



---

<b>To:</b>	Richmond City Council	<b>Date:</b>	November 19 <sup>th</sup> , 2004
<b>From:</b>	Mayor Malcolm D. Brodie Chair, General Purposes Committee	<b>File:</b>	1-0152-00/Vol 01
<b>Re:</b>	<b>RICHMOND CONCERNS – PROPOSED TSAWWASSEN TREATY</b>		

---

The General Purposes Committee, at its meeting held on Monday, November 15<sup>th</sup>, 2004, considered the attached report, and recommends as follows:

**Committee Recommendation**

- (1) *That Richmond City Council request BC Minister Geoff Plant, Attorney General and Minister Responsible For Treaty Negotiations to:*
  - (a) *provide more detailed information regarding proposed Tsawwassen Treaty negotiation matters including:*
    - i) *governance and First Nations participation within regional structures and processes;*
    - ii) *additions to Treaty Settlement lands;*
    - iii) *fiscal compensation to local governments for lands that may be transferred from local government jurisdiction to First Nations, as a consequence of treaty negotiation;*
    - iv) *representation and treatment of non-(First Nation) member residents on Treaty Settlement Land;*
    - v) *taxation and other fiscal matters;*
    - vi) *economic fisheries concerns; and*
    - vii) *municipal Agricultural Land Reserve interests during requests for exclusion by First Nations;*
  - (b) *provide more time (i.e., beyond December 2004) for consultation with local governments regarding proposed Tsawwassen Treaty matters,*
  - (c) *reconsider the proposed Tsawwassen Treaty Agreement In Principle (AIP), Specified Lands approach for Additions to Treaty Settlement Lands and make it consistent with the many other Agreements In Principle in British Columbia;*
  - (d) *ensure that municipal interests are better addressed in treaty negotiations to avoid creating and compounding problems which will only need to be addressed later; and*
- (2) *That the Provincial Government provide additional funding for representation of local government concerns.*
- (3) *That a copy of the letter to BC Minister Geoff Plant be forwarded to Prime Minister Martin, the Federal Minister of Indian Affairs and Northern Development, the Federal Minister responsible for the DFO lands, the Premier of BC, Richmond MPs and MLAs, LMTAC, the UBCM Board, the Mayors of the GVRD municipalities, and the LMMA.*

Mayor Malcolm D. Brodie, Chair  
General Purposes Committee

Attach.

VARIANCE

Please note that staff recommended the following for Part (3)

- (3) That a copy of the letter to BC Minister Geoff Plant be forwarded to Richmond MPs and MLAs, LMTAC members, the UBCM Board and the GVRD Board.

and that Committee added Part (2) above, and renumbered the original Part (2) to Part (3).

## **STAFF REPORT**

### **PURPOSE**

The purpose of this report is to:

- present recent concerns of the Lower Mainland Treaty Advisory Committee (LMTAC) regarding outstanding Tsawwassen treaty negotiation matters, and
- Recommend ways to address them.

### **ORIGIN**

This report focuses on additions to Treaty Settlement lands and their implication.

On November 8, 2004 Richmond and other Lower Mainland members received correspondence from Mayor Ralph Drew, Chair, Lower Mainland Treaty Advisory Committee (LMTAC), regarding outstanding Tsawwassen Treaty negotiation matters (see **Attachment 1**).

The LMTAC Chair requests LMTAC members to:

1. pass a resolution to support the LMTAC's concerns regarding:
  - (a) "Additions to Treaty Settlement Lands (TSL)", and
  - (b) "Fiscal Compensation" for lands that may be transferred from local government jurisdiction to First Nations, as a consequence of treaty negotiation.
2. communicate their concerns to Minister Geoff Plant, Attorney General and Minister Responsible For Treaty Negotiations and send copies to their local MLAs.

### **FINDINGS OF FACT**

#### **PART 1 – MAIN CONCERNS**

##### Timing

It appears that the Parties (i.e., Federal, Provincial, First Nations) which are negotiating the Tsawwassen Treaty are going to finalize the Treaty Agreement-In-Principle (AIP) by mid-December 2004 and several important issues are being settled in a manner which will jeopardize municipal interests.

It is necessary to bring municipal concerns to the Province's attention immediately, if they are to be addressed.

##### Municipal Issues

The above timeline will not provide local governments with adequate time to review and provide feedback on the several critical Tsawwassen Treaty negotiation issues including:

- governance and First Nations participation within regional structures and processes,
- additions to Treaty Settlement lands,
- fiscal compensation to local governments,
- representation and treatment of non-(First Nations) member residents on Treaty Settlement Land
- taxation and other fiscal matters
- economic fisheries.

Precedent

It is important that municipalities address these matters because the proposed Tsawwassen Treaty negotiations will likely set a precedent for other treaty settlements and affect Richmond.

LMTAC Requests Of The Province

The LMTAC has requested the Hon. Geoff Plant to:

1. provide:
  - more detail regarding the above issues, and
  - adequate time for consultation with local governments before the Parties agree on the above substantive matters.
2. reconsider the proposed Tsawwassen Treaty Agreement, Specified Lands approach for Additions to Treaty Settlement lands approach and make the approach consistent with the many other Agreements In Principle (AIP) in British Columbia, and
3. ensure that due diligence is not displaced by hasty agreements.

**PART 2 – “TREATY SETTLEMENT LANDS” (TSL) CONCERNS**“Specified lands” = “Treaty Settlement Lands” (TSL)”

“Treaty Settlement Lands” (TSL) are those lands which are to be transferred to First Nations:

- pre-Treaty signing, and
- post-Treaty signing.

These two types of “Treaty Settlement Lands” (TSL) are to be owned and managed by First Nations pursuant to a treaty.

Currently the precise legal (e.g., governance) status of such lands is not known, but Richmond staff assume that such lands will be either:

- 1 under the jurisdiction (e.g., government, taxation, planning, zoning, servicing) of First Nations, and/or
- 2 not under the jurisdiction of First Nations, in which case they will be under the jurisdiction of another authority (e.g., Federal or Provincial governments; or Richmond).

The Traditional Approach To Treaty Settlement Lands

The traditional approach to Treaty Settlement lands in existing treaty Agreements in Principle (AIP) involves provisions in Final Agreements for identifying:

- specific Treaty Settlement Lands, at the time of Final Agreement, and
- a process:
  - by which a First Nation may acquire ownership of additional lands which may be either, adjacent to, or separate from, Reserve lands,
  - by which the Federal and provincial governments, and First Nations would be able to discuss and independently agree or disagree regarding such additional land decisions.
  - Here the Province would be able to influence (veto) decisions regarding:
    - if the additional lands would be acquired by First Nations,
    - the type of governance (e.g., First Nations, municipal, federal, provincial) of those lands, and
    - how municipal concerns would be addressed.

### The Proposed Tsawwassen Treaty Agreement In Principle Approach to Treaty Settlement Lands

There is less assurance for municipalities in the proposed Tsawwassen Treaty Agreement In Principle (AIP) as it:

- recognizes the following "Specified Lands":
  - Tsawwassen Lands (lands which will be under Tsawwassen ownership and governance jurisdiction), and
  - Other Tsawwassen Lands (lands which will form part of the treaty settlement package that Tsawwassen will own in fee simple, without governance jurisdiction).
- states that, before the Final (treaty) Agreement, the Parties will:
  - attempt to agree on:
    - Tsawwassen Lands, and
    - Other Tsawwassen Lands.
  - If there is no agreement in the Final (treaty) Agreement, on:
    - Tsawwassen Lands, and
    - Other Tsawwassen Lands,
 the Parties will establish provisions for a process to include lands.
- states that municipal consent, while sought, will not be guaranteed and cannot be "unreasonably withheld" (not defined).

Summary Proposed Tsawwassen Treaty Agreement In Principle (AIP) Approach to Treaty Settlement Lands				
Timing of Specified Lands	Ownership In fee Simple	Governance	Municipal Concerns	Municipal Consent Guaranteed?
<b>Pre-Treaty Lands</b> "Tsawwassen Lands"  Lands agreed at the time of the Treaty Final Agreement	By First Nations	Governance by First Nations	- representation - taxation - planning - zoning - servicing - other	- No - Will attempt to obtain municipal consent - Municipal consent is not to be "unreasonably withheld"
<b>Post Treaty Lands</b> "Other Tsawwassen Lands"  Lands specified in the Treaty which are to be acquired by First Nations <u>after</u> the Treaty Final Agreement	By First Nations	To be Determined  Governance by either: <ul style="list-style-type: none"> <li>- Federal</li> <li>- Provincial</li> <li>- municipal</li> <li>- other</li> </ul>	- representation - taxation - planning - zoning - servicing - other	- No - Will attempt to obtain municipal consent - Municipal consent is not to be "unreasonably withheld"

### **PART 3 – DESIGNATING LANDS FOR POSSIBLE POST-TREATY ACQUISITION BY FIRST NATIONS**

The LMTAC has concerns regarding the designation in Treaties of lands for possible acquisition by First Nations post-treaty (e.g., "Other Tsawwassen Lands").

These concerns include: which lands will be designated and the corresponding uncertainty regarding ownership, use, investment, sales, servicing and sale prices.

These concerns require clarification now.

#### **PART 4 - FISCAL COMPENSATION**

The LMTAC has financial concerns including:

- the compensation to municipalities by the federal and/or provincial governments for lands which First Nations acquire,
- cost-recovery for services,
- municipal competitive equity, and
- payments in lieu of taxes.

Treaty negotiations should be cost neutral for municipalities. Thus, these matters should be clarified prior to finalizing the treaties.

#### **PART 5 – OTHER MATTERS**

The LMTAC has identified additional concerns including economic fisheries which should be addressed prior to finalizing treaties.

Previously, Richmond expressed concerns regarding the removal of Treaty Settlement Lands from the provincial Agricultural Land Reserve (ALR) and its impacts on municipalities.

These latter concerns are not discussed in detail in this report.

#### **ANALYSIS**

Treaty negotiations are conducted by the federal and provincial governments and First Nations.

Municipalities are not directly involved in treaty negotiations.

Municipal treaty concerns are represented by the Province.

The LMTAC and GVRD have coordinated municipal input into the Treaty negotiation process through the Province.

Municipal interests are being jeopardized in the proposed Tsawwassen Treaty AIP.

#### **Questions**

The following questions are relevant to this matter:

- 1 What is the hurry to reach an agreement on substantive Tsawwassen Treaty issues by mid December 2004?
- 2 Will the Province request that the Tsawwassen Treaty negotiation process be extended to allow more time for municipal concerns to be addressed?
- 3 How will the Province ensure that the following municipal interests will be better protected and addressed during treaty negotiations:
  - governance and First Nations participation within regional structures and processes?
  - additions to Treaty Settlement lands?
  - fiscal compensation to local governments, for lands that may be transferred from local government jurisdiction to First Nations, as a consequence of treaty negotiation?
  - representation and treatment of non-(First Nations) member residents on Treaty Settlement Land?
  - taxation and other fiscal matters?

- economic fisheries?
- 4 How will municipal interests be protected during reviews of First Nations' requests to remove Treaty lands from the ALR in light of Bill 27?
- 5 What will be the implications of the proposed Tsawwassen Treaty Agreement In Principle (AIP) on treaty negotiations which affect Richmond?
- 6 Will the Province reconsider the proposed Tsawwassen Treaty AIP Specified Lands approach for Additions to Treaty Settlement Lands and make it consistent with the many other Agreements-in-Principle in British Columbia?
- 7 Will the Province provide more detailed information regarding the above mentioned proposed Tsawwassen Treaty negotiation matters?
- 8 Will the Province ensure that municipal interests are better addressed in treaty negotiations to avoid creating and compounding problems which will only need to be addressed later?

### **Recommendations**

Staff recommend that the Richmond City Council:

- 1 request BC Minister Geoff Plant, Attorney General and Minister Responsible For Treaty Negotiations, to:
  - Provide more detail regarding proposed Tsawwassen Treaty negotiation matters;
  - Provide more time (i.e., beyond December 2004) for consultation with local governments regarding proposed Tsawwassen Treaty matters,
  - Reconsider the proposed Tsawwassen Treaty AIP Specified Lands approach for Additions to Treaty Settlement Lands and make it consistent with the many other Agreements In Principle in British Columbia;
  - Ensure that municipal interests are better addressed in treaty negotiations to avoid creating and compounding problems which will only need to be addressed later;
- 2 Provide a copy of the letter to BC Minister Geoff Plant, to Richmond MPs and MLAs, LMTAC members, the UBCM Board and the GVRD Board.

### **FINANCIAL IMPACT**

If the above matters are not addressed now, it is likely that Richmond will incur a variety of unacceptable additional costs during future treaty negotiations which affect Richmond.

### **CONCLUSION**

The LMTAC has identified several important procedural, jurisdictional, governance and financial issues which affect municipalities and Richmond in the proposed Tsawwassen Treaty Agreement In Principle negotiation.

Recommendations are made to address these issues.



Terry Crowe,  
Manager, Policy Planning (4139)  
TTC:cas

**ATTACHMENT 1**

**November 8, 2004 Correspondence  
From Mayor Ralph Drew,  
Chair, Lower Mainland Treaty Advisory Committee (LMTAC)**



To: Mayor Brodie  
Chr. Barnes

pc: CAO  
Director, Intergov. + Corp. Relations  
for appropriate action

Ashton, Fran

**From:** Kirsteen Pirie [Kirsteen.Pirie@gvrd.bc.ca]  
**Sent:** Monday, 8 November 2004 11:30 AM  
**To:** admin@village.lions-bay.bc.ca; ahilsen@dnv.org; bhawkshaw@cnv.org;  
deakinc@portcoquitlam.ca; debbie.comis@city.burnaby.bc.ca; Ashton, Fran;  
gpatz@coquitlam.ca; howard.carley@anmore.com; kelly.kenny@cityofportmoody.ca;  
kladlone@bimbc.ca; lkelly@pittmeadows.bc.ca; mkwarwick@belcarra.ca;  
mrjones@city.surrey.bc.ca; pcurr@tol.bc.ca; pdaminato@city.new-westminster.bc.ca;  
sscholes@westvancouver.ca; syd\_baxter@city.vancouver.bc.ca; tarthur@city.langley.bc.ca;  
tfryer@mapleridge.org; wbaldwin@city.whiterock.bc.ca  
**Cc:** johndturner@telus.net; Adrian Belshaw; Barry Janyk; Candace Gordon; Corinne Lonsdale;  
David Stuart; Isabell Hadford; Jean Ferguson; Jon Harris; Joy Smith; Kim Anema; Kimberly  
Flick; Kirsteen Pirie; Schultz, Lani; leerankin@shaw.ca; Barnes, Linda; Lisa Barrett;  
lbarrett@vcn.bc.ca; Marino Piombini; Pam Goldsmith-Jones; Paul Edgington; Paul Fenwick;  
Ralph Drew; Regan Schlecker; Rick Beauchamp; Ron Riach; Susan Gimse  
**Subject:** Urgent Request - Your Agenda: LMTAC Letter re Pace of Negotiations & LMTAC Concerns  
**Importance:** High  
**Attachments:** Mayors Chairs - Pace of Tsawwassen Negotiations & LMTAC Concerns (Nov 04) COPY.PDF;  
Minister Plant - Tsawwassen Treaty Table - Pace (Nov 04) COPY.PDF; Briefing Note- Local  
Gov Additions to TSL Interests Sept 29 04 FINAL with appendix.pdf; DRAFT 5 Briefing Note-  
Local Gov Fiscal Interests Sept 04 with appendix.pdf

ACTING CITY CLERK

*Sent of behalf of Mayor Ralph Drew, LMTAC Chair*

To: Administrators at LMTAC Member Councils,

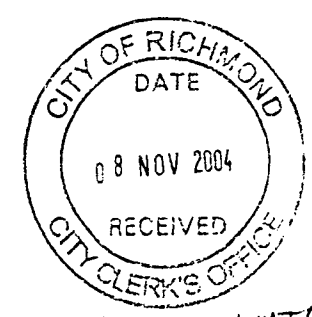
The attached letter to the Mayors and Chairs of all LMTAC member jurisdictions has been distributed to your council via same day courier service today.

Accordingly, I urge you to assist in placing this letter and corresponding material on your jurisdiction's agenda as soon as possible given the tight timelines with which we are working.

A similar email message was distributed to your jurisdiction's LMTAC elected and staff representatives with a similar request. Accordingly, please coordinate with these individuals at your earliest convenience.

Thank you for your prompt attention and assistance.

Mayor Ralph Drew,  
Chair, Lower Mainland Treaty Advisory Committee



0157-20 - LMTA1

LOWER  
MAINLAND  
TREATY  
ADVISORY  
COMMITTEE

		INT
	ARM	
1/	DW	DW
	KY	
	AS	
	DB	
	WB	

November 5, 2004

Mayor Malcolm Brodie & Council  
City of Richmond  
6911 No. 3 Road  
Richmond, BC V6Y 2C1

0157-20-LMTA1

Dear Mayor Brodie & Council:

**RE: LMTAC Concerns & Pace of Negotiations – Tsawwassen Treaty Table**

The purpose of this letter is twofold. First, I want to provide you with a copy of LMTAC's November 4<sup>th</sup> letter distributed to the Honourable Geoff Plant, Minister Responsible for Treaty Negotiations, outlining the serious concerns of the *Lower Mainland Treaty Advisory Committee* member jurisdictions' regarding the significant outstanding issues still requiring consultation and the pace of negotiations at the *Tsawwassen Treaty Table*.

Second, and most importantly, I ask that you place the attached November 4<sup>th</sup> letter on your next agenda for discussion, and that your Council or Board pass a resolution in support of LMTAC's concerns regarding both *Additions to Treaty Settlement Lands* (TSL) and *Fiscal Compensation* for lands that will be transferred from local government jurisdiction to First Nations as a consequence of treaty negotiations. I also ask that you communicate your support of LMTAC's concerns to Minister Plant with copies to your local MLA.

In the case of the *Tsawwassen Treaty Table*, municipal consent for the post-treaty conversion of fee-simple land to TSL is not a prerequisite, unlike all other AIPs in British Columbia. Specifically, the *Tsawwassen Treaty Table* AIP has stipulated in the Lands chapter under clause 23 that "*Before the Final Agreement, the Parties will attempt to obtain the consent of any municipality within whose boundaries the Specified Lands fall*"; however, clause 25 notes that "*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.*" 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.

Although we have not yet resolved the question of *Fiscal Compensation* for local governments that lose a portion of their taxable assessment base as a result of



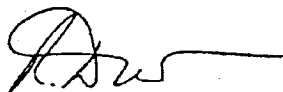
treaty settlement land transfers, it is essential that lands transferred post-treaty be compensated on the same basis as lands transferred at the time of *Final Agreement*.

In addition, the Province intends to explicitly identify (designate) fee-simple lands that, if purchased post-treaty by the First Nation, can be converted to *Treaty Settlement Lands*. 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. This approach is not in the interest of property-owners in British Columbia's communities.

We ask that the Province's *Specified Lands* approach for *Additions to Treaty Settlement Lands* presently being pursued at the *Tsawwassen Treaty Table* be reconsidered and made consistent the many other AIPs in British Columbia.

Your urgent attention to the foregoing would be very much appreciated.

Sincerely,



Mayor Ralph Drew,  
**Chair, Lower Mainland Treaty Advisory Committee**

Attachment

pc: LMTAC Members

November 4, 2004

Honourable Geoff Plant  
Attorney General and Minister Responsible for Treaty Negotiations  
PO Box 9100 STN PROV GOVT  
Victoria, BC V8W 9B1

Dear Minister Plant,

Re: Pace of Tsawwassen Treaty Negotiations

In recent months I have corresponded with you, on behalf of the *Lower Mainland Treaty Advisory Committee* (LMTAC), outlining specific Lower Mainland area local government interests and concerns at the *Tsawwassen Treaty Table* and, in particular, concerns related to *Final Agreement* negotiations.

During this time, the Parties at the *Tsawwassen Treaty Table* have publicly stated that the tripartite goal is to reach an agreement on substantive treaty issues by mid-December. With less than six weeks until this target date, LMTAC members are deeply concerned that details of several substantive treaty issues have yet to be decided at the *Tsawwassen Treaty Table* and, furthermore, that many of the discussions on the details will not be held until late November or early December.

Accordingly, it is now apparent that this current timeline will not provide local government with adequate time to review and provide feedback on issues of critical importance to LMTAC member jurisdictions, such as, but not limited to:

- Governance and First Nation participation within regional structures and processes;
- Additions to *Treaty Settlement Lands*;
- Fiscal compensation to local government;
- Representation and treatment of non-member residents on *Treaty Settlement Land*;
- Taxation and other fiscal matters; and
- Economic fisheries.

+ Ag  
lands

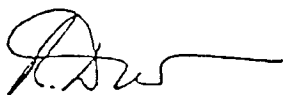
We appreciate that the Parties' wish to conclude negotiations in a timely manner to allow the negotiating table to progress toward *Final Agreement*; however, more detail on the above noted key issues and adequate time for consultation with local government must be provided before the Parties agree to such substantive issues.

...Page Two

November 4, 2004

We trust that you share these concerns, and will ensure that due diligence will not be displaced by hasty agreements.

Sincerely,



Mayor Ralph Drew, Chair  
**Lower Mainland Treaty Advisory Committee**

cc: Lorne Brownsey, Deputy Minister, Treaty Negotiation Office  
Mike Furey, Assistant Deputy Minister, Treaty Negotiation Office  
Bronwen Beedle, Chief Negotiator, Treaty Negotiation Office  
Cory Herrera, Negotiator, Treaty Negotiation Office  
Martha Anslow, Manager, Local Government - First Nations Relations, Ministry of  
Community, Aboriginal and Women Services  
Director Ted Armstrong, Chair, UBCM Aboriginal Affairs Committee  
Alison McNeil, Senior Policy Analyst, UBCM  
Joanne Gauci, Policy Analyst, UBCM  
LMTAC members

## 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.

## A Scan of References to Additions to Treaty Settlement Lands and Local Government Tax Loss\*

### Appendix to: Additions to Treaty Settlement Land & Treaty Negotiations - LMTAC Background Briefing Note to First Principle #12

Document	Issue	Prepared for/by	Date	Page/Section	Text Quotation
Considerations: A Guide to Lower Mainland Area Local Government Interests in Treaty Negotiations	Additions to Treaty Settlement Lands	Lower Mainland Treaty Advisory Committee (LMTAC)	July 2000	Page 10; First Principle #12	<p>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.</p> <p>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.</p>
Considerations: A Guide to Lower Mainland Area Local Government Interests in Treaty Negotiations	Local Government Tax Loss	Lower Mainland Treaty Advisory Committee (LMTAC)	July 2000	Page 14; First Principle #36	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.
GVRD Principles for Treaty Negotiations	Additions to Treaty Settlement Lands	GVRD	Oct. 1999 (updated July 2002)	Page 2; Principle #9	Lands and assets held and designated by the GVRD including, but not limited to, leased lands, rights-of-way, and Crown reserves must be excluded from any treaty settlement.
GVRD Principles for Treaty Negotiations	Additions to Treaty Settlement Lands	GVRD	Oct. 1999 (updated July 2002)	Page 2; Principle #10	The interests in non-Crown land owned in fee simple, including lands owned by the GVRD, other governments, or private individuals and corporations, be protected in future treaties.
GVRD Principles for Treaty Negotiations	Local Government Tax Loss	GVRD	Oct. 1999 (updated July 2002)	Page 2; Principle #14	All costs associated with treaty settlements must be the responsibility of the Provincial and Federal governments in terms of lands and assets that are being negotiated.
Snuneymuxw First Nation Treaty Negotiations: Discussion Paper – Positions and Interests Expressed by Local and Regional Government	Additions to Treaty Settlement Lands	BC Treaty Negotiations Office	Revised Sept. 13, 2002	Page 19;  Regional District of Nanaimo  Crown Lands  Principle #3	<p>Regional District of Nanaimo</p> <p>Any Crown Lands that become treaty settlement lands shall remain under current land use designations unless a change is agreed to under the Growth Management Planning process.</p>

Document	Issue	Prepared for/by	Date	Page/Section	Text Quotation
Snuneymuxw First Nation Treaty Negotiations: Discussion Paper – Positions and Interests Expressed by Local and Regional Government	Additions to Treaty Settlement Lands	BC Treaty Negotiation Office	Revised Sept. 13, 2002	Page 28;  City of Nanaimo  Jurisdiction over Fee Simple Lands  Principle #1	City of Nanaimo  The City expects that all fee simple lands designated as treaty settlement lands to remain under the jurisdiction of the municipality.
Prince George Treaty Advisory Committee Statement of Interest in Treaty Negotiations	Local Government Tax Loss	Prince George Treaty Advisory Committee (PGTAC)	March 4, 1998	Revenue and Taxation section	If non-reserve settlement lands are removed from the municipal assessment rolls and then taxed by the First Nation, the loss of existing tax revenues may be significant in some cases. The Prince George TAC has an interest in the creation of a process in place for compensating municipalities for loss of tax revenues.
FVTAC Guiding Principles in Treaty Making in the BC Treaty Commission Process	Local Government Tax Loss	Fraser Valley Treaty Advisory Committee (FVTAC)	1999	Page 2	At the end of treaty making, there must be zero net costs to local government. Specifically, this means there should be adequate compensation for municipal and regional services rendered by a local government on TSL. The FVTAC recognizes the importance of designating a land base over which First Nations have jurisdiction as Treaty Settlement Lands. Municipalities are bound by the financial stability provisions of the Municipal Act. Maintenance of a stable and adequate tax base that can support the services local governments provide to their constituencies is also a priority. Once treaties are completed, there must be certainty that the changes in jurisdictions that impact local government are also complete.
FVTAC Guiding Principles in Treaty Making in the BC Treaty Commission Process	Additions to Treaty Settlement Lands	Fraser Valley Treaty Advisory Committee (FVTAC)	1999	Page 3	Any crown land which has a local government interest should be preserved and respected by the Crown.
A Guide to Islands Trust Interests in Treaty Negotiations in the Islands Trust Area	Additions to Treaty Settlement Lands	Islands Trust	Feb. 2004	Page 5	<ul style="list-style-type: none"> <li>Any lands acquired by a First Nation after completion of its treaty agreement remain within the land use planning jurisdiction of a local trust committee or island municipality.</li> <li>The local trust committee or island municipality is granted a veto on additions to Treaty Settlement Lands after Treaty Agreement.</li> </ul>

Document	Issue	Prepared for/by	Date	Page/Section	Text Quotation
Fraser Valley Treaty Advisory Committee Minutes	Local Government Tax Loss	Fraser Valley Treaty Advisory Committee	Sept. 16, 2003	Page 2	Discussion related to the importance of ensuring that in the event any fee simple lands become part of the treaty settlement lands, adequate compensation is made to the Regional District for any lost tax revenue. Taxes are intrinsically linked to land, and this is particularly important given the Regional District apportionment to health care infrastructure...
Resolution endorsed by the Union of BC Municipalities membership at the 2004 annual convention	Additions to Treaty Settlement Lands	Union of BC Municipalities (UBCM)	Sept. 2004	---	<p>Regional District Interests in Additions to Treaty Settlement Lands</p> <p>WHEREAS four Agreements in Principle (AIP) negotiated with First Nations in 2003 by the provincial and federal governments have been ratified by all three parties;</p> <p>AND WHEREAS only one of these AIPs required the parties to take into account the interests of the regional district in cases where a proposal is made to add land that is within the Regional District but outside a municipality to First Nations treaty settlement lands post-treaty.</p> <p>THEREFORE BE IT RESOLVED that all treaties and Agreements in Principle negotiated with First Nations by the provincial and federal governments require that regional districts be consulted and accommodated before lands are added to First Nations treaty settlement land post-treaty.</p>
Lheidli T'enneh Agreement in Principle	Additions to Treaty Settlement Lands	Canada, BC, Lheidli T'enneh First Nation	July 26, 2003	Pages 46-47	<p>17. At any time after Effective Date, with the agreement of Canada and British Columbia, Lheidli T'enneh may add to Lheidli T'enneh Lands, land that is:</p> <p>c. outside of municipal boundaries or within municipal boundaries if the municipality consents;</p> <p>18. Nothing in paragraph 17 obligates Canada or British Columbia to pay any costs associated with the purchase, transfer or related costs concerning the addition of lands to Lheidli T'enneh Lands.</p> <p>19. When making a decision pursuant to paragraph 17, the Parties will take into account, among other factors:</p> <p>b. interests of the Regional District of Fraser Fort George in cases where the land is within the Regional District of Fraser Fort George but not within a municipality.</p>
Sliammon Agreement in Principle	Additions to Treaty Settlement Lands	Canada, BC, Sliammon First Nation	2003	Page 24	<p>25. With the agreement of, and at no cost to, Canada and British Columbia, Sliammon may add parcels of land to Sliammon Lands which are:</p> <p>b. outside of municipal boundaries unless the municipality consents</p>
Snuneymuxw Treaty Negotiations Consultation Draft	Additions to Treaty Settlement Lands	Canada, BC, Snuneymuxw First Nation	Feb. 19, 2003	?	<p>14. At any time after the Effective Date, with the agreement of, and at no cost to, Canada and British Columbia, Snuneymuxw may add to Snuneymuxw Treaty Land, land which is:</p> <p>c. outside of municipal boundaries unless the Municipality consents</p>

Document	Issue	Prepared for/by	Date	Page/Section	Text Quotation
Tsawwassen Agreement in Principle	Additions to Treaty Settlement Lands	Canada, BC, Tsawwassen First Nation	2003	Page 24	<p>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.</p> <p>22. Before the Final Agreement, the Parties will agree on the process required to include Specified Lands as Tsawwassen Lands after the Effective Date.</p> <p>23. Before the Final Agreement, the Parties will attempt to obtain the consent of:</p> <ol style="list-style-type: none"> <li>any municipality within whose boundaries the Specified Lands fall; and</li> <li>any First Nation which claims aboriginal rights or title to the Specified Lands, to any proposed inclusion of Specified Lands as Tsawwassen Lands.</li> </ol> <p>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.</p> <p>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.</p>
Maa-Nulth First Nations Treaty Negotiations Summary of Agreement in Principle	Additions to Treaty Settlement Lands	Canada, BC, Maa-Nulth First Nations, BC Treaty Commission	2003	Page 4	Each Maa-Nulth First Nation will be able to add fee simple land to settlement land in the future, subject to the agreement of Canada and British Columbia, and to the consent of the municipality if the lands are within municipal boundaries. Any such additions will be at no cost to Canada and British Columbia.
Sechelt Agreement in Principle Summary	Additions to Treaty Settlement Lands	Canada, BC, Sechelt Indian Band	1999	Page 1	<ul style="list-style-type: none"> <li>For 24 years after the effective date, the Sechelt Indian Band may propose to Canada and BC to add to Sechelt Treaty Land, land that the band had acquired or optioned.</li> <li>The total area of the Sechelt Treaty Land will not be more than 3,055 hectares. The Sechelt Indian Band will not own subsurface resources on lands acquired after the effective date unless agreed to by BC.</li> <li>Any lands to be added must meet certain defined criteria and be approved by Canada and BC. For example, added lands must be within a defined area and must not result in any cost to Canada or BC.</li> <li>To ensure that municipal interests are considered, lands within municipal boundaries may not be added unless the municipality agrees. Similarly, lands acquired within an area of overlap with another First Nation may not be added to treaty lands unless the First Nation agrees.</li> </ul>

Document	Issue	Prepared for/by	Date	Page/Section	Text Quotation
Additions to Reserves – Communications ToolKit (Strategy)	Local Government Tax Loss  Additions to Reserves	Indian and Northern Affairs Canada (INAC)	May 13, 2004	Appendix 4, Page 35	<ul style="list-style-type: none"> <li>• Federal lands are not part of the tax base from which provinces or municipalities may draw property taxes.</li> <li>• Municipalities may face a net loss of property tax revenue when a reserve is created or expanded.</li> <li>• Additions to Reserves (ATR) policy requires that a First Nation negotiate directly with the municipality on reasonable compensation.</li> <li>• ATR policy does not require a First Nation to compensate the municipality for an unlimited time for the net loss of property taxes.</li> </ul>
Evaluation of the Additions to Reserve (ATR) Policy	Additions to Reserve	Audit and Evaluation Branch, Indian and Northern Affairs Canada (INAC)	June 6, 1996	Page iv	<p>Recommendations:</p> <ul style="list-style-type: none"> <li>• That the Director of Lands coordinate with the regions to take steps; including the preparation of appropriate documentation, to inform....</li> </ul> <p>3. Municipalities on the Additions to Reserve policy to ensure they are aware of the policy's implications for them; and</p> <p>4. Other affected parties...</p> <p>7. The policy requires that written consultation occur with urban and rural municipalities within whose boundaries the proposed land addition is located.</p>

## FISCAL INTERESTS AND TREATY NEGOTIATIONS

### BACKGROUND BRIEFING NOTE TO LMTAC FIRST PRINCIPLE #36: *Cost Neutral Agreements for Local Governments\**

This Briefing Note includes information on:

1. LMTAC's current related policy;
2. Background: Local Government Powers Related to Property Taxation  
First Nation Powers Related to Property Taxation (Pre and Post-Treaty)
  - a) Pre-Treaty Context: *Indian Act & Indian Self Government Enabling Act*
  - b) Post-Treaty Context: *Tsawwassen Agreement in Principle*
3. Other related LMTAC interests and concerns

## 1. Fiscal – Existing LMTAC Policy

### *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.*

## 2. BACKGROUND:

### LOCAL GOVERNMENT POWERS RELATED TO PROPERTY TAXATION

Taxation is the predominant tool for financing the provision of municipal services. Among the various tax tools available to local governments, the ad valorem tax (a tax determined by applying a tax rate to the taxable assessed property value) is the largest source of revenues for all municipalities.

The tax derived from a property depends upon its assessed property value (from the BC Assessment Authority) and the municipal tax rate (stated as a tax per \$1000 of assessed value). Each municipality sets its own tax rates annually and in general, most choose to levy a higher rate on industry and business than on homes.

#### Community Charter – Municipal Revenue Provisions:

Local Government powers related to taxation were previously provided for under the *Local Government Act* and are now provided for in the *Community Charter* (Part 7- Municipal Revenue).

Under the *Community Charter*, Property Value Taxation is one source of municipal revenue. Each year, after adoption of the financial plan but before May 15, a council must, by bylaw, establish tax rates for:

- a) the municipal revenue proposed to be raised for the year from property taxes, as provided in the financial plan, and
- b) the amounts to be collected for the year by means of rates established by the municipality to meet its taxing obligations in relations to another local government or other public bodies.

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



Unless otherwise permitted, property taxes are imposed on all taxable land and improvements in the municipality. For the purposes of generating municipal revenue, the bylaw may establish for each property class a rate for all revenue to be raised, or separate rates for revenue to be raised for different purposes, however the relationship between the different property class rates must be the same for all purposes.

## FIRST NATION POWERS RELATED TO PROPERTY TAXATION

### **Pre-Treaty Context: Federal *Indian Act* & Provincial *Indian Self-Government Enabling Act***

In 1988, the federal *Indian Act* (section 83) was amended to enable First Nations to collect taxes on reserve land leased to non-aboriginal residents or businesses. An Indian Band interested to take advantage of this amendment is required to pass a property taxation bylaw which must be reviewed by the Indian Taxation Advisory Board and then approved by the federal minister.

To prevent double taxation, the B.C. government passed the *Indian Self-Government Enabling Act* in 1990, which provided for provincial and municipal authorities to withdraw from taxing reserve lands when band taxation bylaws take effect.

### **Post-Treaty Context: *Tsawwassen Agreement in Principle* (July 9, 2003)**

- **Taxation Chapter**

#### Other Taxation and Tax Administration Agreements

Clause 4: *Before the Final Agreement, Tsawwassen First Nation and British Columbia will negotiate and attempt to reach agreement on terms and conditions;*

- a. *upon which Tsawwassen First Nation will have the authority to impose real property tax on all person in respect of those person's interests in Tsawwassen Lands; and*
- b. *to relieve all persons from real property taxation imposed under authority of British Columbia in respect of their interests in Tsawwassen Lands.*

#### Tsawwassen Lands

Clause 6: *Tsawwassen First Nation will not be subject to taxation of lands, or interests in lands, on Tsawwassen Lands, on which there are no improvements or on which there is an improvement all or substantially all of which is used for a public purposed and not for a profitable purpose.*

- **Fiscal Relations Chapter**

#### Own Source Revenue

Clause 17: *Before initialling the Final Agreement, the Parties will negotiate and reach agreement on:*

- a. *a definition of own source revenue capacity, including own source revenue capacity associated with real property taxation.*

### 3. Other Related LMTAC Interests and Concerns

#### Potential Impacts to Local Government Revenue Sources Resulting from Treaty Settlements

Treaty settlement land packages have the potential to impact local government revenue sources in the following ways:

- current revenue sources (property taxes and grants-in-lieu)
- future prospects and lost opportunity costs

#### Local Government Fiscal 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.*

- **Compensation For Loss of Revenue-** Local governments must be provided with fair compensation in order to adjust to changes to revenue sources (i.e. property taxes, grants-in-lieu of taxes, and future opportunities) resulting from treaty land selection.

The Province is committed to concluding treaties that are of no net loss to local governments. In order to ensure this outcome, **mitigating factors** must be considered and a **process** must be established to address any losses incurred by local governments. The treatment of compensation/adjustment funding for local governments should be guided by the following principals:

##### **Mitigating Factors (Pre-treaty land selection)**

- Pre-treaty, the Province should undertake cumulative impact studies to determine what the anticipated impact land selection will have on affected local governments. This information should be made available to local governments as part of the Province's commitment to transparency.
- Land settlements must take into account what percentage of a municipality's land base is being considered for TSL and the resulting impact to its population/assessment base. (Acknowledge that the magnitude of such impacts on the tax base of smaller municipalities will be greater).
- Provide local governments with sufficient notification of any changes to their existing assessment base in order to plan for necessary adjustments.

##### **Process to Compensate Local Governments (Post-treaty by Effective Date)**

- Provide local governments an opportunity to evaluate the impact of treaties on their revenues and expenditures. (For example, comparing the total property taxes collected with the costs to service a particular parcel of land). In the event local governments demonstrate that a loss has resulted, this information would in turn be used to apply for "community adjustment funding".
- Relief provided to local governments should be provided in accordance with a proposed transition or phase-in period to avoid any undue economic strain on local governments.

- **Cost-recovery for Services-** Local governments rely on service agreements with First Nations to recover user fees and service charges. Although service agreements are a matter to be addressed outside treaty, treaty provisions should enable such intergovernmental arrangements.
- **Budgetary Stability-** Capital financing and service provision commitments are based upon expectations of a relatively predictable population/assessment base. Five-year financial plans are now a statutory requirement and mean that local governments value stability and sufficient time to consider the impacts of revenue change. Given the strict budgetary process designated by the *Community Charter*, which requires local governments to balance their budgets, maintaining financial stability is a primary interest of local governments in order that they continue to be able to provide the services expected by their residents, at a reasonable cost.

Significant or unanticipated changes to any of local government revenue sources may result in revenue shortfalls and tax increases, unless there is a corresponding decrease in expenditures.

- **Future Prospects-** Treaty land selection must not unfairly constrain the ability of Local governments to provide for future growth of their communities (in-keeping with the *Regional Growth Strategy*) and benefit from the development potential within those lands.
- **Fairness and Equity** in First Nation and local government taxation authority as it relates to:
  - Establishing tax rates between property classes
  - Exemptions (land and improvements) in relation to the property tax.
- **Economic Development-** Local governments are interested that there be equity in taxation so that a 'level playing field' is established. This issue must be settled in the negotiations. Mechanisms and opportunities for joint and co-ventures and partnerships between the communities should be supported and encouraged both in the negotiation process and in the post- treaty settlement period.
- **Consistent Legislative and Regulatory Regimes-** First Nation government authorities related to such areas as: property taxation, environmental regulation, income tax, sales tax and labour legislation, should be derived from policy frameworks comparable to principal local government documents (*Community Charter*).

### Local Government Fiscal Concerns

- **Reduced Competitive Equity-** If First Nation governments are provided with competitive tax advantages over neighbouring local governments, this would negatively impact local economies and the ability for non-First Nation governments to attract business investments.
- **Inability to Recover Costs for Services-** All existing and future service agreements must be respected to ensure local governments receive financial contributions from all users of local government programs, services and infrastructure (*LMTAC First Principle #35*).
- **Increased Infrastructure Maintenance Costs-** Unanticipated development of lands that are transferred for treaty settlements will place a strain upon the transportation corridors and service infrastructure of adjacent municipalities, resulting in increased maintenance costs.

## **PROPOSED FISCAL COMPENSATION MODEL TO LOCAL GOVERNMENT\***

### **APPENDIX TO FISCAL INTERESTS AND TREATY NEGOTIATIONS BACKGROUND BRIEFING NOTE TO LMTAC FIRST PRINCIPLE #36: Cost Neutral Agreements for Local Governments**

#### ***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.*

#### **A. Draft Compensation Formula to Calculate Local Government Lost Revenue**

***Annual Local Government Lost Revenue =***

***Land Quantum Transferred From Local Government X  
Current Land, B.C. Assessment, Assessed Value (at Current Property Classification) X  
Current Local Government Tax Rate***

##### **What the Formula addresses:**

- The municipal tax component for municipal lands, unoccupied Crown Lands, and Crown Corporation Lands.
- Treaty related scenarios — although this does not preclude non-treaty scenarios or examples.

##### **What the Formula does not address:**

- Municipal service delivery costs, as these are anticipated to be addressed through the negotiation of service agreements directly between the First Nation and municipality.
- Regional district service delivery costs, as these are anticipated to be addressed through post-treaty regional governance discussions whereby First Nations may become members of the regional district.

#### **B. Formula Assumptions**

- Compensation is to be paid in the form of an on-going *payment-in-lieu*, calculated annually based on the land quantum transferred from the local government, current land assessment for the current property classification for the transferred lands, and the current local government tax rate for that land use.
- Compensation is to be paid as of the *Effective Date* of a treaty, when lands are transferred from municipal to First Nation jurisdiction; and at the time that post-treaty additions to *Treaty Settlement Lands* occur.

\*Endorsed in-principle by LMTAC Board, October 27, 2004.

- Parity between First Nation and local governments in their ability to develop lands for economic opportunities.
- Prior to lands being transferred, service arrangements will be negotiated between First Nations and local governments for payment of services provided. Fees for service will not be unbundled, and will include both hard and soft services.
  - Hard Services (i.e. water, sewer, refuse collection, recycling, etc.) — These types of agreements refer to additional services outside the general tax levy that are directly related to the cost for the various services. Local governments may enter into agreements to provide for full cost-recovery.
  - Soft Services (i.e. police, fire, library, parks, etc.) — Although revenue generated by service arrangements for soft services (included within the general tax levy) may be deducted from a *payment-in-lieu*, if funds for soft services are not also collected with respect to the *Treaty Settlement Lands* (TSL), then First Nation governments would be at a competitive advantage to the local government.
- If local governments do not receive fair payment for services, then cost-recovery will need to be further explored as appropriate on a case-by-case basis and added to the annual *payment-in-lieu*.
- The fiscal compensation model should be adapted to each local government scenario.

### C. Rationale

- A *payment-in-lieu* is a “proxy” tax calculation and only includes the municipal tax component.
- *Payments-in-lieu* already exist; therefore, this proposal is not suggesting something new or precedent-setting.
- The municipal tax assessment is based on the existing *BC Assessment Authority* (and its annual cycle) and is in-line with *Community Charter* provisions related to local government taxation authority.
- As is the case for local government tax revenue calculations, the *payment-in-lieu* compensation calculations would also be done annually in order to accommodate changes in property classifications over time.
- A reliable/predictable property base is integral to each municipality's planning process. Municipalities work according to a 35-40 year redevelopment period for lands in transition from current property classifications.
- The model is based on a local government development-planning horizon, starting on the basis that compensation will be paid to municipalities by the Province into perpetuity, given that the loss incurred by local government for loss of tax assessable lands is in perpetuity.
- Services are provided for the benefit of the greater community, therefore service delivery cannot be unbundled.