



Corporate

NO: R278

Report

COUNCIL DATE: November 15, 2004

REGULAR

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| TO: | Mayor & Council | DATE: | November 9, 2004 |
| FROM: | Staff Representative to LMTAC on behalf of Councillor Priddy | FILE: | 0450-20 (LMTAC) 0440-01 (First Nations) |

SUBJECT: Concerns Relating To Tsawwassen First Nations
Treaty Negotiations – Additions to Treaty Settlement Lands

RECOMMENDATIONS

1. That the City support the Lower Mainland Treaty Advisory Committee in their concerns regarding the issue of **Additions to Treaty Settlement Lands** and **Fiscal Compensation** for lands that will be transferred from local government jurisdiction to First Nations as a consequence of treaty negotiations.
2. That the City communicate its support of LMTAC's concerns to the Honourable Geoff Plant, Minister Responsible for Treaty Negotiations with copies to Surrey's local MLAs.

INTENT

To apprise Council of the Lower Mainland Treaty Advisory Committee's (LMTAC) concerns relating to post-treaty land transfer issues and the latest developments in the Tsawwassen First Nations (TFN) Treaty

Negotiations.

DISCUSSION

As was previously reported to Council earlier this year, on March 15, 2004, the TFN's Agreement in Principle (AIP) was ratified by all three parties at the negotiations table (Canada, British Columbia and the TFN). As a result, the TFN progressed onto, and is presently engaged in, the Negotiation of Final Agreement Stage (stage 5 of the treaty process). Refer to Appendix A for an outline of the 6-Stage process.

TFNs land interests have been isolated within Delta's municipal boundaries including outlying areas/waters to the west of Delta. While these specific negotiations do not include interests that fall within Surrey's jurisdiction we are nonetheless concerned of potential future implications that a TFN settlement may have on the City.

Mayor Drew, LMTAC Chair, stated in the July 28, 2003 LMTAC Media Release that "While senior governments have previously stated that agreements reached on issues at this AIP will not be used as templates for other Lower Mainland treaty tables, there is no doubt these decisions and agreements will have implications for those other tables in the future."

In addition, Surrey has affirmed, on several occasions in the past, that while we are fundamentally supportive of the BC Treaty process, Surrey is opposed to any potential loss of municipal tax revenues resulting from future treaty settlements.

LOCAL GOVERNMENT CONCERNS REGARDING ADDITIONS TO TREATY SETTLEMENT LANDS AND FISCAL COMPENSATION

Through the ongoing treaty negotiations process, many BC First Nations are proposing options to increase their land base in post-treaty settlement situations. In the case of the *Tsawwassen Treaty Table AIP*, municipal consent for the post-treaty conversion of fee-simple land to Treaty Settlement Lands (TSL) will **not** be 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"

notwithstanding, 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.

Local government and the Province have not yet resolved the issue of "fiscal compensation for local governments that lose a portion of their taxable assessment base as a result of treaty settlement land transfers". LMTAC's firm position on this issue is that it is essential that municipal lands transferred post-treaty be compensated for 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. LMTAC’s position is that this approach is not in the interest of property-owners in British Columbia’s communities. Accordingly, LMTAC is requesting support from local jurisdictions in sending a clear message to the Province of its fundamental opposition to this approach.

Dispute to this approach has also been directed to the Province by the by the Union of British Columbia Municipalities via correspondence dated November 8, 2004 (copy of letter is attached as Appendix B).

TIMING OF DECISIONS AT THE TFN NEGOTIATIONS TABLE

Parties at the Tsawwassen Treaty Table (Canada, BC and the TFN) have publicly stated that the tripartite goal is to reach an agreement on substantive treaty issues by mid-December 2004. With less than five weeks until this target date, LMTAC members are deeply concerned that details of several substantive treaty issues, including the above noted TSL concerns, 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 2004. 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.

It is LMTAC’s position that 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. LMTAC formally expressed the above concern to the Province earlier this month.

Regular updates on the above issues have been forwarded to Council through the LMTAC Chair and via staff reports.

CONCLUSION

*The Tsawwassen Treaty Table tripartite Agreement in Principle states that, “the consent of municipalities...to a proposed inclusion of land as Tsawwassen Lands **should not be unreasonably withheld**” compared to all other AIPs in British Columbia for which municipal consent for the post-treaty conversion of fee-simple land to Treaty Settlement Lands (TSL) is required. The Lower Mainland Treaty Advisory Committee (LMTAC) is appealing to the Province that it reconsider this approach. In addition, LMTAC is requesting petitioned support from its members directly to the office of the Attorney General and Minister Responsible for Treaty Negotiations.*

Staff Representative to the LMTAC

on behalf of Councillor Priddy

RAC/

Attachment

APPENDIX A

THE BRITISH COLUMBIA TREATY COMMISSION'S SIX STAGE TREATY PROCESS

The British Columbia Treaty Process was formally established in 1991 when the Province formally joined the negotiations with the BC First Nations and the Federal government. In 1993 the BC Treaty Commission (BCTC) was formed out of this process. The six stages are as follows:

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| <p>STAGE ONE <i>Statement of Intent</i></p> | <p>First Nations choosing to enter into the treaty process must submit a Statement of Intent (SOI) to the BCTC. The SOI identifies the traditional territory, overlapping First Nations and included background information on the First Nation. Upon submission, the BCTC either accepts or rejects the SOI. TFN submitted a SOI in December 1993, wherein it was accepted by the BCTC.</p> |
| <p>STAGE TWO <i>Readiness</i></p> | <p>This is the first opportunity for representatives from the First Nation, BC and Canada to formally meet and declare their interests in treaty making, identify issues of concerns and to exchange information. TFN was declared "ready" by the BCTC in September 1995.</p> |
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| STAGE THREE Framework Agreement | <p>The First Nation, Provincial and Federal governments negotiate procedural matter through the Framework Agreement, which includes identification of substantive issues, establishment of a timeframe, initiation of the public information process and identification of meeting procedures.</p> <p>TFN signed the Framework Agreement in March 1999.</p> |
| STAGE FOUR Agreement-in-Principle | <p>This is the stage at which the parties begin substantive negotiations. The goal is to reach the major agreements that will form the basis of the treaty. During this stage, the parties examine in detail the elements of the Framework Agreement. The Agreement in Principle will confirm the ratification process for each party and lay the groundwork for an implementation plan.</p> <p>The ratification process allows the parties to review the emerging agreement and to approve, reject or seek amendments to it. British Columbia has announced that Agreements in Principle will be subject to public review before ratification. The process also gives the negotiators a mandate to conclude a treaty.</p> <p>TFN reached an Agreement-in-Principle with the Provincial and Federal governments in late 2003.</p> |
| STAGE FIVE <i>Negotiation of Final Agreement</i> | <p>The treaty will formalize the new relationship among the parties and embody the agreements reached in the Agreement in Principle. Technical and legal issues will be resolved at this stage, but issues already settled will not be reopened. The treaty will be signed and formally ratified at the conclusion of this stage.</p> <p>TFN formally entered this phase of negotiations in early 2004.</p> |
| STAGE SIX Implementation | <p>Once the treaty has been signed, a substantial amount of work is still required. Above all, the execution of long-term implementation plans and the commitment of good will and effort are the goal of the final stage of the process.</p> |

APPENDIX B

Available for viewing in the Legislative Services Dept at Surrey City Hall.