

***APPROACHES AND OPTIONS FOR
TREATIES IN URBAN AREAS***

A DISCUSSION PAPER

Prepared For:

**The Union of British Columbia Municipalities,
the Ministry of Aboriginal Affairs and
the Ministry of Municipal Affairs**

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PREFACE

This discussion paper examines some of the issues of concern to local government about the roles and responsibilities of First Nation governments and their relationship to local governments in treaties. It is the product of two one-day workshops and associated research sponsored by the UBCM and the provincial government.¹ Excerpts from the paper were presented at the 1999 UBCM convention and the paper includes comments made by participants at that session.

The participants at the workshops were drawn from provincial ministries (Municipal Affairs and Aboriginal Affairs), local government and the UBCM. However, the ideas expressed in this paper are not to be interpreted as the views of any individual or organization. The paper is intended to stimulate further discussion on the issues and does not present final, defined positions. Peter Adams, of Semmens & Adams, was responsible for facilitating the workshops and preparing the paper. He is responsible for any errors and omissions.

¹ The workshops were held in July and August 1999. Terms of reference and a list of the persons who participated in the two workshops are included as Appendices.

CHAPTER ONE: INTRODUCTION

BACKGROUND

For most First Nations in BC involved in treaty negotiations, discussions have reached Stage 4 of the process - the stage where substantive treaty discussions begin. The goal of Stage 4 is an Agreement-in-Principle (AIP) on each of the topics that will form the basis of the treaty. Many of these treaty discussions are taking place in the more urbanised areas of the province where the issues associated with treaties have significant implications for residents of the area and for local governments.

Many local governments are concerned that the issues associated with treaty making in the more urbanized areas have not been adequately discussed in the treaty making process to date. Many of the issues of concern to local government were not prominent in the Nisga'a treaty deliberations because of the remote location of the Nisga'a Nation. However, in the active treaty discussions around the province, it is clear that many of the issues of interest to First Nations are also directly relevant to local governments. Local governments hope that, through the treaty process, ways will be found to balance the interests of all parties including local governments and the persons they represent.

PURPOSE OF THE PAPER

The purpose of the paper is to explore governance issues of interest to local government and to identify a range of alternative approaches to these issues that could be considered in the context of urban treaties. The paper is not intended to be exhaustive but to concentrate on some of the more prominent concerns of local government, as expressed by workshop participants. One of the primary purposes of the paper is to stimulate discussion on the various options presented. For this reason, in presenting the options, the paper is more rather than less inclusive – it includes the full range of options identified in the workshops. No attempt has been made to narrow down the range to those that are likely to be accepted by all parties. Also, it is likely that different approaches will be taken in the various treaty discussions. Therefore, it is useful to present a wider range of options than would be relevant for any individual treaty table.

STRUCTURE OF THE REPORT

The balance of the report is divided into six Chapters, one for each of the issues discussed at the workshops. The six topics were selected by asking workshop participants to identify the issues they considered of greatest concern to local government.

The following topics were those most frequently cited:

1. Land-Use Planning
2. Property Taxation
3. Servicing Agreements
4. Relationships Between Governments
5. Representation of Non-Members
6. Dispute resolution process

The division of the six issues into separate Chapters is somewhat artificial because many of the issues are interrelated. Also, some of the options identified in one Chapter inevitably overlap with options identified in other Chapters. Nevertheless, workshop participants found the division into separate topics a useful way of ‘getting to grips’ with difficult issues and, for this reason, the same format has been retained for the paper.

Within each Chapter, the discussion is divided into the following five sections:

- **What Are Local Governments’ Concerns?** This section describes the issues that are of concern to local government.
- **What Is The Situation Today?** As background to discussion of the options, this section describes the situation today: first, in the context of the relationship between local governments (or between residents and governments); and, second in the context of the relationship between First Nation governments and local governments.
- **How May Treaties Change The Situation?** This section describes how the current situation may change as a result of treaties. Its purpose is to anticipate the ways in which treaties may increase or resolve some of the concerns of local government. (Please note that these sections are speculative and that the comments made mostly reflect local governments’ perspective.)
- **What Can We Learn From Agreements To Date?** This section describes the approaches taken to the issue in the Nisga’a and Sechelt agreement. In some Chapters, reference is made to experience outside of BC.
- **What Options Exist For Addressing The Issue Post-Treaty?** This section outlines the various options developed at the workshops and discusses some of the implications of those options. This section also addresses a recurring question posed at the workshops: “why should the relationship between First Nation governments and local governments differ, if at all, from the relationship between local governments?”

Each Chapter finishes with a summary of comments made at a workshop session held in conjunction with the UBCM convention. Participants at that session were divided into Groups, each of which addressed one of the topics covered in this paper. The Groups were asked to provide comments in answer to the following questions:

- Have local government's concerns been properly stated?
- Which of the options seem most relevant and are there others that should be included?

TERMINOLOGY

Although the focus of the report is on issues in urban areas, time was not spent at the workshops trying to define what is meant by the term 'urban'. Participants did not feel that a precise definition is necessary or useful for the purposes of this paper. The characteristics of local communities vary widely around the province. Similarly, the interaction between First Nations and local governments varies considerably from area to area. Therefore, the issues discussed in this paper are expected to be of interest to a wide range of local governments, not simply those located in the most densely populated areas of the province.

Following usage in federal and provincial legislation, the sections of the report that describe the current situation use the words Indian and Band to respectfully denote First Nations.

CHAPTER TWO: LAND-USE PLANNING

WHAT ARE LOCAL GOVERNMENTS' CONCERNS?

Local governments have three primary concerns about land use planning:

- **Harmonization of land-use:** The land use plans of First Nations may not be in harmony with the Official Community Plans (OCPs) of neighbouring local governments and with the Regional Growth Strategies (RGSs) adopted by the regional district. Land-use conflicts could create tensions between neighbours over the form of land-use (e.g. industrial bordering on residential) and over the impact on services provided by neighbouring jurisdictions (e.g. traffic congestion).
- **Loss of Regulatory Control:** Treaties may transfer land to First Nations that is currently within the jurisdiction of local governments and which is covered by an OCP. As a result, local governments may lose regulatory control over this land.²
- **A Patch-Work of Jurisdictions:** Settlement lands may not be contiguous extensions of reserve land but could include discontinuous parcels of land, some of which could be within developed areas and small in size. Local governments are concerned about the prospect of a 'patch-work' of jurisdictions and development on settlement land incompatible with other land use in the area.

Local governments are also concerned that First Nations may be able to influence land development off of settlement land where they can demonstrate a cultural association with that land. At this time, the nature and extent of this influence is uncertain.

WHAT IS THE SITUATION TODAY?

Between Local Governments

(a) Municipalities

- The *Municipal Act* requires a municipality to refer a proposed Official Community Plan (OCP) for comment to its neighbours. However, there is no formal obligation to consider the comments received or to act on them. The final decisions on the plan are taken by the municipality. There is also a requirement that the municipality give public notice and hold a public hearing on changes to the OCP.

² They may also lose a revenue base - see Chapter Three.

- Municipalities must participate in the development of a Regional Growth Strategy (RGS), where the Region has decided to develop such a strategy. The *Municipal Act* lays out a structured process for developing the RGS.³ After the RGS has been adopted, each municipality must adopt a regional context statement that demonstrates how its OCP is to be made consistent with the RGS. An intergovernmental advisory committee (IAC) provides the forum for consultation on the RGS among staff of the affected governments and agencies. The RGS process is still relatively new. To date, RGSs have been developed in two areas of the province.
- Land development within a municipality must be consistent with the regulations of various provincial ministries and agencies (e.g. environmental standards; Agricultural Land Commission; *Highway Act*; health standards etc.). In this way provincial agencies can condition development within municipalities.
- The *Municipal Act* also conditions the relationships between neighbours on boundary issues such as boundary roads, waterways and utility ROWs.
- Municipalities have several formal and informal points of contact with their neighbours through which they can discuss land-use plans. The points of contact include membership on the Regional District Board and servicing agreements.
- Local governments also have the option of referring contentious disputes with neighbours to the provincial government for help in resolution. This is certainly not a preferred route.

Electoral Areas (including the ‘fringe’ areas around municipalities)

- Land-use planning in electoral areas is the responsibility of the Board of the Regional District. All members of the Regional Board, including municipalities, can vote on planning issues in electoral areas but municipalities can choose to opt out of the planning function (and thereby opt out of paying for the function). In some regional districts, large municipalities can dominate the voting on electoral area plans.
- The RGS process for a region applies to the electoral areas as well as the municipalities. All plans and bylaws in an electoral area must be consistent with the RGS, where one has been adopted.
- In addition to other provincial approvals, the Ministry of Highways is the approving officer for sub-divisions in the electoral areas.

Between Local Governments and First Nations

- Provincial laws cannot regulate use of reserve land. Hence, the *Municipal Act* does not apply and provincial agencies are not involved. Land use decisions are subject to the *Indian Act*.

³ Including a dispute resolution mechanism - see Chapter Seven.

- There is no formal requirement for Band Councils to refer land-use plans to local governments for comment. A local government may have an opportunity to influence land use decisions on a reserve where the Band Council wishes to purchase services from the local government.
- The *Municipal Act* does not require local governments to refer OCPs to Band Councils for comment. Informally, Band Councils may be invited to comment on the OCPs of municipalities and electoral areas.
- In developing an RGS, the Regional Board is **required** to consult with affected First Nations and First Nations may sit on the Intergovernmental Advisory Committee. Generally, First Nations are not responding to this opportunity for various reasons, including limited capacity.
- Through the *First Nations Land Management Act* (Bill C49) passed by the federal government in 1999, certain First Nations may choose to take control over land management decisions. The *Act* applies to the Musqueam, Squamish, Westbank, N'Quat'qua and Lheidli T'enneh First Nations in BC. Bill C49 does not include a requirement that First Nation governments consult with neighbouring local governments on land use issues.
- Local governments and Band Councils do not routinely interact through established institutions. For most local governments, servicing agreements are the main form of contact with Band Councils.
- Band Councils are not represented on Regional Boards except in the Sunshine Coast (see the Sechelt discussion below). In some cases, however, they have been invited to attend and to participate in such meetings.
- Some Band Councils and local governments have developed formal methods of consultation (e.g. in Kamloops).

HOW MAY TREATIES CHANGE THE SITUATION?

- For local governments, their First Nations neighbours will become more 'significant' in terms of:
 - ⇒ The amount of land they control;
 - ⇒ Their financial ability to develop that land; and,
 - ⇒ Their desire to pursue development
- Development on First Nations land will no longer be subject to federal government approval. In the past, the federal government may have influenced the nature and pace of development.
- Provincial laws dealing with environmental protection, safety and health will apply and these will condition development on settlement land.

- Treaties may recognise certain aboriginal interests off settlement land (e.g. cultural interests). Some form of structured consultation will be established on these issues.
- Affected local governments will not be a signatory to the Treaty - the provincial government will represent them – but are involved in the process. Through the process of treaty making, technical working groups have been established at some tables to discuss issues of interest to First Nations and local governments. These processes are expected to improve the dialogue between these two levels of government.

WHAT CAN WE LEARN FROM AGREEMENTS TO DATE?

Nisga'a Final Agreement

- The Nisga'a governments will have control over land-use on settlement land. However, provincial laws, such as those associated with building inspection, safety and environmental standards, will apply. Also, provincial interests in roads and rights of way access will also be protected.
- Because of the remote location of Nisga'a Lands, the prospect of land-use conflict is less likely than in urban areas.
- The treaty includes provision for, and an expectation that, the Nisga'a Nation and the Regional District will enter into agreements to coordinate their activities in areas of common responsibility such as planning and infrastructure development.

Sechelt Agreement-in-Principle

- The Sechelt Indian Government District currently has authority over land-use issues on Sechelt Land – delegated to them from federal self-government legislation. In managing this land, they voluntarily follow the land-use planning processes that are defined in the Municipal Act. Post-treaty, the same procedures are expected to be followed on settlement land.
- The AIP allows for lands acquired in the future to become Sechelt Land - subject to federal and provincial approval, and subject also to municipal approval if the land is inside a municipality.
- The District is a full member of the Regional Board. This will continue after treaty and will provide an avenue for ongoing dialogue with local governments in the region.
- The elected Advisory Council to the District, established under provincial statute, is a vehicle for non-members to have input on District decisions.

- The Indian Government District and the District of Sechelt operate a joint Sewer Commission - each has 50% membership on the Commission Board. This is relevant because provision of sewerage services is often critical to development. The Commission does not have bylaw making powers. These powers rest with the parent bodies.
- The AIP recognises that the Sechelt may have a cultural 'interest' in lands outside of settlement lands and that the Sechelt will be invited to participate in processes concerning the planning and management of heritage sites.

WHAT OPTIONS EXIST FOR ADDRESSING THE ISSUE POST-TREATY?

Seven options have been identified for the structuring the relationship between First Nations and local governments in the area of land use planning. Under each option, the working assumption is that provincial environmental, safety and health standards will apply.

1. **Independent authority with reciprocal consultation agreements:** This option allows First Nations and local governments to consult on land use issues (and other issues) of mutual interest. The specifics of the consultation procedures would be decided by the parties involved but could be guided by 'best practices' guidelines or by 'model' agreements. Under this option, each government retains authority to plan land-use subject to applicable provincial statutes.
2. **Independent authority with mandatory referral and/or consultation:** This option recognises the independent decision-making authority of each government over land use planning decisions but establishes processes through which neighbours can have input on decisions of mutual interest:
 - a) Both First Nation governments and local governments would be required to **refer** land-use plans to their neighbours for comment. This is similar to the current provisions of the *Municipal Act*.
 - b) Both First Nation governments and local governments would be required to **consult** with their neighbours on land-use plans in a genuine and structured fashion. A consultation protocol would be defined that would include provisions on notice, information, presentation and consideration. (Note: The Nisga'a Treaty contains a useful definition of consultation.⁴) This requirement would go beyond the current provisions of the *Municipal Act*. However, the *Act* would be changed to incorporate an expectation of genuine consultation not just referral.
3. **Establishment of a formal consultative body:** In addition to the requirement to consult, a formal consultative body could be established through which First Nations

⁴ There is no obligation in the Treaty for the Nisga'a government to consult with local governments. The term is defined for other purposes.

governments and local governments could meet and discuss items on a routine basis. It would be through this body that land-use issues and other matters of joint interest would be raised and discussed before they became ‘problems’ among neighbours. The proposed body would be formal and structured (e.g. with agenda and minutes) but would not have decision-making powers. It could also include an agreed process for resolving disagreements over land-use.

4. **Local Government Status:** A First Nation government would be required to establish land-use plans in the same fashion as a municipal government. This would include the requirement that the First Nations’ OCP be consistent with the RGS. The First Nations government would be a full member of the Regional Board for land use decisions. (Note: This option could be applied to issues other than land-use planning.)
5. **Joint Land Use Plans:** At the time of treaty, a First Nation and affected local governments would enter into a land-use agreement that spelled out the agreed range of uses for some or all settlement land. It could also cover land adjoining settlement land but located inside the jurisdiction of local government. The land-use agreement would also specify the method of modifying the agreed plan. In the absence of an agreement between the parties, no changes could be made to the land use plan and the approved land-uses. (Note: Such an agreement could have other elements of interest to both parties such as servicing.) A similar approach was taken in Saskatchewan, in relation to additions to treaty settlement lands, when the Muskeg Lake Cree Nation wanted to create a new reserve in the City of Saskatoon.⁵
6. **Concurrent Planning Authority:** Land-use plans for settlement land and the land adjoining settlement land would have to be consistent with First Nations land-use plans and with local government land-use plans. Any changes to those plans would have to be approved by a joint planning authority composed of First Nations and local government representatives. This is similar to Option 5 but would include authority for resolving land-use changes.
7. **First Nations land would be subject to local government land use plans:** First Nations land would be part of local government jurisdiction and land-use would be conditioned by local governments’ land-use plans. First Nations citizens would participate in decision-making in the same way as other residents of the local government.

Other than Option 1, all Options place some degree of constraint on independent First Nations authority and on local governments’ authority over land-use in areas bordering on First Nations land. Options 2, 3 and 4 would place an expectation on First Nations governments similar to that place on neighbouring local governments. Option 4 would put First Nation governments and local governments on a similar basis for local land-use planning issues. However, it is not obvious that First Nations would want to

⁵ “The Impact of Aboriginal Land Claims and Self-Government on Canadian Municipalities: The Local Government Perspective”, Theresa M. Dust Q.C., ICURR.

participate directly in the governance of the regional district. In the more densely populated areas of the province, First Nations may have a more 'natural' relationship with a neighbouring municipality than with the regional district.

Options 5 and 6 allow neighbouring jurisdictions to condition land-use planning in areas of mutual interest in ways that go beyond what neighbouring local governments can currently do. Option 7 makes First Nation land-use plans subordinate to those of local government.

Local governments may seek greater influence on First Nations land use than they would on land-use in neighbouring jurisdictions for a number of reasons, including: the geographic proximity of First Nations land to developed areas of the municipality; and, the impact of development on First Nations land on services that are financed by local government. However, this concern may not apply equally to all types of settlement land.

Settlement land will take a variety of forms including former reserve land, land adjacent to former reserve land, and 'satellite' parcels of land inside well developed parts of an established community. Also, some land may become settlement land through purchase after a treaty has come into effect. The various options listed above may be more applicable to some types of land rather than others. The method of land-use harmonization need not be the same for all types of land.

If local governments do not have formal mechanisms to influence land use, they may use control over services to condition development on settlement land. Chapter Three deals with the issues of servicing agreements.

Where tensions arise today between neighbouring local governments, elected officials have a number of formal and informal political channels to bring what they see as 'poor neighbourly' attitudes to their neighbours attention. They can also appeal to public opinion in the neighbouring jurisdiction. As a last resort, if the relationship with a neighbour reaches an impasse, a local government could approach the province for a remedy. There is concern that these less obvious means of influence will not be as effective in the relationship between local governments and First Nations and that there will not be any defined process through which land-use disputes will be resolved. For this reason, Chapter Seven examines the issues of dispute resolution mechanisms in more depth.

COMMENTS FROM THE CONVENTION WORKSHOP SESSION

Please note that two separate Groups discussed this issue.

Have Local Government's Concerns Been Properly Stated

One Group felt that the Chapter does not give enough emphasis to the prospect of treaties creating opportunities as well as concerns. In particular, treaties will provide the opportunity for First Nations and local governments to work together to develop land in ways that will be beneficial for the whole community.

The other Group felt that the Chapter does not adequately address some relevant aspects of treaty making, such as: the issue of overlapping First Nation interests in land; the possibility of interim measures prior to treaty; the differences that arise as a result of communal ownership structures rather than individual property rights; and, the implications of some First Nations gaining land-use powers through Bill C49 rather than through the treaty process.

Which of the Options Seem Most Relevant and are there others that should be included?

One Group recognised that the ordering of the options represents an increasing amount of control over land-use on First Nations Land. The Group favoured use of Options 1 and 2 over the more intrusive options. However, Option 5 (joint land-use plans) may have application at the regional level. The Group favoured greater involvement of First Nations in regional land-use planning.

This same Group made the following comments on the other Options: Option 3 was seen as involving new and unnecessary bureaucracy; Option 4 was not considered key to harmonization of land-use; and, Options 6 and 7 were not considered useful because they imply considerable control over the decisions of First Nations. The Group favoured an approach that emphasised 'carrots' rather than 'sticks'.

The other Group reviewing this issue wanted to see more discussion, under each of the Options, of which powers and relationships would be entrenched in the treaty.

CHAPTER THREE: PROPERTY TAXATION

WHAT ARE LOCAL GOVERNMENTS' CONCERNS?

Local governments have three interrelated concerns about property taxation:

- **The Impact of Land Transfer:** If, as part of a treaty, land is transferred from local government jurisdiction to First Nations jurisdiction, local government is concerned about the loss of property tax revenue (or grants in lieu of taxes) from that land.
- **Equity in Taxation Between Neighbouring Jurisdictions:** Local governments wish to see equity in the property tax treatment of land and improvements under First Nations jurisdiction compared to similar property under the jurisdiction of local government.
- **Equity for Non-Members Living on Treaty Settlement Lands:** Local government is concerned that non-members will be paying property taxes to First Nation governments but may not have the right to vote in elections for First Nations governments.

This Chapter addresses all three issues. However, the issue of non-member representation is more thoroughly discussed in Chapter Six.

WHAT IS THE SITUATION TODAY?⁶

Local Governments

(a) Municipalities

Category of Person	Property Taxation
Owner of fee simple land that is part of the municipality	Subject to all local and provincial property taxation applicable inside municipalities
Lessee of reserve land that is part of the municipality	Subject to all local and provincial property taxation unless the Band has established an independent taxation regime. In that case, only the Band levies taxes. Taxes are not paid to the provincial government or local government. Services may be provided by the municipality (under contract to the Band).
Band Member living on reserve land that is part of the municipality	Not subject to provincial or local taxation Could be subject to Indian Band taxation

⁶ Please note that the tables in this section do not discuss taxation other than property taxation and do not include reference to the home owner grant.

(b) Electoral Areas

Category of Person	Property Taxation
Owners of fee simple land that is part of the electoral area	Subject to all property taxes applicable in the area. Regional district levy depends on services received. Provincial rural tax and school tax apply
Lessees of reserve land that is part of the electoral area	Subject to all local and provincial property taxation unless the Band has established an independent taxation regime. In that case, only the Band levies taxes. Taxes are not paid to the provincial or regional government. Services may be provided by the region (under contract to the Band).
Band Members living on reserve land that is part of the electoral area	Not subject to provincial or local taxation Could be subject to Indian Band taxation

First Nations Governments

Category of Person	Property Taxation
Band members living on reserve land	Could be subject to Indian Band taxation if the Band has established an independent taxation regime
Band members living off reserve land	Pay property taxes to local government and the provincial government
Lessees of reserve land	Pay provincial and local property taxes; or, Pay property taxes only to the Band if the Band has established an independent taxation regime.

Sechelt Indian Government District

Category of Person	Property Taxation
All residents of the Sechelt Indian Government District	Pay local taxes levied by the Sechelt Indian Government District and all regional and provincial taxes.

HOW MAY TREATIES CHANGE THE SITUATION?

- Parcels of land that are currently part of a municipality or an electoral area may become treaty settlement land (based on a ‘willing buyer and willing seller’ relationship). From owners of this land, local governments may be receiving taxes or grants in lieu of taxes. They may also be providing services to owners or occupiers of the land. On balance, the land may be generating net revenue (revenue less the cost of servicing) for the municipality.
- If the First Nations property taxation regimes currently in place are continued unchanged, residents of First Nations lands will not be subject to provincial property

taxation (for schools, and for policing and roads in unincorporated areas) or to taxation in support of general⁷ regional services.

- It is not necessarily the case that current First Nation property taxation regimes will be continued. After treaties, First Nation citizens will be subject to federal and provincial laws including provincial taxation statutes. Treaties will spell out First Nations' legislative authority in the area of property taxation and the way concurrent areas of jurisdiction will be shared.
- Unless covered by a servicing agreement, residents of First Nations land will not contribute through property taxes to the cost of providing services they use but which are provided by neighbouring jurisdictions (e.g. recreation, roads, policing). They may contribute to some services through user fees, and differential user fees for non-residents may apply.
- The Nisga'a and Sechelt arrangements may not be indicative of the property taxation regimes that will be negotiated in urban treaties because neither represents a situation where property taxation has been a major concern for neighbouring jurisdictions.
- The taxation and representation issues are intertwined. Non-members may not be able to vote for the First Nation government even though they are paying taxes to that government for services received. Some mechanism for non-member input, representation or protection will be a precondition of delegating provincial property taxation powers to First Nations.
- It is anticipated that land development will lead to a larger number of non-members living on settlement lands. In some circumstances, it is possible that they will form the majority of residents living on settlement lands.

WHAT CAN WE LEARN FROM AGREEMENTS TO DATE?

Nisga'a Final Agreement

- Nisga'a citizens will be subject to provincial and regional district property taxation after a tax exemption period of 12 years.
- Non-citizen residents of settlement land will continue to pay provincial and regional property taxes.
- At this time the Nisga'a have not sought property taxing powers. The Ministry of Aboriginal Affairs has indicated that the Nisga'a could be provided with delegated powers of property taxation in the future but only if this includes 'protection' or 'representation' for non-Nisga'a taxpayers.

⁷ General services include the management of development, participation in RGS and solid-waste planning. Services such as regional parks may be provided as a region wide 'extended' service but participation in the service is not mandatory.

- The Kitimat-Stikine Regional District will receive a grant from the province for a period of 12 years equivalent to the estimated cost of having a ‘Nisga’a director’.
- Nisga’a citizens resident on Nisga’a fee simple land will pay provincial and local taxes in the normal manner.

Sechelt Agreement-in-Principle

- The current situation described above will continue. Residents will continue to pay provincial and regional district taxes.

WHAT OPTIONS EXIST FOR ADDRESSING THE ISSUE POST-TREATY?

The Impact of Land Transfer

- Local governments wish not to be fiscally disadvantaged by the transfer of land. To some, this means no net financial impact resulting from the loss of property tax revenue and the cost of providing services. To others, it means no reduction in property tax revenue.
- In the land selection process, treaties could avoid transferring land that has a significant fiscal impact on local government. Alternatively, compensation could be provided through:
 - ⇒ Servicing agreements with First Nations established at the time of treaty; and/or,
 - ⇒ Federal or provincial government compensation for any financial loss.

Equity in Taxation Between Neighbouring Jurisdictions

- Local governments wish to see equity in the tax treatment of property under First Nations jurisdiction compared to property under the jurisdiction of local government. Equity could be achieved by some or all of the following options:
 - ⇒ All property owners/occupiers would pay provincial property taxes (e.g. school taxes and rural taxes), including First Nations citizens and other residents of settlement lands. This will be the case in Nisga'a and Sechelt. It is not the case today where First Nations have instituted an independent taxation regime. (There could be a transition period, as in the Nisga'a treaty.)
 - ⇒ All property owners would pay taxes to support general regional services (e.g. solid waste planning; regional hospital district levies). This could be accompanied with some form of representation on the Board of the Regional District.
 - ⇒ At the time of treaty, First Nations would be expected to enter into servicing agreements with local governments that cover services directly provided to settlement land and local services that First Nations residents may use outside of settlement lands (e.g. roads, policing, recreation).

- ⇒ Post-treaty, First Nations and local governments would negotiate servicing agreements.⁸ First Nations would contribute indirectly to the cost of services such as roads and policing in the same way as other non-residents.
- Local governments are also concerned that First Nations will not be able to create property tax havens by not charging residents/occupiers for services provided. Implementation of the equity measures listed above would address this concern.

Equity in Taxation for Non-Members Living on Treaty Settlement Lands

- The property taxing powers provided to First Nation governments could allow for non-member input on decisions – see Chapter Six.
- Alternatively or in addition, conditions could be established governing the use of property taxation powers. Such conditions could include:
 - ⇒ The requirement that property taxation be linked to the services provided.
 - ⇒ Limits on the ways in which First Nation governments can discriminate between different property taxpayers.
 - ⇒ Limits on tax rates.
- If neither of these approaches is taken, the relationship between First Nations and members will be determined by First Nation governments. Presumably, non-members will reside on First Nations land only if the conditions are acceptable to them; although, some transition arrangements may be appropriate for existing residents.

COMMENTS FROM THE CONVENTION WORKSHOP SESSION

Have Local Government's Concerns Been Properly Stated

The Group discussing this issue felt that some of local government's concerns have not been as forcefully stated as they need to be. They pointed to concerns evident even today about inequities in payment for schools, road and policing between persons living on First Nations land and those living in other areas. They also expressed concern about these people using local government services but not paying for them. It was pointed out that non-aboriginal home owners living on First Nations land are often paying taxes comparable to home owners in surrounding areas but that these tax dollars are not always being used to pay for local government services consumed.

⁸ Chapter Four examines the issues associated with servicing agreements.

Which of the Options Seem Most Relevant and are there others that should be included?

The Group pointed out some innovative ways of having residents of First Nation land pay for services e.g. paying for 911 service through their telephone bill.

The Group felt that the issue of property tax inequities is of such concern that it should be addressed on a priority basis.

CHAPTER FOUR: SERVICING AGREEMENTS

WHAT ARE LOCAL GOVERNMENTS' CONCERNS?

Local governments are concerned that servicing agreements between First Nation governments and local governments provide adequate and predictable compensation for the services provided. This Chapter addresses the issues associated with servicing agreements. The previous Chapter discussed a related issue, property taxes paid by residents and occupiers of First Nations land.

WHAT IS THE SITUATION TODAY?

Between Local Governments

- Numerous, mostly voluntary, arrangements have been established between local governments for a wide variety of services:
 - ⇒ Contractual agreements between municipalities and between municipalities and electoral areas. All issues concerning scope, terms and conditions are negotiated between the parties.
 - ⇒ Through the regional district, local governments can collaborate to receive cost-effective services. Provision of these services is subject to the governance structures, approval processes and financing arrangements dictated by the *Municipal Act*. For the most part, participation is voluntary but some region-wide services are mandatory (such as solid waste management). In defined and rare circumstances, the wishes of a member jurisdiction concerning participation in a service can be overridden by other members of the region.
 - ⇒ Special collaborative institutional arrangements are in place in some areas of the province for collective provision of services e.g. in the Okanagan for water supply; in the Capital Region for library services; and, in Sechelt for sewerage services.
- A regional district may provide services to non-members through contractual arrangements (e.g. sewerage services are provided by the Fraser Valley Regional District to parts of Langley).
- Some municipalities complain about the 'free rider' problem i.e. the use of services by non-residents (usually residents of neighbouring jurisdictions) who do not contribute through taxes to the cost of providing those services. It is difficult to exclude non-residents from the use of services such as police and roads.

- A municipality is not obliged to provide services to its neighbours. However, a municipality cannot compromise another municipality's ability to provide a service where that service depends on a facility located in another jurisdiction (e.g. a supply of water).

Between Local Governments and First Nations

- Numerous voluntary arrangements, usually with a municipality providing the service. Most of these agreements cover 'hard' services, such as water supply, sewerage collection and treatment, and fire protection. Some cover the full range of local government services.
- Most arrangements are covered by formal agreements, although some arrangements are based on unwritten agreements. The agreements can vary in scope and complexity; some are very elaborate. A number of agreements were put in place when First Nations established independent taxing regimes under the *Indian Self-Government Enabling Act*.
- First Nations are currently somewhat constrained in their ability to enter into contractual arrangements because, under federal legislation, they do not have 'natural person' powers.
- While most of these agreements are for services only, they may include some conditions linked to land use. A local government may not be prepared to provide services where it believes the proposed developments on reserve lands to be in conflict with its own land use plans.
- Where a service is provided under agreement, and a dispute arises, local governments have a legal right to withhold service subject to reasonable notice. In practice they find it difficult to exercise this right. They find it particularly difficult where basic services are being provided to non-member occupiers of reserve land. Non-member occupiers cannot vote for the Band Council but could be voters in local government elections. Therefore, local government elected officials feel that they have some responsibility to non-members living on reserve land, even though service provision is the responsibility of the Band Council.
- First Nation residents may use services provided by local government but not directly contribute to the financing of those services. This is the same 'free rider' issue noted above. First Nations may be able to attract development to reserve lands (and away from local governments) by promising low taxes. Low taxes may be possible because neighbouring local governments are paying for some of the services used by residents of First Nations land.
- First Nations do not participate in regional services as a member of the regional district, except for the Sechelt.

HOW MAY TREATIES CHANGE THE SITUATION?

- In a number of ways, treaties should lead to positive outcomes:
 - ⇒ Service agreements will be between two responsible partners, the First Nation and the local government. The federal government will no longer be involved. (However, First Nations may need time to build the capacity to exercise its new responsibilities.)
 - ⇒ First Nations will have the powers of natural person - it will be possible to sue them for default on a contract.
 - ⇒ Both existing and future rights of way (ROWs) for local services are expected to be protected and access guaranteed for provincial and local services and utilities. Expropriation of settlement land for ROWs will be possible by the province.
- Transition language should deal with the transfer and continuation of existing agreements.
- Some issues are unlikely to be dealt with through treaties and will be left to individual agreements including compatibility/consistency of services across local boundaries.
- In the absence of mutually acceptable land-use planning arrangements, local governments may attempt to use servicing agreements to limit or condition land use on settlement land.

WHAT CAN WE LEARN FROM AGREEMENTS TO DATE?

Nisga'a Final Agreement

- The Nisga'a Nation will have natural person powers and the authority to enter into agreements with local government. However, the treaty recognises the need to build the Nisga'a government's capacity to exercise this authority.
- ROW protection is included in the treaty.
- The treaty provides that the Nisga'a government(s) may enter into agreements with the Regional District to purchase or supply services.

Sechelt Agreement-in-Principle

- The Sechelt Indian Government District will remain a full member of the Regional Board. As such it may participate in regional services.

WHAT OPTIONS EXIST FOR ADDRESSING THE ISSUE POST-TREATY?

Overall, the establishment of accountable First Nation governments through treaties is expected to lead to an improved situation for concluding and enforcing servicing agreements. The parties would negotiate the scope and terms of these agreements, in the same way as agreements are negotiated among local governments. However, two additional options have been identified for establishing a closer relationship between First Nations and local governments:

1. **Statement of Intent:** Include in the treaty a statement that summarises the intended relationship between First Nations and local governments and the intended ways of working together. This could be a general statement or could cover specific services.
2. **Regional District Participation:** Provide each First Nation with an invitation to participate in regional services on the same basis as municipal members - either as full member of the Regional Board or as a partial (stakeholder) member with voting rights only on the services in which they participate. Terms and conditions (e.g. payment) would be the same as for other members of the region.

These options lead us into a discussion of the political relationship between First Nations and local governments, the topic of the next Chapter.

COMMENTS FROM THE CONVENTION WORKSHOP SESSION

Have Local Government's Concerns Been Properly Stated

The Group felt that the Chapter underestimates local government's concerns with servicing agreements. The primary concern is not with adequate and predictable compensation, where an agreement exists. It is that First Nations may not recognise the need for an agreement even though they may be participating in services provided by others.

Which of the Options Seem Most Relevant and are there others that should be included?

No specific comments on the options listed.

CHAPTER FIVE: THE POLITICAL RELATIONSHIP BETWEEN GOVERNMENTS

WHAT ARE LOCAL GOVERNMENTS' CONCERNS?

First Nations will have many, if not all of the powers typically exercised by local government in BC.⁹ However, for the most part, First Nation governments do not see themselves as local governments and are not part of the local government family. For this reason, local governments are concerned that they will not have the same opportunities to work in partnership with First Nation governments as they have through the various political institutions established for and by local government.

WHAT IS THE SITUATION TODAY?

Local Governments

- The primary vehicle for local government interaction is through the Regional Districts. Municipal governments appoint representatives to the Regional Board from their municipal councils. Residents of unincorporated areas elect a director to the Board.
- Local governments also interact through:
 - ⇒ Membership in the UBCM
 - ⇒ Participation in Treaty Advisory Committees (TACs)
 - ⇒ Participation in the Municipal Finance Authority (MFA)
 - ⇒ Council of Councils meetings (with wider representation than on the Regional Board)
 - ⇒ Intergovernmental Advisory Committees (as part of RGS)
 - ⇒ Special structures such as the Okanagan Basin Water Board and the Greater Vancouver Transportation Authority.

Local Governments and First Nations

- Only a few formal relationships exist between First Nations and local governments.
 - ⇒ The Sechelt Indian Government District is a unique local government structure and is a full member of the Sunshine Coast Regional District.
 - ⇒ Membership on the Columbia Basin Trust.
 - ⇒ Representation on some Land Use Management Structures (e.g. for Clayquot Sound).

⁹ They will also have powers that are typically exercised by the province.

- In some areas, there are agreements to meet and cooperate on issues of mutual concern (e.g. in Kamloops). In others, local governments have invited First Nations to be active observers at Regional Board meetings

HOW MAY TREATIES CHANGE THE SITUATION?

- First Nations will become the sole authority responsible for local government type issues. They will no longer be subject to the *Indian Act*. The federal government's involvement will be only as a provider of funding.
- First Nations will not be municipalities and will not be subject to the *Municipal Act*. (However, some sections may apply)
- The lack of a formal relationship with local government neighbours could be problematic if First Nations have greater willingness and capacity to develop their land.

WHAT CAN WE LEARN FROM AGREEMENTS TO DATE

Nisga'a Final Agreement

- The Nisga'a Nation is neither a municipality nor an electoral area. However, in practice the electoral area director is likely to be a member of the Nisga'a Nation.
- The treaty includes provision for the Nisga'a Nation and the Regional District to enter into agreements to coordinate their activities in areas of common responsibility such as planning, health and infrastructure development.
- Residents of Nisga'a Lands will be able to vote for the electoral area director. It is likely, given the demographics of the area, that the electoral area director will be a citizen of the Nisga'a Nation. Therefore, even though the Nisga'a Nation will not be formally represented on the Regional Board, there will be a Nisga'a voice at the Board table.

Sechelt Agreement-in-Principle

- The Sechelt will retain the unique structure that they have developed. The Sechelt Indian Government District will operate like a municipality and will remain a full member of the Regional District.
- The Sechelt Indian Government District will continue to be a member of the UBCM.
- The Agreement in Principle (AIP) contains explicit language on consultation with local governments.

WHAT OPTIONS EXIST FOR ADDRESSING THE ISSUE POST-TREATY?

A structured political relationship between local governments and First Nations governments is a valuable way to achieve better understanding and a closer working relationship between neighbours. This could be achieved through:

- **Voluntary Arrangements:** Agreements between governments to meet and discuss issues on a routine basis; and/or,
- **Joint Commissions:** Governance structures created for the joint management of shared services.

Instead or in addition, First Nations could participate in regional districts. Two options exist for involving First Nations in regional districts.

- **Full Membership:** First Nations would participate in the same way as municipal members of the Board of the regional district - with the associated roles and responsibilities, including participation in regional land-use planning. While this may seem the most straightforward option, it could raise some concerns: first, the impact of new governments on the voting dynamics of the Regional Board; second, the imbalance in voting rights between large municipalities and small First Nations; third, the impact of new members on the size of the Board. For these reasons, this option may not be useful in all areas of the province.
- **Stakeholder Membership:** Involvement by First Nations on the Regional Board where they 'opt in' to regional services. This option is more flexible than full membership but would reduce the obligation on First Nations to see themselves as members of the region and to consider the needs of other members. However, this option may be more useful where a First Nation has a close relationship with an individual municipality rather than with the regional district.

COMMENTS FROM THE CONVENTION WORKSHOP SESSION

Have Local Government's Concerns Been Properly Stated

No specific comments.

Which of the Options Seem Most Relevant and are there others that should be included?

The Group noted that any mechanism put in place after treaty cannot be expected to generate a good relationship overnight. Relationship-building takes time. For this reason, a positive working relationship is most likely, post-treaty, where one has been established pre-treaty. The Group pointed out that the treaty process itself could be a catalyst for developing good relations.

In reviewing the Options the Group noted that no one model is likely to be appropriate for all circumstances. A variety of mechanisms will be needed. Also, they noted that, while some Options are labelled ‘voluntary’ and some are more structured, all will depend on good will between the parties to be successful.

The decision as to whether the appropriate relationship for a First Nation is with an individual municipality or with the regional district is one best considered on a case by case basis. One possibility is that the relationship with the region be mandatory on a limited number of issues that clearly have consequences beyond the boundaries of individual First Nations e.g. air quality monitoring and management.

The Group pointed out the *Municipal Act* forces local governments to work together while preserving their independence. The same approach is needed in designing and developing relationships between First Nations and local government.

CHAPTER SIX: REPRESENTATION OF NON-MEMBERS

WHAT ARE LOCAL GOVERNMENTS' CONCERNS?

Local governments are concerned that non-members living on treaty settlement land will not have the right to vote in elections for First Nation governments but will be subject to the laws established by those governments.¹⁰ The law making powers of First Nations governments will include most of the powers currently exercised by local government.

Today, non-members typically do not have voting rights or other forms of representation on First Nation governments. Many local governments view treaties as an opportunity to address a situation they considered inconsistent with democratic government.

WHAT IS THE SITUATION TODAY?¹¹

Local Governments

(a) Municipalities

Category of Person	Resident Where	Voting Rights
Any person of voting age Including members of Indian Bands where the reserve is part of the municipality ¹²	Inside the municipality	Able to vote for mayor and councillors
Any person of voting age	Resident outside the municipality but an owner of land in the municipality (only one person can vote where shared ownership)	Able to vote for mayor and councillors

¹⁰ The issues associated with property taxation were discussed in Chapter Four.

¹¹ Please note, the tables in this section do not list all the conditions on voting rights or refer to corporate owners of property.

¹² It is possible that a reserve is geographically 'within' a municipality but the area covered by the reserve is not 'part of' the municipality (i.e. the Letters Patent do may not make the reserve part of the municipality).

Electoral Areas

Category of Person	Resident Where	Voting Rights
Any person of voting age Including members of Indian Bands where the reserve is part of the electoral area.	Inside the electoral area	Able to vote for a single electoral area director
Any person of voting age	Resident outside the electoral area but an owner of land in the electoral area (only one person can vote where shared ownership)	Able to vote for a single electoral area director

First Nation Governments

Category of Person	Resident Where	Voting Rights
Any Band member of voting age	On reserve land	Able to vote for the Band Council
Any Band member of voting age	Off reserve land	Able to vote for the Band Council
Non-Band members	On reserve land	Cannot vote for the Band council Possibility of an informal advisory committee

Sechelt Indian Government District

Category of Person	Resident Where	Voting Rights
Any member of the Band of voting age	On reserve land inside the Sechelt Indian Government District	Able to vote for the Band council (Note: Ex-officio, all members of the Band council also form the municipal council.) Can also vote for members of the Advisory Council. ¹³
Non-band members	On land inside the Sechelt Indian Government District	Cannot vote for the Band council Can vote for members of the Advisory Council. Cannot vote for the an electoral area director

¹³ In practice, members of the advisory council have been chosen by acclamation rather than through election. Those standing for the advisory council have not been band members.

HOW MAY TREATIES CHANGE THE SITUATION?

- Land development could lead to a larger number of non-members living on treaty settlement lands. It is possible, in some circumstances, that they will form the majority of residents living on treaty settlement lands.
- Non-members may not be able to vote for the First Nation government even though they may be paying taxes to that government for services received and even though they may be subject to regulations established by the First Nation government.
- Following treaties, non-members may become disenfranchised in the sense that they may not be able to vote for a First Nations government or for a local government representative.
- Members of First Nations may continue to be able to vote in local government elections as well as participate in First Nations' governments.
- Provincial laws, such as landlord-tenant laws, are expected to apply on settlement lands.

WHAT CAN WE LEARN FROM AGREEMENTS TO DATE?

Nisga'a Final Agreement

- All residents of Nisga'a land will continue to vote for the electoral area director (Nisga'a citizens will form a majority of residents of the electoral area.)
- Non-citizen residents of Nisga'a land will not vote in elections for the Nisga'a government(s). The Nisga'a government determines who can become a citizen.
- The treaty includes a requirement that Nisga'a government consult with residents who are non-citizens on decisions that 'directly and significantly affect them'.¹⁴ The meaning of the word consultation is explicitly defined in the treaty.¹⁵
- The Nisga'a Government may establish Public Institutions (e.g. a school board) and may delegate powers to them. If the activities of these Institutions 'directly and significantly affect' non-citizens, the Nisga'a government must provide an opportunity for participation by non-citizens. Participation may take various forms. However, if members of the Institution are elected, non-citizens must be able to vote and stand for office, or must be provided with a guaranteed number of voting members on the Institution.¹⁶

¹⁴ Chapter 11, section 19 of the Nisga'a Final Agreement.

¹⁵ Chapter 1, *ibid.*

¹⁶ Chapter 11, sections 20 and 21, *ibid.*

Sechelt Agreement-in-Principle

- The current self government arrangements will continue. They provide for non-member input through an elected Advisory Council.

WHAT OPTIONS EXIST FOR ADDRESSING THE ISSUE POST-TREATY?

In this section, we distinguish three categories of options for providing representation for non-members in First Nation governments. The categories are based on different concepts of First Nation governments: member-only governments; mixed representation governments; and, public governments.

Member-Only Governments

- Non-members cannot vote or stand for election in First Nation governments.
- First Nation governments would seek the input of non-members through some combination of:
 - ⇒ Notification/consultation on issues that affect them - possibly through formal advisory councils.
 - ⇒ Representation of non-members on Joint Management Boards or Public Institutions that have powers delegated from the First Nation government. The possible forms of participation or representation are varied.
- The form of consultation and representation could be defined in the treaty.
- Alternatively, the form of non-member representation could be left to the discretion of the First Nation. First Nations can be expected to create mechanisms for input from non-members where First Nations wish to encourage non-members to reside on treaty settlement land. Those who choose to reside on First Nations land would do so knowing the nature of the representation offered.

Mixed Representation Governments

Two types of mixed representation options could be considered:

- Non-member residents could elect non-member representatives to participate in government decision-making on **defined** issues. This approach is similar to the concept of stakeholder representation used in regional district legislation. The voting weight of non-member representatives need not be the same on all issues - non-member representatives could be in a minority on some or all issues. It would be necessary to define those services where input from non-members was appropriate. It could exclude issues such as culture, language, and citizenship. It could include issues such as property taxation, the use of taxation revenues and land-use regulation.
- An alternative form of mixed representation would be to allow all residents, including non-members to vote in elections for First Nation governments but to allow only First

Nation citizens to stand for office. In this way, First Nation representatives would have to consider the views of non-member residents.

Public Governments

- All residents could vote for the First Nations government and stand for election.
- Residents of First Nations land would not vote in local government elections except where they are property owners in that jurisdiction.

COMMENTS FROM THE CONVENTION WORKSHOP SESSION

Have Local Government's Concerns Been Properly Stated

The Group felt that the concerns have been well stated.

Which of the Options Seem Most Relevant and are there others that should be included?

The Group indicated that that non-members should be able to vote in some way on decisions that affect the services that non-members pay for.

CHAPTER SEVEN: DISPUTE RESOLUTION

WHAT ARE LOCAL GOVERNMENTS' CONCERNS?

Local governments would prefer to avoid disputes by developing a close working relationship with First Nations based on mutual respect. However, local governments are concerned that the complexity of the relationship will increase post-treaty and that formal mechanisms need to be put in place to resolve disputes should they arise.

Most 'disputes' between First Nations and local government are expected in the areas of land use and servicing agreements. However, local governments wish to see mechanisms be in place to respond to other issues, should they arise.

WHAT IS THE SITUATION TODAY?

Local Governments

Local governments use their informal networks and formal process of communication to avoid formal disputes. Where disputes do arise, they can resolve them in a variety of ways:

- Using the dispute resolution mechanism that is spelt out in agreements negotiated between the parties (e.g. in servicing agreements)
- Using procedures specifically spelt out in the *Municipal Act* and other statutes:
 - ⇒ Defined process for making decisions on regional services.
 - ⇒ Processes for resolving disputes over Regional Growth Strategies. These procedures allow for escalating steps of mediation and arbitration. If all else fails, the province can direct an arbitration process to resolve a dispute between the parties.
 - ⇒ Mediation or arbitration through the Inspector of Municipalities.
 - ⇒ Inter-municipal dispute resolution provisions for specific services.
- The provincial government can be called on to use its powers of persuasion to influence the outcome.
- The court system can be used to resolve differences in the interpretation of existing laws.
- The provincial government can use its legislative power to resolve disputes (e.g. where authority is not well defined in current legislation).

Recent changes to the *Municipal Act* have recognised local government as an independent and accountable order of government. They have also given local governments broad corporate powers and broad servicing powers. In keeping with these new directions, further changes to the *Municipal Act* are expected to deal with inter-governmental relationships and the resolution of disputes among local governments.

First Nations and Local Governments

For the most part, local governments and First Nations do not have as well developed channels of communication as exist among local governments. Nevertheless, where disputes arise, they can be resolved through consultation, or they can be handled through dispute resolution mechanisms such as:

- Those laid out in agreements negotiated between the parties (e.g. in servicing agreements).
- In rare circumstances, legislation may spell out a process for resolving disputes. For example, the *Indian Self-Government Enabling Act* lays out procedures for negotiation of independent taxation agreements.
- The federal government may use its powers of persuasion to influence the views of First Nations. Informally, the provincial government may be able to influence the federal government's actions. Also, the province may be able to influence the views of local government.
- Through its legislative power, the federal government is able to create new legislation to resolve disputes.

HOW MAY TREATIES CHANGE THE SITUATION?

- Treaties will give greater independent authority for First Nations
 - ⇒ They will not be subject to restrictions imposed by the *Indian Act*
 - ⇒ They will be subject to federal and provincial laws except where a Treaty makes First Nation laws paramount
- First Nations will take on the powers of a 'natural person' - this will make it easier to enforce contracts with First Nations. However, enforcement through court action is not a preferred form of dispute resolution.
- First Nation citizens will be subject to federal and provincial laws. The treaty will spell out the First Nation's legislative authority. In some areas, however, the First Nation's laws will be paramount. They are unlikely to be subject to the full scope of the *Municipal Act* (although some sections are likely to apply – for example, the provincial building code.)
- First Nations and local governments may wish to renegotiate contractual agreements that do not include adequate dispute resolution mechanisms.

- The only available legislative option open to the province for resolving a dispute post-treaties will be by changing the authority of local government.

WHAT CAN WE LEARN FROM AGREEMENTS TO DATE?

Nisga'a Final Agreement

- An expectation that Nisga'a Government and the regional district will discuss matters of mutual interest and concern.
- Defined (staged) dispute resolution mechanism between the Parties to the agreement. Local governments are not a party to the treaty but are represented by the provincial government.
- 'De facto' the Nisga'a Nation has representation on the regional board.

Sechelt Agreement-in-Principle

- The Sechelt Indian Government District voluntarily agrees to operate subject to the provisions of the *Municipal Act*
- The Sechelt Indian Government District will continue to be a full member of the regional district.

WHAT OPTIONS EXIST FOR ADDRESSING THE ISSUE POST-TREATY?

The options are different depending on whether jurisdiction over an issue is separate or shared. Therefore, the following discussion is divided into two sections.

Separate Jurisdiction

In this circumstance, authority is clear and the final decision-making responsibility unambiguously rests in the hands of one party (e.g. today one municipality may not like the land-use decisions made by a neighbour but the neighbour has the authority to make those decisions). In these situations, differences of opinion can be easily resolved by the agency that has the authority. Strictly speaking, there is no conflict to be resolved.

However, in these situations neighbours will still want to avoid and may wish to resolve conflicts in a way that is not seen as heavy handed. Therefore, the primary focus in these situations will be on developing good relationships and encouraging reciprocal consultation on issues of mutual interest.

Where neighbours have clear and separate jurisdiction, they can enter into agreements to assist each other in certain circumstances (e.g. servicing agreements; land-use agreements). Such agreements would likely include mandatory dispute resolution mechanisms. These dispute resolution mechanisms would be triggered when the parties are unclear on the meaning of a particular aspect of the agreement or where one party believes that another party is not fulfilling its obligations under the agreement. Structured

dispute resolution mechanisms utilise a range of alternatives to court action and provide mechanisms for differences to be resolved before they become serious.

In areas of separate jurisdiction, the post-treaty relationship between local governments and First Nations could be assisted by having some combination of:

- Agreements on appropriate processes of consultation.
- Formal diplomatic relationships – see Chapter Five.
- Availability of ‘best practice’ dispute resolution mechanisms to be used, on a voluntarily basis, by the parties (e.g. the dispute resolution language in the Nisga'a agreement¹⁷).
- Availability of defined dispute resolution mechanisms to respond to situations where one or more of the parties believe that decision-making authority is ambiguous or inconsistent, or where the actions taken by a party are believed to be inconsistent with defined decision-making authority.

Post-treaties, most of the relationships between First Nations and local governments are likely to be in areas where jurisdiction is separate.

Shared (or Interrelated) Jurisdiction

In this circumstance, the decision-making authority of one government is in some way shared or conditioned by the decisions of other governments (e.g. Under Part 25, the regional growth strategies section of the *Municipal Act* the OCPs of individual municipalities must be consistent with the RGS adopted by the Regional Board). In these circumstances, the manner in which decisions are taken and the manner for resolving differences among the parties would be identified in legislation or agreement. The manner of reaching decisions would emphasise consultation and consensus building. Dispute resolution mechanisms would cover those situations where the parties cannot reach a collective decision and where parties make individual decisions that are incompatible with the collective decision.

Post-treaties, it is possible that First Nations and local governments may share decision-making authority in the context of:

- Regional (and perhaps sub-regional) land use planning; and,
- Those regional services that they participate in.

¹⁷ By best practice is meant the language itself not its application – the dispute resolution sections in the Nisga'a agreement apply only to disputes among the Parties to the agreement.

COMMENTS FROM THE CONVENTION WORKSHOP SESSION

Have Local Government's Concerns Been Properly Stated

The Group felt that disputes are most likely to arise in the areas of land use, servicing and use of resources.

A concern of local government is that they feel excluded from the treaty process. As a result, they cannot be sure that their concerns will be adequately addressed through treaties and wish, therefore, to see an adequate dispute resolution mechanism in place for resolving issues post-treaty.

Which of the Options Seem Most Relevant and are there others that should be included?

The Group pointed out that prevention is the best approach i.e. deal with issues before they become disputes. This can best be achieved by forging relationships between local governments and First Nations. The process should start now and should be based on 'empowering' the various parties; a solution shouldn't be imposed on them.

The Group noted that all parties need to work together based on reciprocal respect for roles and authorities. This includes First Nation to First Nation as well as First Nation to local government.

APPENDIX A
WORKSHOP PARTICIPANTS¹⁸

NAME	ORGANIZATION
Richard Taylor Alison McNeil	UBCM
Gary Paget Graham Dragushan	Ministry of Municipal Affairs
Lisa Nye Debbie Seto-Kitson Juanita Berkhout John Balogh Steve Winn Sandra Kilmartin	Ministry of Aboriginal Affairs
Cameron Thorn	District of North Vancouver
Tamara Little	Fraser Valley TAC
Marino Piombini	Greater Vancouver Regional District
David Didluck	Lower Mainland TAC
Wayne d'Easum	Regional District of Central Okanagan
Mayor Bruce Milne	District of Sechelt
Les King	City of Nanaimo
Peter Adams Facilitator	Semmens & Adams

¹⁸ Some participants only attended one of the workshops.

APPENDIX B

TERMS OF REFERENCE

OBJECTIVE/PURPOSE

The objective and purpose of this project is to assist in preparing a framework which identifies key approaches and options for urban treaty negotiations.

More specifically, the project will:

- explore approaches in treaty negotiations to address urban governance issues;
- explore how issues raised in the urban context with respect to local government/ First Nation relationships can be addressed both within and outside treaties;
- assist in developing Provincial mandates on urban governance;
- contribute to current treaty negotiations in urban areas; and,
- identify next steps necessary to address urban governance issues.

SCOPE

This project will focus on governance issues in the urban context. It will focus on mechanisms for dispute resolution, relationships between First Nation governments and local governments, and on the processes for representation of non-aboriginal citizens who may be subject to aboriginal self government. The approaches and models identified will be tested against the urban governance issues as these are found in current treaty tables. The project will not prescribe any specific recommendations for any particular table.

While it is recognized that issue of First Nation citizens living off settlement lands is important to local governments in urban areas, this larger issue is beyond the scope of this project.

TASKS

Research

1. Research and document information on other urban governance arrangements. [This context setting task will be primarily supported by work of officials from the Ministry of Municipal Affairs (MMA) and the Union of British Columbia Municipalities (UBCM)].

2. Identify and document approaches to address key issues related to the negotiation of urban governance provisions. This will be primarily based on discussions emerging from

current urban treaty tables. Three broad areas of urban governance issues which should be discussed and addressed include:

A. Local Government - First Nation Conflict Resolution

- mechanisms for issue and dispute resolution.

B. Inter-Governmental Linkages and Relationships

- program and service delivery
- infrastructure
- fiscal relationships
- land use planning and zoning
- economic development
- political relationships between First Nations government and local government (representation/participation in local government structures)

C. Representation and Aboriginal Self Government

- representation of non-aboriginal citizens in First Nations' government decision-making processes
- rights of non-aboriginal citizens residing on Treaty Settlement Land.
- linkage between land, governance and jurisdiction.

3. Meet with key players including treaty negotiators, provincial and municipal officials.

Analysis of Approaches and Options

4. Identify and evaluate:

- missing elements in existing approaches and models;
- new governance approaches and models to address urban issues.
- implications of these approaches and models against the issues, interests, and principles of the key players

Final Report and Recommendations

5. Final report will:

- provide a brief overview of other urban self-government arrangements;
- explore approaches and models to address urban governance issues;
- provide observations about urban self-government specific to current treaty tables; and,
- identify next steps needed to address urban governance issues.

TIMING

The work should be completed by September 27, 1999.