

Corporate



NO: R045

Report

COUNCIL DATE: March 10, 2003

REGULAR COUNCIL

TO: **Mayor & Council** DATE: **March 6, 2003**

FROM: **Staff Representative to LMTAC on behalf of Councillor Priddy** FILE: **0046-039**

SUBJECT: **Corporation of Delta's Withdrawal from the Lower Mainland Treaty Advisory Committee**

RECOMMENDATION

That this report be received for information.

DISCUSSION

At its Regular Council meeting of March 3rd, 2003, the Corporation of Delta unanimously passed a motion to withdraw its participation from the Lower Mainland Treaty Advisory Committee (LMTAC). Please find attached a copy of the relevant Corporation of Delta Council report dated February 27, 2003 (Appendix A).

BC's Attorney General has announced publicly that the province intends to discuss the matter with Delta Council in an effort to deal with the concerns reflected in their February 27th, 2003 report.

The LMTAC office has advised member municipalities that, as of the date of this report, they have not received written notification from Delta regarding their March 3rd, 2003 motion.

The significance of Delta's decision and its potential impacts to other LMTAC member municipalities has yet not been determined. At this time, the LMTAC office is in the process of gathering additional information and reviewing the logistics that may result following from Delta's motion. The matter will be discussed more fully at the LMTAC's upcoming March 2003 Regular Meeting in the presence of the provincial and federal negotiating team. At the this meeting, Surrey will re-affirm it's position with respect to the BC Treaty process that:

- (a) While the City is fundamentally supportive of the BC Treaty process, Surrey is opposed to any potential loss of municipal tax revenues or alterations to existing land use resulting from future treaty settlements;
- (b) That all existing and future BC Treaty negotiations potentially effecting Surrey must reflect consideration and compliance to the Surrey Council endorsed "First Principles" of the Lower Mainland Treaty Advisory Committee (Appendix B); and
- (c) That the Provincial and Federal Government include the noted First Principles as a part of their negotiations process for all treaties affecting lower mainland municipalities.

We will provide Council with further updates to this issue as they become available.

Robert Costanzo,

Staff Representative to LMTAC
on behalf of Councillor Priddy

Attachment

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APPENDIX A

(reported downloaded from the Corporation of Delta website)

THE CORPORATION OF DELTA

**COUNCIL REPORT
REGULAR MEETING**

To: Mayor and Council

From: Councillor Robert Campbell

Date: February 27, 2003

**Withdrawal from Lower Mainland Treaty
Advisory Committee (LMTAC)**

RECOMMENDATIONS:

- A. That Delta withdraw participating on the Lower Mainland Treaty Advisory Committee (LMTAC) and notify LMTAC accordingly, along with providing a copy of this report;
- B. That Delta request the Lower Mainland Treaty Advisory Committee (LMTAC) not elect a new Tsawwassen Table Representative from the LMTAC membership given Delta's withdrawal from LMTAC;
- C. That the Federal and Provincial negotiators be requested to communicate directly with Delta on Tsawwassen First Nation's (TFN) treaty matters and treaty issues generally;
- D. That Delta host a public meeting on treaty negotiation issues to provide the community's residents an opportunity to comment and obtain information regarding the Tsawwassen treaty negotiations;
- E. That the three (3) Chief Negotiators be invited to attend the public meeting in response to the Parties' expression of interest, as contained in a February 19th, 2003 letter to the editors of Delta and Richmond local newspapers, for Delta to host the three parties and specifically the three Chief Negotiators;
- F. That Delta request The Honourable Robert Nault, Minister of Indian and Northern Affairs to visit the Municipality, at Delta's expense, to address Council regarding Bill C-7, the proposed First Nations Governance Act which, if passed, will not be optional and will be imposed on all First Nations;
- G. That Delta request the three (3) Chief Negotiators to suspend the Intergovernmental Relations Technical Working Group as the objectives of this group, which reports to the negotiating parties, are to examine issues of a non-treaty nature; and,
- H. That a copy of this report be forwarded to the Federation of Canadian Municipalities (FCM), the Union of British Columbia Municipalities (UBCM), the Greater Vancouver Regional District's Board of Directors, the Honourable John Cummins MP, Delta South MLA Val Roddick, Delta North MLA Reni Masi, the Attorney General and Minister Responsible for Treaty Negotiations, and the Federal Minister of Indian and Northern Affairs.

PURPOSE:

The purpose of this report is to recommend that Delta withdraw from the Lower Mainland Treaty Advisory Committee (LMTAC), and that a treaty-related public meeting be hosted by Delta, with invitations being extended to the three (3) negotiating parties – BC, Canada, and Tsawwassen First Nation. This report also recommends that the Federal Minister of Indian and Northern Affairs be requested to update Council on new draft Federal legislation pertaining to First Nations' governance. In addition, it is recommended that the negotiating parties suspend the Intergovernmental Relations Technical Working Group.

BACKGROUND:

Lower Mainland Treaty Advisory Committee (LMTAC) has 26 members each representing their home community or regional district on First Nations issues. Delta has been a member of LMTAC since the mid-1990's. Over this time, LMTAC "First Principles" and other relevant policy documents have been developed to facilitate the identification of local government interests and concerns pertaining to treaty negotiations. Since the establishment of a March 31st, 2003 deadline for completion of an Agreement-in-Principle, the three negotiating parties have been proceeding quickly with the Tsawwassen treaty negotiations. In conjunction with the increase in negotiation activity, provincial policy on treaties has been shifting. Delta's involvement on the Lower Mainland Treaty Advisory Committee has been reviewed from the context of the current situation.

Council Policy:

LMTAC First Principles and Delta's Position Paper pertaining to the LMTAC First Principles.

DISCUSSION:

With regards to the treaty negotiation process and LMTAC's role, the BC Treaty Process involves the three negotiating parties – Canada, British Columbia, and First Nations. LMTAC and local governments have no official participatory status, as only the three negotiating parties are treaty signatories. Despite a Memorandum of

Understanding between the Union of BC Municipalities and the Province regarding consultation with local governments, the role of LMTAC is primarily that of an observer. The Province has indicated that LMTAC is a full member of the Provincial negotiating team and may forward comments/concerns directly to provincial negotiators. However, both the Provincial and Federal governments have **set** mandates under which negotiations take place. It is these negotiation mandates that determine the recognition, if any, of local government concerns.

With the negotiating parties often working with "confidential" information, members of LMTAC, in particular the Table Representatives, often receive this information that can only be reported back to LMTAC Executive during In-Camera meetings. In terms of the Tsawwassen negotiations, information that has the potential to impact Delta and its residents cannot be communicated to the public. Further, much of the information can not be reported to even Delta Council by the LMTAC Table Representative. This raises concerns, as members of Council are obligated and have been sworn in to act in the interests of all residents of the Municipality. Not being able to share information deemed "confidential" by the negotiating parties conflicts with Councillors' having to act in the best interests of their community.

With Tsawwassen treaty negotiations proceeding quickly, the schedule established by the three negotiation parties is intense, with meetings being held on almost a daily basis. Keeping up with the issues is a strain on municipal resources. LMTAC is an additional layer in terms of process and meetings which requires further resources. Given the reality of the defined Provincial and Federal negotiation mandates, there is limited value to directing resources to LMTAC.

Specific Delta concerns related to such items as fisheries, Agricultural Land Reserve, governance, additions to future treaty settlement land, and Brunswick Point have not been alleviated by the Provincial and Federal negotiating teams. At the same time, there is a concerted effort by the negotiating parties to push Delta into servicing discussions. With the establishment of the Intergovernmental Relations Technical Working Group, the negotiating parties are intending for this Working Group to discuss issues of a non-treaty nature, such as servicing. This Working Group will be reporting to the negotiating parties and thus operating under already set negotiation mandates. In a February 3rd, 2003 letter, the Minister of Community, Aboriginal and Women's Services indicated to Delta that the servicing issues require a "government-to-government negotiated solution, not one decided for your respective communities by the Courts or imposed by the provincial or federal governments." This report recommends that the negotiating parties suspend the Intergovernmental Relations Working Group.

At this point in time, entering into further servicing arrangements would be difficult given the status of the treaty negotiations. The treaty-related land selection process is only at the proposal stage and the TFN has not even accepted the Province's land offer and, there has been no agreement on a governance model for the TFN and the TFN has not accepted the Province's position that the ALR designation will apply. Further, the TFN has not yet developed a plan equivalent to an Official Community Plan to guide development. In the absence of an agreement on these issues it is uncertain what form and function a servicing agreement should take.

LMTAC has prepared good policy papers documenting positions for municipalities to take on these types of issues. Those positions/ principles are defined in a document referred to as the LMTAC "First Principles." The TFN treaty negotiations are now at the Agreement in Principle stage and it is apparent that not all the LMTAC principles will be adhered to and issues specific to Delta are arising, and cannot be addressed effectively within the LMTAC structure that deals with issues through a 26 member regional committee. Delta's time can be most effectively spent handling those issues directly.

Based on the current situation at the Tsawwassen Table and the issues addressed above, it is recommended that Delta withdraw from the Lower Mainland Treaty Advisory Committee and request to be informed on treaty-related matters directly by the appropriate Federal and Provincial representatives. In keeping with Delta's recommended withdrawal from LMTAC, it is further recommended that LMTAC be requested to not elect another Tsawwassen table representative.

As consultation must be provided to the public that may be directly impacted by the treaty negotiations, it is recommended that Delta host a public meeting on treaty issues and extend invitations to the three negotiating parties.

Given the status of the Tsawwassen negotiations, the holding of a public forum for Delta's residents to obtain information and provide feedback will be timely and three Chief Negotiators have expressed an interest in hearing

the public's input. With the issue of governance being discussed at the Tsawwassen Treaty Table, it is also recommended that the Federal Minister of Indian and Northern Affairs be invited to provide a status update to Council of the draft federal legislation, referred to as the First Nations Governance Act.

Financial Implications:

For year 2002, LMTAC involvement by staff (Staff Representative and Alternate Staff Representative) has required the allocation of approximately a minimum of 500 hours. Delta's withdrawal from LMTAC will result in the better utilization of staff's resources, and will result in associated cost reductions.

CONCLUSION:

Due to the activity at the Tsawwassen Table and the need to ensure that Delta's role in the treaty process is most effective, it is recommended for the Municipality to withdraw from LMTAC and request to not elect a new Tsawwassen Table Representative. As part of this withdrawal, it is recommended that the Federal and Provincial representatives be requested to communicate directly with the Municipality on treaty-related matters. To ensure that the public is well informed and has an opportunity for comment, it is recommended that a public meeting on treaty negotiations be hosted by Delta, with invitations being extended to the three negotiating parties. In addition, it is recommended that the negotiating parties suspend the Intergovernmental Relations Working Group.

Councillor Robert Campbell

Delta Elected Representative,

Lower Mainland Treaty Advisory Committee

APPENDIX B

LOWER MAINLAND TREATY ADVISORY COMMITTEE FIRST PRINCIPLES

There are several broad principles which help to inform Lower Mainland area Local Government interests in treaty negotiations. These principles were developed in 1999 through a 10 month policy development and consultation exercise that directly involved all 26 municipal and regional district governments represented on LMTAC. Further principles were added in June 2000. LMTAC's First Principles provide the framework for more detailed exploration of underlying interests.

GENERAL PRINCIPLES

Description:

Principle:

Uniqueness of Urban Treaties

1. Treaty agreements in other regions of the Province should not be used as a precedent or template for urban treaty settlements. Provisions in Lower Mainland area treaties should reflect the complex realities of the urban environment specific to each treaty.

Local Governments are Not Third Party Interests

2. Local Government shall be recognized in the treaty process as an independent, responsible and accountable order of

government, not as a secondary level or third party interest.

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| ject Canadian Constitution | 3. Treaties should uphold the principles of the <i>Canadian Constitution</i> and the <i>Canadian Charter of Rights and Freedoms</i> . |
| ject Heritage | 4. Treaty settlements must respect the values, heritage, culture and traditions of Aboriginal and non- Aboriginal peoples. |
| n and Transparent Negotiations
ded By Senior Governments | 5. Tripartite* treaty negotiations must be open and provide for meaningful public input throughout the negotiations. The cost of the public process is to be funded as an essential part of treaty-making by the tripartite negotiating parties. |
| olution of Overlaps | 6. Agreements-in-Principle* (Stage 4) shall not be completed until all conflicting land, water and resource issues (of those Aboriginal peoples who qualify under the BC Treaty Process) have been resolved. Agreements-in-Principle* shall include the details of the overlap resolution agreement. |
| d for Certainty | 7. Local Governments strongly support the need for certain and final definitions of Treaty rights. Treaties should provide a clear and exhaustive definition of powers that First Nations governments may exercise. |
| of LMTAC | 8. LMTAC is the voice of Lower Mainland area Local Governments on all issues relating to the treaty process. |
| sistent Application of Principles | 9. LMTAC's First Principles will be applied to all Lower Mainland area treaty agreements. |

LAND PRINCIPLES

Brief Description:

Cash Settlements in Urban Areas

Principle:

10. Urban treaty settlements should be composed primarily of cash and other fiscal considerations rather than land, because of scarcity of unencumbered and uncommitted lands in the Lower Mainland area.

Private & Local Government Lands and Assets Protected

11. Privately-owned fee-simple* lands, Crown Corporation lands, and Local Government-owned lands and assets, including those acquired through a Local Government process, must not be available for land selection. Lands and assets include, but are not limited to: Local Government facilities, rights-of-way, lands leased from other governments, Crown lands subject to a Local Government license/tenure, municipal and regional parks, conservation and protected areas, greenbelts, school board lands, and Local Government commercial operations (i.e. forest lands, park concessions).

Continuation of Local Government Authority over Lands Pre and Post Treaty

12. 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.

Lands Held in Fee-Simple

- 13. Clarity and consistency in regulatory jurisdiction is paramount in the post-treaty environment. Treaty settlement lands* within municipalities and regional districts are to be treated like all other fee-simple* lands (e.g. be subject to compatible zoning bylaws, be assessed for regional services, and not include ownership of sub-surface resources).

Importance of Access

- 14. 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.

SOURCE and ENVIRONMENTAL PRINCIPLES

**Description:
Source Sustainability**

Principle:

- 15. Sustainability* of local economies is a priority in the post-treaty environment. Lower Mainland area renewable, natural resources (including, but not limited to, forests, water and fish) must continue to be managed on a sustainable basis in order not to undermine the economic base of Local Governments and their communities.

Consistent Regulatory Controls

- 16. Clarity and consistency in regulatory jurisdiction with respect to natural and physical resources are paramount in the post-treaty environment. Development of resources can have a significant impact on Local Governments

Conservation / Environmental Protections

- 17. International agreements and Federal and Provincial legislation with respect to conservation (of wildlife, migratory birds, fish and other species) must be incorporated into all treaties.

Present, future and potential refuge and environmentally-sensitive areas, including but not limited to, the Fraser River Basin, Boundary Bay Wildlife Management Area, Maple Wood Flats and Indian Arm, must be identified and protected during the treaty process.

Protect Wildlife Habitats

- 18. Locally, nationally, and globally significant wildlife habitats in the Lower Mainland area must be recognized and protected.

Preserve Agricultural Lands

- 19. Lands in the Agricultural Land Reserve (ALR) must remain in the ALR and under the jurisdiction of the

Agricultural Land Commission (ALC).

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| ect Local Government Leases and
ises | 20. Local Government leases and licenses (including park tenures and agricultural, mining, forest and range leases/licenses on Crown lands), and the economic and environmental viability of these agreements, as well as any provisions for their renewal, must be respected and preserved. |
| ss, Usage, Maintenance and Protection
ater Resources | 21. Local Government and private interests in water must be preserved. Interests include, but are not limited to: ground water, aquifers, natural drainage systems, watersheds, reservoirs, water licenses, water lots, shoreline and easement access for servicing, historic rights of water use, purity control standards and water use regulations. |
| ect Annual Allowable Cut | 22. Forest land which may come under Aboriginal control must remain and continue to be managed within the existing timber supply areas and Forest Districts to ensure no loss of Annual Allowable Cut (AAC) on the land base. |
| ect Fish Stocks | 23. The protection of fish stocks is a primary concern, and the rights and responsibilities of all fishers engaged in native, commercial or recreational fishing should be given due consideration. |

VERNANCE PRINCIPLES

Description:

Principle:

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| ect Government Authorities | 24. Treaties must recognize and respect the authority and jurisdiction of Federal, Provincial and Local Governments. |
| ication of Criminal / Civil Laws | 25. Canadian Criminal Law should continue to apply as well as existing precedents set out in Civil Law in British Columbia. |
| ocratic Values | 26. Aboriginal self-government should uphold the principles of democracy and accountability. |
| ts of Representation | 27. Treaties must uphold the principle of “no taxation without representation” for all persons residing on treaty settlement lands.* Mechanisms need to be developed to ensure that all persons who are living on treaty settlement lands* and who are paying taxes or levies to the First Nation have access and a voice in First Nation governance systems. |
| ery of Local Programs/Services | 28. Aboriginal self-government provisions must provide for First Nation participation in, or partnerships with, Local Governments for more effective and efficient delivery of programs and services. |

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| “at or Beat” Standards | 29. Standards and regulations (including enforcement provisions) that apply to treaty settlement lands* should meet or exceed established standards set by Federal, Provincial and Local Governments for issues including, but not limited to: environmental protection, public health, labour, safety, fire protection, building codes, noise and licensing. |
| Dispute Resolution Accessible to Local Governments | 30. Treaties should include an effective dispute resolution mechanism that is accessible to Local Governments, particularly relating to inter-jurisdictional issues such as, but not limited to: planning, land use, natural resources, growth management, stewardship and transportation. |
| Cooperation Between Local Government and Nations Powers | 31. Local Governments must be provided the opportunity to access Local Government-related powers, as defined by Provincial legislation, also available to First Nations in the post-treaty environment. |
| Access Off-Reserve/TSL* Issues | 32. Lower Mainland area Local Governments have increasing Aboriginal populations that are not from the traditional territories* of Lower Mainland area First Nations as well as Aboriginal populations that will reside off future treaty settlement lands.* Treaties must include mechanisms to ensure that the costs of providing programs and services to these populations do not become the responsibility of Local Government. |
| Participation in and Delivery of Regional Programs/Services | 33. Treaties must identify regional programs and services (such as, but not limited to, air quality, solid waste management and Regional Growth Strategies) in which First Nations must participate, either through direct involvement in the existing program/service or indirectly through a contract with Local Governments.

This principle recognizes that some programs/ services affect all area residents and that regional delivery enhances economies of scale. This principle also emphasizes the importance of the various interconnections between urban communities in the Lower Mainland area. |

GENERAL PRINCIPLES

Description:

Recognize Fiscal Capacities

Principle:

34. Treaties must recognize the limited fiscal capacity of all levels of government and not impose any cost to Lower Mainland taxpayers, other than their contribution to treaty settlements through the cost-sharing Memorandum of Understanding between the Provincial and Federal Governments.

Respect Service Agreements

35. 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.

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| Neutral Agreements for Local Governments | 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. |
| sharing of costs | 37. No one Local Government should be disproportionately burdened as a result of treaty negotiations. |
| able Cost Recovery Post-Treaty | 38. The Provincial <i>Municipal Act</i> and <i>Vancouver Charter</i> must enable Local Governments to develop flexible taxation and cost-recovery mechanisms when dealing with Aboriginal governments in the post-treaty environment. |
| ect Existing Financial Commitments | 39. Treaties must respect and recognize existing Provincial fiscal commitments to Local Governments. |