



Item
Meeting2008 May 26

COUNCIL REPORT

TO: CITY MANAGER **DATE:** 2008 May 21

FROM: DIRECTOR PLANNING AND BUILDING **FILE:** 1400-20
Ref: LMTAC

SUBJECT: LMTAC DRAFT DISCUSSION PAPER ON COOPERATIVE
MANAGEMENT AGREEMENTS WITH FIRST NATIONS

PURPOSE: To brief Council on the Cooperative Management Draft Discussion Paper prepared and circulated by the Lower Mainland Treaty Advisory Committee (LMTAC).

RECOMMENDATION:

1. **THAT** Council receive this report for information.

REPORT

1.0 INTRODUCTION

Council, at its regular meeting of 2008 April 11, received the transmittal letter from the Lower Mainland Treaty Advisory Committee (LMTAC) for the Draft Discussion Paper entitled, *“Developing a Local Government Perspective on Cooperative Management Agreements with First Nations”*. A full version of the draft discussion paper is available from the City Clerk, if required. LMTAC is requesting any comment(s) be issued to LMTAC on or before 2008 May 30.

LMTAC was created with the signing of a Memorandum of Understanding (MOU) between the Province of British Columbia and the Union of British Columbia Municipalities (UBCM) on 1993 March 22. LMTAC is comprised of 26 local government jurisdictions and its mandate is:

“Coordinating and representing the collective interests of local government, and through them their constituents, in defining and building relationships between First Nations and other orders of government.”

It should be noted that Councillor Dhaliwal, the City’s representative to LMTAC has reviewed and provided comment on the LMTAC draft discussion paper as a member of the LMTAC Board of Directors and that the City’s staff representative has provided comment on several successive versions of the LMTAC discussion paper as a member of LMTAC’s Technical and Strategic Working Group (TSWG).

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The purpose of this report is to provide an executive summary of the LMTAC draft discussion paper on cooperative management to Council for its consideration. As a result, this report relies heavily on the content contained with the LMTAC draft discussion paper.

2.0 INTENT AND TIMELINE

LMTAC prepared a draft discussion paper in order to develop a local government perspective on the topic of cooperative management agreements as it is an issue being raised on an increasing frequency at both Lower Mainland treaty negotiations and as part of *New Relationship* agreements. Through a comprehensive assessment of cooperative management from each of the key stakeholder perspectives (First Nation, Federal, Provincial, and Lower Mainland local governments), the draft discussion paper attempts to demonstrate that significant implications for local government exist and that these implications for local government need to be considered by all parties pursuing land and resource cooperative management agreements.

During the LMTAC Executive Committee meeting of 2007 December 12, the LMTAC Chair (Mayor Ralph Drew of the Village of Belcarra) raised the matter of considering the subject of cooperative management as a new item for the 2008 LMTAC work plan. The development of a policy paper on the subject of cooperative management was approved by the LMTAC Board of Directors on 2008 January 23. On 2008 March 26, following the development of a draft discussion paper with input from the TSWG, the LMTAC Executive and the LMTAC Board, the LMTAC Board approved the release of a draft discussion paper to LMTAC member jurisdictions and other interested parties for their review and comment. Although LMTAC have requested comment on the draft discussion paper on or before 2008 May 30, LMTAC anticipates that this discussion paper will likely continue to evolve over time with further discussion with LMTAC members and other affiliated government bodies.

3.0 COOPERATIVE MANAGEMENT

In the case of agreements with First Nations, the term cooperative management is used to represent shared or joint decision making between a government and a First Nation. Cooperative management agreements can be between just two parties (bi-lateral) or can involve three or more parties (multi-lateral). Cooperative management agreements often deal with the management of land and/or resources. However, the reasons for such agreements may be legal, cultural, resourced based, or economic. The spectrum of cooperative management ranges from *Memorandums of Understanding* at the low end (where the government may retain the decision making power) to *Final Treaty Agreements* on the high end (where the First Nation may have a partnership role or full community control).

Cooperative Management agreements have been entered into both inside and outside of the British Columbia Treaty Process. The following list highlights some recent examples of Cooperative Management Agreements:

- *Cates Park/Whey-ah-Wichen Protocol/Cultural Agreement* between the District of North Vancouver and the Tsleil-Waututh First Nation (2001).
- *Joint Watershed Management Agreement* between the Sunshine Coast Regional District and the Sechelt Indian Band (2005).
- *Squamish Estuary Wildlife Management Area* dedication by the Province of BC and the Squamish First Nation (2008).
- Application (to the Ministry of Forests and Range) for a *Probationary Community Forest Agreement* by the Resort Municipality of Whistler, Squamish Nation and Lilwat Nation (2008).

3.1 First Nations Perspective

During the period from late 2006 to early 2007, over 60 First Nations involved in the treaty process signed a *Unity Protocol*, which put forward six key issues and requests resolution of these key issues as an approach to generally remove barriers and accelerate the British Columbia Treaty Process. “Co-management - Land and Resources” was one of the six key issues identified as needing attention.

According to the LMTAC draft discussion paper, cooperative management may prove to be an attractive option in the Lower Mainland for First Nations who wish to participate in the management of their traditional territory, yet are confronted with the reality of limited unsubscribed Crown land being available for treaty settlement.

3.2 The Province of BC’s New Relationship with First Nations

In 2005 March, the Province of British Columbia announced a *New Relationship* with First Nations to help close the gap in the socio-economic factors, such as health and education, between Aboriginal and non-Aboriginal people and communities. Based on the literature reviewed in the LMTAC draft discussion paper, it would appear that cooperative management is a cornerstone of the Provincial government’s *New Relationship* as a means to move toward reconciliation of Aboriginal-Crown title issues and jurisdictional issues in British Columbia.

3.3 The Federal Contribution

The draft discussion paper notes that the experience of the Federal government with the cooperative management has been inconsistent – although various Federal governments have demonstrated a level of comfort with the concepts at a policy level, there has been

limited implementation in practice. The one exception referenced is the land claims agreements which have been negotiated in the northern territories.

3.4 Local Government

The LMTAC draft discussion paper notes that several Lower Mainland local governments have experience entering into cooperative management agreements with neighbouring First Nations, sharing varying degrees of decision making with their Aboriginal partners. The reasons referenced in the LMTAC draft discussion paper for local government entering into these types of agreements include, but are not limited to: furthering relations; capacity building; servicing agreements; park management; archaeological preservation; and economic development.

Local governments are also indirectly affected by cooperative management agreements that are negotiated between senior governments and First Nations. The LMTAC draft discussion paper also notes that cooperative management agreements may have a positive effect on local government such as in the case of the following examples:

- *Indian Arm Provincial Park/ Say-Nuth-Khaw-Yum* management agreement between BC Parks and the Tsleil-Waututh Nation has resulted in positive, intergovernmental relations being established and maintained between the District and Tsleil-Waututh Nation¹.
- *Memorandum of Understanding between the Katzie First Nation and District of Maple Ridge* (September 2007) which allowed the District of Maple Ridge's community interest to preserve wild spaces to coexist with the Katzie First Nations' efforts to secure community forest management within the Blue Mountain Provincial Forest.

The LMTAC draft discussion paper suggests that these examples demonstrate how the participation of local government in the negotiation and implementation of cooperative management agreements can be mutually beneficial to the Parties and surrounding communities.

3.4.1 Challenges

Although cooperative management offers potential benefits yielded from consensus-based mediation and shared-decision making and an alternative to litigation as a dispute resolution mechanism, a number of challenges are also identified in the LMTAC draft discussion paper, including:

- *Differing management values* – aboriginal management value may clash with local government management system values.

¹ The Mayor of the District of North Vancouver is provided representation as a Provincial appointee on the park management committee responsible for implementing this agreement.

- *Escalating conflict* – if conflict is present prior to cooperative management, cooperative management may heighten the conflict.
- *Commitment* – the process of cooperative management requires the allocation of adequate time and adequate resources by all parties involved.

3.4.2 *Implications*

The LMTAC draft discussion paper suggests that the negotiation and implementation of cooperative management agreements have implications and challenges for senior governments, First Nations, and local government that will impact each organization's internal processes, as well as their relationship with one another. From a local government perspective, participation in the negotiation and implementation of cooperative management agreements present the following implications and challenges for consideration as identified in the LMTAC draft discussion paper:

- Governance;
- Public health and safety;
- Legal liability and responsibility; and
- Financial implications for local government.

The LMTAC draft discussion paper also notes that cooperative management schemes may have several unintended consequences on the relationship between senior governments, First Nations and local governments, including:

- Disruption of local and regional planning processes;
- Disincentive to treaty; and
- Economic concerns.

3.4.3 *Interests*

The LMTAC draft discussion paper lists the following local government cooperative management interests which should be given consideration whether through an agreement negotiated directly with local government or between senior governments and First Nations.

- Protection of local government assets;
- Land use planning;
- Early engagement;

- Sharing of powers, benefits, liability and responsibility;
- Sustainability (natural, social, ecological);
- Consent to additional costs; and
- Public health and safety.

Moreover, the LMTAC draft discussion paper suggests that full and fair consideration of these interest statements by parties to a cooperative management agreement would likely enhance local government support for cooperative management schemes and principles.

4.0 CONCLUSION

Although staff do not anticipate a need for cooperative management agreements within the City of Burnaby at this time, there are cooperative management agreements currently in place in other local government jurisdictions within the Lower Mainland and there is an expectation that there will be more in future.

LMTAC prepared a draft discussion paper in order to develop a local government perspective on the topic of cooperative management. The LMTAC draft discussion paper:

- puts forward a broad range of issues which should be reviewed by any municipal government considering entering into a cooperative management agreement directly;
- lists a number of local government interests which should be given consideration when senior government(s) are entering into a cooperative management agreement with First Nations; and
- suggests that full and fair consideration of the municipal interests by parties to a cooperative management agreement will enhance local government support for cooperative management schemes and principles.

As a result, the LMTAC draft discussion paper is viewed by staff as a comprehensive and useful document for all parties potentially involved in cooperative management agreements – local governments, First Nations, and senior governments. Through the use of the discussion paper as a resource on cooperative management, future cooperative management agreements which allow for shared or joint decision making between a government(s) and a First Nation should be able to address some of the issues, challenges, implications, and interests identified to maximize the positive common benefit and minimize the potential negative impact to all parties involved.

Given the ongoing involvement of Councillor Dhaliwal at the LMTAC Board and staff at TSWG during the preparation of the draft cooperative management discussion paper, no further comments are being recommended to Council for its consideration at this time.

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Once comments on the draft discussion paper from LMTAC member jurisdictions and other interested parties have been considered by LMTAC, LMTAC will likely undertake a broader release and distribution of the discussion paper. However, LMTAC anticipates that this discussion paper will not be a static document but rather will likely continue to evolve over time with further discussion with LMTAC members and other affiliated government bodies.



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PLANNING AND BUILDING

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cc: City Solicitor
Director Finance
Director Engineering
Director Parks, Recreation and Cultural Services