

Tsawwassen Treaty Negotiation
Intergovernmental Technical Working Group
Workshop #3 – Services and Finances
June 29, 2004
(Coast Tsawwassen Inn)
Final

Participants:

Tsawwassen First Nation: Dan Millette, Robert McCaraker, Steve Brubaker
Corporation of Delta: Mayor Jackson, John Dumont, George Harvie
GVRD: Johnny Carline, Marino Piombini
LMTAC: Ralph Drew, Kirstie Pirie, Regan Schlecker
Canada: Margo Novak
British Columbia: Ellen Frisch
Sussex Consultants: Tom Reid
Chair, John Waddell, QC

Observers:

Rhys Williams, City of Vancouver
Cheryl Hall, Joan Green, Corporation of Delta
Mary Tate, Delta Treaty Advisory Committee

Excerpted from Tom Reid Report #3:

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| <p>The goals of Workshop #3 are to develop a thorough understanding of:</p> <ul style="list-style-type: none">• The differences in service delivery in a community of 100,000 compared to services in communities of 750-5,000;• Options for delivering services and how to assess them;• How intergovernmental servicing agreements work;• The linkages between community growth and services;• How local governments manage shared boundary roads.• Cost recovery mechanisms for local services;• The structure and operation of servicing partnerships;• How to evaluate the costs and benefits of providing certain services; and,• How to evaluate the costs and benefits of expanding services. |
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2:15 Tom Reid of Sussex Consultants made a PowerPoint presentation that included the topics noted above and discussion ensued.

Cost-recovery and service delivery:

For regional services there is no link between what a municipality pays and the actual cost to deliver the services since costs are recovered from user fees and taxes are based on assessment of property values. If Tsawwassen were a full member of GVRD its share of GVRD taxes based on the present assessed property values would be about \$7400.

It was noted that the average homeowner pays more for cable television than for fire and policing costs. A municipality must balance its need for its own crews vs. contracting out for the same services.

Municipal governments have some flexibility in their annual budgets and may shift monies between line items depending on their priority.

Regional Districts do not have this flexibility. Monies dedicated to a particular service budget must remain within that specific budget. (i.e. a Water District surplus could not be transferred to the Sewage and Drainage District). GVRD noted that in the event of a surplus, it would be rolled into the next years' reserves and applied first to the debt.

Delta noted that development cost charges (DCC) based on the Official Community Plan are collected in conjunction with development projects to assist with the funding of infrastructure costs related to community growth. Those DCC's must be spent on that capital budget item (e.g. roads, water work or sewers) and can not be crossed over. DCC funds are accrued so they are available for access when individual projects are required.

The Chair of LMTAC (and Mayor of Belcarra) noted that Belcarra has no potable water supply, but has a fire control system that is 80% complete. Delta noted that it has a separate water supply (beyond that provided by GVRD) in North Delta which supplies approximately 20,000 residents.

Certain services are linked and this must be considered when contracting for services e.g. building inspection and fire services. A Fire Protection Agreement should be robust enough to include such things as fire safety inspection.

Roads and Streets:

BC pays for construction and maintenance of roads within Electoral Areas. Not a lot of money is spent on this service. Construction and maintenance is routinely contracted out by small governments and by larger local governments as more significant projects are proposed.

Fire & Policing:

It was noted by LMTAC that where certain emergency services are not available, mutual aid agreements are critical; e.g. Belcarra has no fire boats and Delta has no HazMat Team, although Delta is reconsidering the need.

Delta noted that in order for a community to 'bid' on providing a service, such as fire protection, certain infrastructure is required (i.e. piping) and concern was expressed regarding construction standards and water pressure in homes on reserve. Tsawwassen stated that all houses on the reserve meet national building code standards and are inspected on an annual basis. Tsawwassen would appreciate the Fire Chief informing Chief and Council immediately if there are any buildings in the Tsawwassen Community that the Fire Chief believes are a risk to Fire Dept. staff or the residents.

The water main on the main Tsawwassen's reserve provides both fire protection and drinking water is not looped and therefore provides inconsistent pressure for fire fighting.

Delta noted it has provided fire services without recovering costs from Tsawwassen and reiterated the need for an Official Community Plan for the next 20 years. The OCP will drive the infrastructure. There are many other important issues for Delta including the ALR removal, additions to treaty settlement land and territory issues.

Boundary Roads:

(Slide 18) Boundary roads are commonly shared down the middle in order to address issues related to the 'free rider' principle. If a road is shared, the other municipality will consult with each other on development projects fronting the street. Residents of both municipalities utilize the road, so there is an equivalency in sharing the maintenance and upgrade costs. For roads that are considered part of the 'main road system', Translink may contribute some monies for maintenance.

Where there are shared roads do municipal governments need to schedule the work or work cooperatively? Different arrangements are worked out between neighboring municipalities. Generally one government will receive the quotation for the road work and bill the other government for ½. It is more cost-effective for the work to be done simultaneously and share the bill.

Dike Maintenance:

This service requires a long-armed mower and some training through the Inspector of Dikes Office. Delta's dike budget for 2004 is about \$80,000. Capital improvements to dikes are also required on a periodic basis. In the Tsawwassen area Delta and Richmond have both sea and river dykes. Maintenance of river dykes is more onerous.

Delta maintains 60 km. of dike, an asset worth millions. Delta concerns include, the ease of damage from a single storm surge, long-term rising sea level and decreased federal and provincial funding. Delta has an emergency preparedness plan which includes an evening dike patrol during times of potential flooding. Probability of a flood is serious therefore there is not a great deal of building at the flood plain level.

In summary, dikes are unique in that they have a 'spill over' effect for all neighbouring communities. There needs to be a cohesive planning and response process in the event of an emergency.

Access:

Access provisions for servicing are important. Delta explained the comprehensive process BC Hydro expects Delta to follow prior to Delta work in the BC Hydro RoW including: "reasonable" prior notice, detailed statement of the proposed work and a map.

What services are good candidates for being contracted out?

1. Financial audit
2. Minutes/record keeping of meetings
3. Road maintenance
4. building inspection
5. bylaw enforcement officer
6. road improvements
7. sewer and water system maintenance
8. fire protection
9. land use planner
10. garbage collection

The costs and benefits of infrastructure must be weighed. Certain works are 'required' and must be done and others are optional. Optional services must be prioritized and the costs/benefits identified (improving service quality, efficiency) (Slide 28).

Local governments may establish different tax rates for different classes of land use (i.e. industrial and residential). This tax shifting provides that a larger proportion of costs be borne by certain non-residential land uses. BC establishes the GVRD tax multiples, however municipal governments set their own.

Sample service agreements were reviewed (an electronic copy of the Gallagher Canyon servicing agreement between Westbank Nation and the Regional District of Okanagan and the City of Kelowna and two water districts was subsequently distributed).

What are the legal implications if GVRD provided a service such as sewage?

GVRD noted that GVRD along with the provision of services has authorities that it acts upon, such as inspection of sewage treatment facilities, including the authority to shut them down. In the City of Vancouver this is delegated to City of Vancouver staff. Therefore it is difficult to provide services that are inconsistent with the Livable Region Strategy. Delta noted that the GVRD does

Authorities:

A City of Vancouver observer noted the importance that local governments need to have and provide for appropriate authorities to go with their functions, e.g. emergency measures etc. Local governments should have harmonized and parallel bylaws. The example was provided that a fire fighter must have the authority to close a road if necessary, not just 'fight the fire'.

LMTAC noted that servicing mechanisms have two parts: 1) Agreement for Services, and 2) the Authorities. The local government must adopt an authorizing bylaw that provides for those services.

Delta explained that any bylaw proposing to provide a service to residents outside its boundaries must go to a public hearing first. Delta's solicitor is reviewing the Community Charter requirements and implications of providing services outside Delta boundaries, including the counter-petition process.

GVRD noted that if Tsawwassen somehow becomes a member of GVRD and is subject to its rules – this is a simpler situation to consider since all governments ‘know the rules’. If this is not the case, if it is outside GVRD and not subject to its legislation; it may not be simple, it will be a negotiated outcome. Make no assumption under the present circumstances that services can be provided by any entity if Tsawwassen is not an incorporated municipal government.

Tom Reid noted that the GVRD may need to have its letters patent amended by BC in order to provide GVRD the ability to negotiate.

Liability:

GVRD and Delta reiterated that local governments are liable when providing a service and appropriate insurance coverage is fundamental. Insurance coverage costs are very high but important.

LMTAC Chair explained that the “Municipal Insurance Association of BC” provides insurance and most communities in BC participate. It functions as a cooperative and has relatively stable rates. Tom Reid further noted that MIABC charges for insurance based on population. Having ‘municipal status’ vs. ‘Municipal-type’ status provides this benefit.

Tsawwassen noted that ratification of the Land Code has created a need for liability insurance. Tsawwassen is working on a nation-wide initiative with Chief Robert Louie of Westbank. Tsawwassen will have liability insurance and will be at the forefront on this initiative.

A staff observer from the City of Vancouver noted that when a community on an Indian Reserve receives services from a local or regional government the service is prioritized with other regional services. This may lead to some frustration about the perceived lack of responsiveness when a particular matter is not acted upon quickly. There are some inherent difficulties being part of a bigger system. This is also a function of how the service agreement is structured. For example; is the agreement to provide only a water volume, or is it also to maintain all water infrastructure?

Land Code:

What is the status of the Land Code and the component regarding lands post-treaty. Tsawwassen noted that the clause 5 of the Land Code is standard in all Land Codes and has not been tested. Canada reminded IGRTWG that the Land Code only applies to reserve land (Section 91.24 of the Constitution Act, 1982). After treaty, Tsawwassen lands will no longer be Section 91.24 land and therefore the Land Code will not exist post-treaty. After treaty the Indian Act will not apply to Tsawwassen Lands. If there is an ‘addition to reserve’ under DIAND’s present policy, that would be evaluated by a different branch of DIAND and not be part of treaty negotiations.

Delta queried “Tsawwassen’s jurisdiction over Delta”. Canada clarified a different land management regime will exist post-treaty. Tsawwassen will have governance jurisdiction over treaty settlement lands (Tsawwassen Lands) only. Other land parcels (Boundary Bay, Fraser River, Beach Grove) will be owned by Tsawwassen First Nation in fee simple and be within the Corporation of Delta’s jurisdiction. Delta’s bylaws will apply to non-Treaty Settlement Lands owned in fee-simple by Tsawwassen First Nation. Tsawwassen explained the concept of Tsawwassen Territory, the broader region within which Tsawwassen will have certain resource harvesting and other Consultation rights on provincial resource and environmental matters.

GVRD distributed two documents:

1. “GVRD Services to, and Representation of, Non-Members”, and
2. The 1987 agreement between GVRD and Point Roberts Water District No. 4 regarding the supply of water:

Participants discussed an interest to potentially meet again in the fall should any follow-up discussion be required and should Chief Negotiators provide that direction to the Technical Working Group.

The meeting closed at 5:30pm