
TO: CITY MANAGER **DATE:** 2009 Feb 10

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

SUBJECT: SUMMARY OF LOWER MAINLAND TREATY ADVISORY COMMITTEE (LMTAC) INTERESTS REGARDING COMMON TABLE NEGOTIATIONS

PURPOSE: To seek Council endorsement of the “*Summary of LMTAC Interests Regarding Common Table Negotiations*” as input to the Provincial government in their development of a response to the *Common Table* discussions with First Nations.

RECOMMENDATIONS:

1. **THAT** Council endorse the “*Summary of LMTAC Interests Regarding Common Table Negotiations*”, as prepared by the Lower Mainland Treaty Advisory Committee (LMTAC).
2. **THAT** Council forward a copy of this report to Ms. Regan Schlecker, Managing Director, Lower Mainland Treaty Advisory Committee (LMTAC).

REPORT

1.0 INTRODUCTION

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 with a mandate for:

“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.”

Councillor Dhaliwal represented the City of Burnaby as a member of the LMTAC Board until 2008 November. As of 2009 January, Councillor Johnston is the City’s representative on the LMTAC Board.

Council, at its regular meeting of 2008 May 26, received a report for information on the Lower Mainland Treaty Advisory Committee’s (LMTAC) Draft Discussion Paper entitled, “*Developing a Local Government Perspective on Cooperative Management*”

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Agreements with First Nations". That Council report presented an executive summary of the LMTAC draft discussion paper on cooperative management. One of the conclusions of the report received by Council for information was:

"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."

Cooperative management is one of seven issues up for discussion as part of the tripartite *Common Table Negotiations* between the Federal government, the Provincial Government and First Nations.

Council, at its regular meeting of 2009 January 19, received an item of correspondence dated 2009 January 5 from the Lower Mainland Treaty Advisory Committee (LMTAC) transmitting the document entitled, "*Summary of LMTAC Interests Regarding Common Table Negotiations*" for their information, comment and endorsement. Copies of the summary document (including LMTAC's full policy analysis) can be downloaded directly from LMTAC's website at <http://www.lmtac.bc.ca>¹.

The purpose of this report is to provide an overview of the document entitled, "*Summary of LMTAC Interests Regarding Common Table Negotiations*" and to seek Council endorsement of the summary document as input to the Provincial government in their development of a response to the *Common Table* discussions with First Nations. As a result, this report relies heavily on the content contained with the summary document prepared by LMTAC. LMTAC is requesting any comment(s) be returned to LMTAC on or before 2009 February 16.²

2.0 BACKGROUND

Between October 2006 and spring 2007, the First Nations' *Unity Protocol Agreement* was signed by approximately 60 First Nations in response to frustrations First Nations had encountered during *BC Treaty Process* negotiations with the governments of British Columbia and Canada. According to LMTAC, the 60 original *Unity Protocol* signatories still active in the *BC Treaty Process* has decreased to approximately 52 First Nations; as 8 previous supporters have since left the *BC Treaty Process*.

Unity Protocol First Nations identified challenges with respect to Federal and Provincial mandates on the following seven *Common Table* issues and seek to jointly engage with them on the negotiation of principles or options that all Parties can rely upon when negotiating individual treaties:

¹ The PDF of the report is the second "new" item located inside the picture on the home page of the LMTAC website.

² Although it was noted at the 2009 January 28 LMTAC Board meeting that this was not a hard deadline.

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- Recognition / Certainty
- Constitutional Status of Treaty Lands
- Governance
- Co-Management
- Fiscal Relations and Taxation;
- Fisheries; and
- Shared Territories.

During the provincial *Throne Speech* of February 12th, 2008, British Columbia announced it would support the *Common Table* proposal.

The *Common Table* was officially established in May 2008 with a series of fourteen, full-day meetings scheduled over a three-month period. Discussions were organized and moderated by the *BC Treaty Commission* (BCTC), to address each of the seven topics identified above.

3.0 INTENT AND TIMELINE

Changes to the treaty negotiation mandates by Federal and/or Provincial governments on the *Common Table* issues could have significant implications for local government and the outcome of the *Common Table* discussions will likely have a significant bearing on future negotiations under the *BC Treaty Process*.

LMTAC has since been advised by representatives of the Ministry of Aboriginal Relations and Reconciliation (MARR) that the Province will be providing a response and analysis of the seven *Common Table* issues discussed with the First Nations Summit (FNS) to the BCTC for further consideration. As local government sits as a member of the Provincial negotiating team within the *BC Treaty Process*, this represents an opportunity for local government to ensure their concerns are communicated to the Province for their consideration.

In order for local government interests to be considered as part of the Province's submission to the BCTC, the LMTAC Executive met on October 8th, 2008, and endorsed the drafting of a summary of LMTAC interests with respect to *Common Table* negotiations and directed LMTAC staff to prepare a final document for submission to the Province by the end of November 2008.

LMTAC prepared the document entitled, "*Summary of LMTAC Interests Regarding Common Table Negotiations*" to help local governments become familiar with potential policy concerns surrounding the *Common Table* issues. This document was endorsed by the LMTAC Board on 2009 November 26.

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As a member of the Provincial treaty negotiating team, the LMTAC Board submitted this summary report on 2009 November 28 to both the Honourable Michael de Jong, Ministry of Aboriginal Relations and Reconciliation (MARR), and Chair Robert Hobson, President, Union of BC Municipalities (UBCM) with a request the Province give due consideration to local government interests in developing its response to the *Common Table* – including having direct representation from local government at future *Common Table* meetings.

The same version of the summary document was transmitted to Council at their regular meeting of 2009 January 19 by the LMTAC Board as an outcome of this LMTAC initiative.

4.0 SUMMARY OF COMMENTS PROVIDED TO THE PROVINCE

This section uses excerpts of the summary document to provide a comparison of *Unity Protocol* statements and LMTAC comments for each of the seven *Common Table* issues. The policy analysis undertaken by LMTAC demonstrated that current Provincial mandates on all seven of the *Common Table* issues are consistent with LMTAC’s First Principles for treaty negotiations and as a result LMTAC supports the current BC mandates and principles as they relate to all seven *Common Table* issues.

4.1 Recognition / Certainty

Unity Protocol statement:

“We need to find a way to achieve certainty for all Parties without requiring extinguishment of aboriginal rights, title and identity. The objective is to find certainty through recognition and reconciliation rather than by the governments imposing extinguishment and assimilation.”

LMTAC Comments:

“LMTAC supports current BC mandates and principles, as stated [in the document].
Through treaty negotiations, local governments seek certainty to the greatest extent possible with respect to the jurisdiction of local, provincial, federal and treaty First Nation governments. Uncertainty surrounding aboriginal rights and title negatively impacts local government land use planning decisions, land acquisitions, and investment in local communities. To address certainty, LMTAC supports the ‘modification’ model used in the Tsawwassen and Maa-nulth Final Agreements.”

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4.2 Constitutional Status of Treaty Lands

Unity Protocol statement:

First Nation Reserves and lands have always been protected against provincial and local jurisdiction through a direct relationship with the British Crown and then the federal government. B.C. and Canada are now trying to impose removal of Reserve status and of this protection. It is a further example of the history of denial. First Nations should be able to explore options to meet legitimate federal and provincial interests without being forced to give up Reserve status and constitutional land protections if they do not wish to do so.

LMTAC Comments:

“LMTAC supports current BC mandates and principles, as stated [in the document].
Local governments are interested that, post-treaty, First Nation [Treaty Settlement Lands (TSL)] be subject to the same federal and provincial legislation as applies to lands located within local government boundaries, avoiding a jurisdictional “patchwork”. LMTAC supports the Province’s existing mandate whereby the Indian Act will no longer apply to a treaty First Nation, its lands or members and will be replaced by a concurrent law model whereby Federal, Provincial and some regional governance authorities apply to TSL and, in matters where a First Nation Government has law-making authority, the treaty sets out which law prevails in the event of a conflict.”

4.3 Governance

Unity Protocol statement:

British Columbia has already made movements to remove one of the key barriers in the area of governance. It appears Cabinet will agree to include First Nation governance authorities in Treaty rather than requiring a separate Governance Agreement with no constitutional protection. First Nations must be confident that in the future their laws will not be relegated into a mirror image of Canada and BC laws.

LMTAC Comments:

LMTAC supports current BC mandates and principles, as stated [in the document].
Local governments recognize that First Nations’ governance structures will need to accommodate the unique history of each community. However, any provincial negotiation mandate with respect to First Nation’s governance should ensure that First Nation governance authorities are compatible with those of regional and municipal governments in matters relating to land use planning and mandatory regional services.

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Further, that First Nation governments also be subject to the same standards for democracy and financial accountability as local governments, and that non-members residing on First Nation TSL are consulted on matters that directly and significantly affect their interests.

4.4 Co-Management

Unity Protocol statement:

The current model pursued by the governments is for First Nations to give up title to most of our Territory in exchange for fee simple ownership of a small percentage of their lands and limited hunting and fishing rights outside the Treaty lands. The current government mandates extinguish First Nation governance authority and decision-making roles outside of small areas of Treaty lands. We will be proposing tools and options to meet government interests while still enabling First Nations to maintain our relationship to our whole Territory and to have a meaningful role in making decisions in our Territories.

LMTAC Comments:

LMTAC supports current BC mandates and principles, as stated [in the document].
Cooperative management with First Nations can have significant impacts on local government interests, as articulated in the LMTAC discussion paper Developing a Local Government Perspective on Cooperative Management Agreements with First Nations. Treaties must not impose cooperative management schemes with First Nations upon local government. Any cooperative management negotiations regarding Crown lands located within or adjacent to local government boundaries must involve early and ongoing involvement of the affected local government.

4.5 Fiscal Relations and Taxation

Unity Protocol statement:

The governments have many “bottom line” positions in this area that need to be opened up for negotiations. These include requiring First Nations to give up tax exemptions, refusing to improve funding for programs and services delivered by First Nations, refusing to include tax-sharing agreements with First Nations in Treaty, and requiring First Nations to accept federal claw-backs of at least 50 cents on every dollar generated by First Nations post-Treaty (with a few exempted areas of revenue). These fixed mandates leave no room for negotiations and impose a model that is more likely to condemn First Nations to poverty than it is to close the gap between aboriginals and non-aboriginals and create healthy and prosperous First Nation communities.

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LMTAC Comments:

LMTAC supports current BC mandates and principles, as stated [in the document].

Taxation: As the relationship between First Nations and government is redefined post-treaty, LMTAC supports the principle that there should be an eventual phase-out of Indian Act tax exemptions, resulting in equal tax treatment for all Canadians. LMTAC believes that the existing tax exemptions for aboriginal people should be phased out, consistent with the principle that all Canadians are equal with respect to rights, privileges and opportunities, as well as equal obligations to broader society.

Fiscal Relations: Any tax or fiscal arrangements proposed in treaty negotiations must not impose financial costs upon local government. In the event of service agreements, treaties must provide local governments with flexible cost-recovery options when dealing with First Nations.

4.6 Fisheries

Unity Protocol statement:

Fisheries are vital to the health and cultural and economic survival of many First Nations. Current government mandates need to be opened up to create more flexibility. First Nations must have a meaningful role in managing and protecting fisheries for future generations. Treaties should not force First Nations to give up key aspects of their aboriginal fishing rights. We will develop tools and options to enable First Nations to support our economies and fish management and habitat enhancement from the sale of fish as we have always done. We hope to develop cooperative management processes that meet the legitimate interests of governments and other parties who have an interest in maintaining sustainable fisheries.

LMTAC Comments:

LMTAC supports current BC mandates and principles, as stated [in the document], and reiterate that salmon allocations for the Fraser River fishery must be sustainable, ensuring the resource is available for future generations.

4.7 Shared Territories

The LMTAC document notes that Provincial government and First Nation sources have suggested to LMTAC that establishing a process to resolve the issue of shared territories (or overlap) between First Nations will be addressed as a seventh *Common Table* item.

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LMTAC Comments:

LMTAC supports the Province in that First Nations should work towards the resolution of shared territories amongst themselves.

Based on experience at the Tsawwassen Treaty Table, Lower Mainland local governments continue to support the early resolution of shared territories between First Nations in British Columbia, preferably prior to signing of an Agreement-in-Principle [AIP]. As the independent 'keeper' of the BC Treaty Process, the BC Treaty Commission should consider a direct role in facilitating and moderating shared territory discussions amongst First Nations.

5.0 CONCLUSION

The document entitled, “*Summary of LMTAC Interests Regarding Common Table Negotiations*”, as prepared by LMTAC, demonstrates that current Provincial mandates on all seven of the *Common Table* issues are consistent with LMTAC’s First Principles for treaty negotiations. LMTAC’s submission to the Province was made with the understanding that any significant change to the Provincial mandates would require further analysis by LMTAC. LMTAC has stated that the Province has committed to share its views with both UBCM and LMTAC should *Common Table* discussions result in changes to the *BC Treaty Process*. As a result, it is recommended that Council endorse the “*Summary of LMTAC Interests Regarding Common Table Negotiations*” as a demonstration of on-going support to LMTAC and as a request to the Province to give due consideration to local government’s interests, including having direct representation from local government at future *Common Table* meetings.



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