Waters

First Nation Access to Crown Lands

Legislative Jurisdiction and Authority

4. *Fisheries*

[An elements chart has been tabled by Canada. The parties have also discussed the possibility of using the Sliammon Fisheries AiP chapter as a drafting tool for this topic.]

General

Documentation

Harvest, Sale, Trade, Barter

Domestic Allocations

Participation in Commercial Fishery and Economic Development

Legislative Jurisdiction and Authority

Joint Fisheries Committee

First Nation Annual Fish Plans

First Nation Fish Licence

Regional Management

Enforcement, Stewardship, Enhancement

5. Wildlife and Migratory Birds

Harvest and Allocations

- Rights of the TFN community to harvest designated species including harvest methods, subject to certain limitations;
- Identify TFN's harvest area;
- Process for determining allocations for designated species;
- Clarify the relationship between TFN's right to harvest and other existing and future authorized uses and disposal of Crown land, including non-TFN authorized hunting; and
- Provisions in respect to sale, trade and barter.

Management

- Process for authorizing TFN harvest entitlement;
- Process for developing and approving annual TFN wildlife plan;
- TFN's internal management process for wildlife allocations;
- Coordinating annual wildlife plan with multi-year management plans;
- Relationship between TFN harvest area with BC's wildlife management areas and regions, and critical wildlife areas;
- Opportunities for TFN involvement in any wildlife management advisory processes and programs.

Legislative Jurisdiction and Authority

Licenses, Fees, Charges, Royalties

Enforcement

- Provisions for enforcement including enforcement protocol and TFN participation and programs.

6. *Heritage and Culture (in Framework Agreement: culture, artifacts & heritage)*Legislative Jurisdiction and Authority

- Deal with jurisdiction over culture and heritage on and off TSL including studies, copyrights, and import and export.

Participation

- Participation in public processes respecting the planning or management of heritage resources affecting Tsawwassen.

Information Sharing, Access, Identification

- Information sharing with respect to heritage resources;
- Provide for access to and identification of cultural materials held in federal collections and the Royal British Columbia Museum, and for the identification of cultural materials in other public and private collections; and
- Tsawwassen access to Tsawwassen heritage resources off Treaty Settlement Lands: consideration of implications for privately owned property.

Agreements

- Provide for agreements regarding the protection and management of cultural materials.

Intellectual property

- Clarify TFN intellectual property rights to Tsawwassen cultural and heritage resources.

General ProvisionsCultural MaterialCultural Heritage SitesPlace Names

- Authority and participation in naming and renaming place names.

Activities Affecting Heritage Resources

- Process to deal with approval of activities affecting heritage resources.

7. *Environmental Assessment and Environment Protection (in Framework Agreement: environmental management)*General Provisions

Standards

- Establish consistency and comparability of environmental standards on and off TSL.

Agreements

- Harmonize the administration and delivery of environmental management laws, programs and services; and
- Allow for agreements with respect to environmental management functions.

Involvement/participation/Consultation/Accommodation

- Ensure federal, provincial and First Nation environmental assessment processes provide for the other Parties' participation including consultation, consent and accommodation as appropriate.

Legislative Jurisdiction and Authority: Environmental AssessmentEnvironmental Assessment on First Nation LandEnvironmental Assessment off First Nation LandLegislative Jurisdiction and Authority: Environmental ProtectionEmergencies

- Clarify liabilities and responsibilities with respect to dealing with environmental emergencies.

*8. Water*Interests/Rights/Ownership

- Clarify interests, rights and ownership of water, including groundwater.

Legislative Jurisdiction and Authority

- Identify jurisdiction over freshwater including property rights, water quality, exportation, importation.

Access

- Provide for access to water for domestic and commercial purposes;
- Principles for allocation of water between all users drawing upon the same water supply as TFN; and
- Relationship between TFN's water rights and existing and future non-TFN water rights.

Legislative Jurisdiction and AuthorityManagement and Administration

- Allow for agreements between TFN and BC with respect to the management and administration of water licensing, inventory and monitoring; and
- Allow for participation in water management advisory processes.

9. *Forest Resources (in Framework Agreement: forestry)*

Access

- Provisions with respect to TFN access to forestry resources.

Management and Standards [as required]

- Provisions that clarify forest management, marking and scaling practices and standards over forestry resources on and off TSL.

Emergencies [as required]

- Provisions that clarify responsibilities for fire fighting and forest health on and off TSL; and
- Provisions that clarify liabilities and responsibilities with respect to dealing with environmental emergencies on and off TSL.

10. *Governance*

Tsawwassen Government

- General characteristics, e.g., relationship to *Indian Act*, *Canadian Constitution*, Tsawwassen Constitution and Final Agreement;
- Identification of official name;
- Tsawwassen government as a legal entity (e.g., capacity, rights, powers, privileges, accountability, immunity, liability);
- Provision for appeal and review of administrative decisions made by Tsawwassen government;
- Registry of, and copies of, Tsawwassen laws, by-laws, etc.;
- Possible provisions in the Final Agreement to make provision from Tsawwassen Indian Band to Tsawwassen government; and
- Geographic extent of Tsawwassen government authority.

Tsawwassen Constitution

- Confirm the TFN Constitution is an internal document; components include for example, establishment of a TFN government structure, elections accountability to members, procedures for law making and, provisions for disposition of treaty-related assets, including land, etc.

Individuals who are not Tsawwassen members

- Provisions to address the interests of individuals who are not members of TFN, but who either reside on or have a property interest in TFN lands.

Legislative Jurisdiction and Authority

- Nature and scope of law making authority including areas specified, to be negotiated, necessarily incidental, and necessary to rights and responsibilities under the Final Agreement; and
- Relationships among laws

Financial Accountability**11. Local and Regional Government Relations**Relationship with local and regional governments

- Identify relationship of TFN Government with other local governments and regional bodies such as Delta Municipality, Greater Vancouver Regional District and Greater Vancouver Water District.

12. Financial ComponentAmount of Capital Transfer and provisions for payments

- Amount of Capital Transfer;
- Principles to be included in the negotiated schedule of payments; and
- Arrangements for repayment of negotiation loan.

13. Fiscal Relations

- Principles to govern fiscal relations including standards of programs and services, funding obligations, flexibility and method for determining costs and funding;
- Provision for negotiation of fiscal agreements;
- Principles to govern specific negotiations; and
- Principles that clarify Parties' contributions including Tsawwassen's contributions from its own revenue sources.

14. TaxationTaxation roles and responsibilities

- Principles that clarify authority of Canada, BC or Tsawwassen to impose or levy taxes of various types;
- As needed, provision for specific negotiations regarding tax administration, etc.;
- Provisions regarding taxation of Tsawwassen members, Tsawwassen government, tax treatment of TSL and capital transfer; and
- Review of other approaches to taxation with other First Nations.

15. Economic Development

- Provisions for economic development initiatives.

16. Resource Revenue**17. Dispute Resolution**

- Identification of what would be covered by a dispute resolution process;
- Identification of broad objectives for relationship (e.g., desire to avoid disputes); and

- Indication of broad stages of dispute resolution process.

18. *Eligibility and Enrolment*

- Identify criteria for eligibility for enrolment under the Tsawwassen treaty;
- Implications for enrolment in other treaties or other obligations, rights or benefits;
- Administrative procedures (e.g., enrolment committee, provision for appeal, etc.);
- Funding for administrative procedures; and
- Transitional provisions for Tsawwassen responsibility for enrollment process.

19. *Implementation*

- Status and purpose of implementation plan; and
- Procedure for beginning work and target for completion of implementation plan.

20. *Approval of the Agreement in Principle*

- Procedures (e.g., initialing by Chief Negotiators, signatures by authorized individuals).

21. *Ratification of the Final Agreement*

- Procedures by which each party will ratify the final agreement; and
- Procedure for ratification of Tsawwassen constitution.

22. *Parks and Protected Areas*

TSAWWASSEN TREATY NEGOTIATIONS

**CHAPTER RELATED TO
APPROVAL OF THE AGREEMENT IN PRINCIPLE BY THE THREE
PARTIES**

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As topics progress to this level of discussion, we intend to make working drafts available to the public for their information. Once the Parties have agreed on the substantive approach to a particular issue, each Party may wish to propose drafting language for that clause, as part of the working development.

Where previously released Interest Papers and background documents provide more clarification and context, we will note those documents.

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George Mackie Library
South Delta Library

Ladner Pioneer Library
Kwantlen University College (Surrey)

For further information on the public consultation process, negotiations or if you would like to provide comments, please contact:

British Columbia
(250) 356-8721
Cory Herrera
Negotiator

Tsawwassen First Nation
(604) 943-2112
Ruth Kenny

Federal Treaty Negotiation Office
Indian and Northern Affairs Canada
1-800-665-9320
Diane Gielis, Advisor
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<http://www.corp.delta.bc.c>

Tsawwassen First Nation Treaty Negotiations

APPROVAL OF THE AGREEMENT IN PRINCIPLE

Status	Clause
Recommended.	1. This Agreement in Principle will be submitted to the Parties for approval after it has been initialed by the Chief Negotiators for Canada and British Columbia and the Chief of the Tsawwassen First Nation.
Recommended	2. Tsawwassen First Nation will have approved this Agreement when it is signed by the Chief of the Tsawwassen First Nation after it has been approved in accordance with a Tsawwassen First Nation community approval process that includes a general assembly and a community vote by secret ballot by on-reserve and off-reserve Tsawwassen First Nation members.
Recommended	3. Canada will have approved this Agreement when it is signed by a Minister authorized to do so by the federal Cabinet.
Recommended	4. British Columbia will have approved this Agreement when it is signed by a Minister authorized to do so by the provincial Cabinet.
Recommended	5. This Agreement is not legally binding

Issues to be resolved by AIP	Funding requested from Tsawwassen to support the Agreement in Principle approval process within their community.
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TSAWWASSEN TREATY NEGOTIATIONS

**CHAPTER RELATED TO
RATIFICATION OF THE FINAL AGREEMENT BY THE THREE
PARTIES**

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As topics progress to this level of discussion, we intend to make working drafts available to the public for their information. Each Party may wish to propose drafting language for a clause on substantive issues under negotiation.

Where previously released Interest Papers and background documents provide more clarification and context, we will note those documents.

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Consultation Draft #1 - December 11, 2002
 Tsawwassen First Nation Treaty Negotiations

RATIFICATION OF THE FINAL AGREEMENT

Status	Clause
	General
Recommended	1. The Final Agreement will be legally binding once ratified by all of the Parties in accordance with the ratification provisions of the Final Agreement. 2. After the Final Agreement has been initialed by Chief Negotiators for Canada, British Columbia and Tsawwassen First Nation, it will be submitted to the Parties for ratification as set out in the Final Agreement.
	Ratification by Tsawwassen First Nation
Recommended	3. The Parties will establish a Ratification Committee, with equal representation of each of the Parties. The Ratification Committee will be responsible for the Tsawwassen First Nation ratification process, including preparing a list of eligible voters, as set out in the Final Agreement.
Recommended	4. An eligible voter will be a person who: <ul style="list-style-type: none"> (a) is enrolled under the eligibility and enrolment provisions of the Final Agreement; (b) is at least 18 years of age on the day of voting; (c) is not enrolled in any other land claims agreement; and (d) meets any other criterion set out in the Final Agreement.
Recommended	5. Ratification of the Final Agreement by Tsawwassen First Nation will require: <ul style="list-style-type: none"> (a) that Tsawwassen First Nation voters have a reasonable opportunity to review the Final Agreement; (b) a vote, by way of a secret ballot; (c) that a majority of eligible voters vote in favor of the Final Agreement; (d) if the Tsawwassen First Nation Constitution is not already ratified, then ratification of it through the process set out in the Final Agreement; and (e) the Final Agreement be signed by the authorized representative of Tsawwassen First Nation.
	Ratification by Canada
Recommended	6. Ratification of the Final Agreement by Canada will require: <ul style="list-style-type: none"> (a) that the Final Agreement be signed by a Minister authorized by the federal cabinet to do so; and (b) the coming into force of federal legislation giving effect to the Final Agreement.
	Ratification by British Columbia
Recommended	7. Ratification of the Final Agreement by British Columbia will require: <ul style="list-style-type: none"> (a) that the Final Agreement be signed by a Minister authorized by the provincial cabinet to do so; and (b) the coming into force of provincial legislation giving effect to the Final Agreement.

TSAWWASSEN TREATY NEGOTIATIONS**CHAPTER RELATED TO
DISPUTE RESOLUTION**

Canada, British Columbia and Tsawwassen First Nation are pleased to provide working draft documents that form the basis for discussions at the Tsawwassen Treaty table. This draft chapter represents the progress reached to date on discussion of specific topics of an Agreement in Principle (Stage 4 of the Treaty process). This chapter concerns "Dispute Resolution," the process by which, after the treaty is in effect, the three Parties who sign the treaty will resolve disputes amongst themselves related to interpretation of the treaty provisions.

As topics progress to this level of discussion, we intend to make working drafts available to the public for their information. Once the Parties have agreed on the substantive approach to a particular issue, each Party may wish to propose drafting language for that clause, as part of the working development.

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DISPUTE RESOLUTION

Status	Clause
Recommended	1. The Final Agreement will set out a dispute resolution process for: <ul style="list-style-type: none"> (a) disputes over interpretation, application, implementation, and alleged breaches of the Final Agreement; and (b) other matters identified in the Final Agreement.
Recommended	2. The Parties share the following objectives to avoid disputes: <ul style="list-style-type: none"> (a) to cooperate and develop respectful working relationships; and (b) to identify and resolve issues early, efficiently, and in a non-adversarial way.
Recommended	3. Unless otherwise provided for in the Final Agreement, any disputes that arise between or among the Parties will progress, until resolved, through the following stages of the dispute resolution process: <ul style="list-style-type: none"> (a) informal discussions between or among the Parties; (b) formal negotiations between or among the Parties; (c) mediation or another non-binding process between or among the Parties; and (d) a binding decision-making process, either by arbitration where agreed to in the Final Agreement, or by court proceedings.
Recommended	4. Unless otherwise provided for in the Final Agreement each Party will bear its own costs of participating in the dispute resolution process and the Parties will share common costs.

TSAWWASSEN TREATY NEGOTIATIONS

CHAPTER RELATED TO
AMENDMENT OF THE FINAL AGREEMENT BY THE THREE
PARTIES

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As topics progress to this level of discussion, we intend to make working drafts available to the public for their information. Once the Parties have agreed on the substantive approach to a particular issue, each Party may wish to propose drafting language for that clause, as part of the working development.

Where previously released Interest Papers and background documents provide more clarification and context, we will note those documents.

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AMENDMENT

Status	Clause
Recommended	1. All amendments to the Final Agreement will require the consent of all three Parties.
Recommended	2. Any one or more of the Parties may propose an amendment to the Final Agreement.
Under Review By Canada	3. Where all Parties agree that an amendment to the Final Agreement is required, the Parties will proceed diligently to agree on the wording of such amendment.
Recommended	4. There will be a process for ratifying amendments to the Final Agreement.
Recommended	5. The Parties agree to take the necessary steps to implement amended provisions of the Final Agreement as soon as possible after the amendment has been ratified by all of the Parties.

Issue to be resolved by Final Agreement	The process referred to in Clause 4 has not been identified. It will have to be negotiated and agreed on by Final Agreement.
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