

SERVICING INTERESTS and TREATY NEGOTIATIONS BACKGROUND BRIEFING NOTE TO LMTAC FIRST PRINCIPLE #35: *Respect Service Agreements**

This Briefing Note includes information on:

1. LMTAC's current related policy
2. Background: Intergovernmental Relations provisions within the Tsawwassen Agreement in Principle (July 2003)
3. Other related LMTAC interests and concerns

1. Service Interests – Existing LMTAC Policy

First Principle #35 – Respect Service Agreements

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.

(Backgrounder Discussion paper, Services, Service Agreements and Treaty Negotiations, August 2001)

Interest Statement 4.5.2 Cost Recovery

Where programs, services and/or infrastructure are provided by Local Government, and are used by and benefit residents outside the tax base for that Local Government, a mechanism for fair contribution to those services needs to be in place. This is of particular importance to Lower Mainland area Local Governments since First Nations in urban areas are more likely to rely on the hard and soft services of neighbouring municipalities.

Local Governments should be compensated for any loss of infrastructure and investments made on Local Governments' lands and assets as a result of treaty settlements.

Setting the Context

Local governments support addressing matters of intergovernmental relations between First Nation and local governments within a separate *Final Agreement* chapter. Although service agreements are a matter to be addressed outside treaty, treaty provisions should enable such intergovernmental arrangements.

Local governments recognize the changing context for negotiating service arrangements with First Nation communities, whereby there is an increasing trend for First Nations to actively negotiate service arrangements with local governments that meet the unique circumstances of their communities without seeking the assistance of the Federal Ministry of Indian and Northern Affairs Canada (INAC). As a result, there is a vast array of existing service arrangements to learn from.

Service agreements may refer to hard or soft services such as, but not limited to, the following:

'Hard' Services	'Soft' Services
• Transportation infrastructure (roads, bridges)	• Social planning
• Public works	• Public health regulation
• Water supply and distribution	• Emergency planning
• Irrigation and flood control	• Traffic planning

* This background briefing note was endorsed by the LMTAC Board, February 23, 2005.

2. BACKGROUND:

The *Tsawwassen Agreement-in-Principle Governance Chapter* included an Intergovernmental Relations section with the following provisions:

- Clause 29. *The Parties acknowledge that access to services is a vital issues for any self-governing community, and that this is a critical issue for Tsawwassen First Nation that must be resolved before the Final Agreement.*
- Clause 30. *The Parties acknowledge that it is a priority for Tsawwassen First Nation to have access to services on or to Tsawwassen Lands, such as water, sewer, fire protection and policy protection on reasonable terms, including for example:*
- a. *Tsawwassen First Nation paying a reasonable fee or charge for such services, subject to alternative payment or taxation arrangement for such services; and*
 - b. *Tsawwassen First Nation complying with the requirements of the service provider which are reasonably and necessarily related to the services to be provided.*
- Clause 31. *The Parties acknowledge and agree on the desirability of constructive, fair, and predictable arrangements for the delivery of services on or to Tsawwassen Lands.*
- Clause 32. *Between the Agreement in Principle and the Final Agreement, the Parties will discuss provision of such services on or to Tsawwassen Lands and options for delivery of such services, including:*
- a. *contracting for services on a business basis;*
 - b. *participation in the Greater Vancouver Regional District;*
 - c. *self-servicing, such as municipal-type authorities regarding water supply; and*
 - d. *access to programs of general application through the payment of provincial taxes or through inter-governmental agreements.*
- Clause 33. *By the Final Agreement, British Columbia is committed to ensuring that servicing arrangements will be in place:*
- a. *that address the interests of both Tsawwassen First Nation and local government participants; and*
 - b. *that have the attributes set out in clauses 30, 31 and 32.*
- Clause 34. *The Parties will establish an Intergovernmental Relations Technical Working Group and invite participation by local and regional governments.*
- Clause 35. *Before the Final Agreement, the Parties will use the Intergovernmental Relations Technical Working Group to address technical issues, including:*
- a. *the transition of Tsawwassen Reserve and provincial Crown land to Tsawwassen Lands under Tsawwassen First Nation governance;*
 - b. *applicable contractual and statutory relationships between neighbouring and regional government;*
 - c. *options and their implications for participation of Tsawwassen First Nation in regional government;*
 - d. *transitional boundary adjustments;*
 - e. *impacts on roads;*
 - f. *post treaty servicing; and*
 - g. *intergovernmental agreements.*
- Clause 36. *The Parties will initiate a Treaty Related Measure to support development of intergovernmental relationships, and options and issues concerning membership in the Greater Vancouver Regional District.*

3. Other Related LMTAC Interests and Concerns

Local Government Servicing Interests

- **Cost-recovery for Services-** Treaties must be revenue neutral to communities. Costs need to be clearly outlined in the agreement, and perceived by each party as “fair”. Since costs also need to be predictable, a mutually accepted valuation formula should be used that addresses increased maintenance and capital replacement costs, infrastructure replacement and capacity. Legislative reform initiatives must enable local governments to implement innovative and flexible cost-recovery mechanisms that are adaptable should unforeseen costs arise in the future.
- **Comparable Standards of Service-** That neighbouring local government and First Nation jurisdictions provide infrastructure that meets acceptable health and operational standards for residents and does not compromise the total infrastructure system.
- **Dispute Resolution Mechanism-** A dispute resolution mechanism/process must be accessible to local governments. Agreements should include well-defined exit provisions and conditions so that an unfavourable agreement can be terminated if necessary.
- **Coordinated land use and planning-** Treaties must effectively address the relationship between First Nation land use planning authorities and both local and regional planning processes. First Nation communities must be required to comply with regional plans such as the *Regional Growth Strategy* and any necessary environmental management and/or emergency plans for which a regional district is delegated responsibility. Land development is often tied to the availability of local infrastructure and hard and soft services. An absence of an agreement on these issues between local and First Nation governments may pose a significant impediment to economic development and effective long-term planning. Local governments need to ensure that they have the capacity to implement additional contractual agreements.
- **Integrating First Nation Communities into Regional Initiatives-** For some types of environmental or sanitary services (particularly those with significant human health implications) -- services such as water, sewer, air quality monitoring or landfills-- First Nations should be obliged to be involved in, and contribute to, since all residents of the region benefit. The non-participation of one community can undermine the efficacy of the entire regional program, particularly for issues such as regional growth planning, air quality control and solid waste management.

If First Nations contribute their share of costs for services that benefit the region then mechanisms need to be developed to ensure First Nations also have the ability to be directly represented.

- **Consistent Legislative and Regulatory Regimes-** First Nation government authorities related to such areas as environmental regulation should be derived from policy frameworks that are comparable to or better than principal local government documents (i.e. *Community Charter*).
- **Access to Local Government Lands and Assets-** There must be continued access (via land, water or air) to local government lands and assets on, between or adjacent to Treaty Settlement Lands as well as to privately-held and leased lands on, between or adjacent to Treaty Settlement Lands for the purposes of, but not limited to, infrastructure development and maintenance (*LMTAC First Principle #14*).
- **Building Intergovernmental Relations-** Local governments recognize the benefits derived from building positive intergovernmental relations with neighbouring First Nation communities. Service agreements can be a stepping stone to developing long-term community partnerships and similarly, the development of informal intergovernmental relations can encourage future contractual arrangements.

Local Government Servicing Concerns

- **Non-payment for Services Rendered-** 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*).
- **Treaty Transition-** Local governments involved in the treaty process need to clarify if re-negotiation of existing service arrangements with Indian Band governments will be necessary post treaty, and whether transition language is needed in the treaty.
- **Increased Operating Costs, Capital Upgrading Costs and Capacity-** Unanticipated development of lands that are transferred for treaty settlements may place a strain upon the transportation corridors and service infrastructure of adjacent municipalities, resulting in increased maintenance, upgrading and/or capacity costs.
- **Non-member Representation-** In the Lower Mainland there will likely be a significant population or majority of non-Aboriginal residents living on future Treaty Settlement Lands - residents who seek a voice in how community services are provided - and it is unclear how these residents will be represented within First Nation governments (*LMTAC First Principle #27*).