

## **Frequently Asked Questions**

### **1. Where does it specifically say in the Self Government Agreement that an Advisory Council has to be established?**

There is no specific reference to the Advisory Council in the Westbank First Nation Self-government Agreement. Rather section 54 of the Agreement sets out that Non-Members living on Westbank Lands or having an interest in Westbank Lands shall be provided in Westbank Law with mechanisms through which they may have input into proposed Westbank Law and proposed amendments to Westbank Law that directly and significantly affect them. The section continues to go and say that any mechanism established under this section can only be changed with the consent of non-Members. Section 54 is deliberately broad to allow the community locally to determine what the appropriate mechanisms will be and for these mechanisms to evolve and develop over time. The mechanism of choice is an elected Advisory Council that will formally be established in Westbank Law and will supersede the existing Interim Advisory Council. The Advisory Council is being modelled on the successful example established at Sechelt when that First Nation became self-governing in 1986.

### **2. Will the Advisory Council have any power other than to make suggestions?**

The elected Advisory Council established under Westbank Law will make recommendations to the Chief and Council on matters that significantly and directly affect non-Members. For example property taxation. While the Advisory Council will not have a veto over decisions made by Chief and Council the Chief and Council is legally obligated to take into consideration the recommendations of the Advisory Council when laws are made.

### **3. When establishing mechanisms for non-members input it is important that “bread and butter issues” such as taxation, budgets, bylaw establishment, physical development, capital improvements etc. are clearly spelled out in a meaningful input process. It is equally as important to have a dispute resolution process to avoid lengthy and costly litigation. What mechanism will be in place for dispute resolution?**

It is expected that the Law establishing the Advisory Council will include a formal process for dispute resolution. In addition to any dispute resolution process set out in Westbank Law, the Indian Taxation Advisory Board (the body that provides recommendations to the Minister of Indian Affairs on whether to approve First Nation tax bylaws) is establishing national mechanisms to resolve disputes between ratepayers and First Nation governments. The proposed *First Nations Fiscal and Statistical Management Act* provides for a complaints process for ratepayers to file a complaint and have that complaint heard by an independent body.

**4. Specifically what changes will there be for the non-native residents on the WFN land when the Self Government Agreement comes into effect?**

Westbank First Nation has, over the years, established a sound reputation for good governance and has, as a matter of policy, followed generally accepted standards of good governance that has benefited all residents of Westbank Lands. This is despite the *Indian Act*, which for example, does not provide any legal certainty with respect to financial accountability, conflict of interest and mechanisms for non-Members to have input into First Nation governance. Good governance at Westbank has been a matter of choice not law. The Self-government Agreement and Constitution now replace the *Indian Act* and establishes in law a strong, accountable and structured governance regime for Westbank First Nation, which is a significant improvement over governance under the *Indian Act*. While it is not anticipated that there will be any significant and demonstrable change in the manner in which business between non-Members and Westbank First Nation is conducted after self-government, what has changed is the legal foundation under which 'business as usual' will continue.

**5. What does the Self Government Agreement do to our leases?**

Nothing. All terms and condition of existing leases continue. Section 89 of the Self-government Agreement sets out that interests in Westbank Lands created, granted or issued pursuant to the *Indian Act* and existing on the Effective date (the date self-government is in force) shall continue to have effect in accordance with their terms and conditions.

**6. Who will our land leases be with? My lease is currently with the crown will it change to the WFN?**

Prior to self-government head leases (the primary lease where a non-Member can gain an interest in reserve lands) could only be made with the Crown; even where an individual First Nation member had a certificate of possession for that land. This is because 'Indians' (including Bands) under the *Indian Act* are 'wards of the state' with the Crown acting as a 'trustee'. As a trustee the Crown, where it decides that it is in the best interest of an 'Indian' or a 'Band' has entered into leases on behalf of its charges. Consequently the name that appears on the lease is 'Canada' with Canada acting on behalf of the Band or the member. Under self-government Canada will no longer be a trustee and the Westbank First Nation or a Member will be able to make their own lease arrangements and these leases will be legal. Future land decisions (e.g. entering into leases) will be made by property owners and they will execute their own agreements. For an existing lease entered into prior to self-government and where Canada was the Trustee and is named on the lease, these leases will continue to be administered by the WFN.

**7. Who or what decides on an increase in taxes? Is it based on a cost of living percentage?**

Any increase or decrease in property taxes is a result of the budgeting process. WFN policy is to keep property taxes consistent with (or lower than) those of the surrounding jurisdictions. Rates for all jurisdictions are based on approved budgets. The Westbank First Nation Chief and Council, in consultation with the Advisory Council, establish spending priorities and each year approve a budget for local government services to be paid from property taxes to be collected. The budget is prepared by WFN staff that ensures that WFN legal obligations are met and policy directions followed. Once Council approves the property taxation budget, tax rates are set for each property class and a taxation rates bylaw prepared. Council vote on the tax rates bylaw, which is then forwarded to the Minister of Indian Affairs who must approve it. Once the Minister has approved the bylaw, property tax notices are prepared by the WFN taxation office and sent to all ratepayers.

**8. What will happen to the homeowner grants currently given when Self Government becomes reality?**

WFN policy is to provide Homeowner grants to ratepayers similar to those provided by the Province of British Columbia. The WFN intends to continue with the practice of issuing Homeowner grants where the Province continues to do so.

**9. What assurances and protection do homeowners have regarding assessments and taxes? What will prevent the WFN from taxing us out of our properties?**

WFN is a responsible government committed to providing good local services at fair rates of taxation. Self-government provides the legal framework to ensure that resources are budgeted and expended appropriately. Property taxation does not change under self-government. Westbank will continue to collect property tax under the *Indian Act* or its successor. Under this system the Minister of Indian Affairs remains responsible for approving taxation and assessment bylaws as well as yearly (taxation) rates bylaws.

**10. Do you see us getting library privileges?**

A decision in the early 1990s was made by Chief and Council following consultation with ratepayers not to collect property taxes for library services. Residents who live on WFN Lands that wish to withdraw books from the Okanagan Library system may purchase a library card. In the future, however, if residents wish to pay for Library services through the property taxes this is a matter that the Advisory Council could study and make a recommendation to Chief and Council.

**11. Does the WFN become purely self-sufficient?**

No local government in Canada is truly self-sufficient. All rely on revenues from various sources, including transfers from other governments. Westbank First Nation currently contributes approximately 70% to the cost of government and services at Westbank from revenues collected locally. The balance of revenues come from federal transfers which are predominantly used to provide the social safety net to WFN members and other status Indians living on-reserve (not non-Members). Canada and Westbank will enter into a multiyear funding agreement where Canada will provide financial support to Westbank as the community moves forward with self-government.

**12. Is the Self-government Agreement fair for all band members?**

The Self-government Agreement is fair for all Band members and creates greater democracy than currently exists under the *Indian Act*. Read in conjunction with the WFN Constitution, the Agreement puts local decision making into the hands of the community providing for participatory democracy for Members with transparency and accountability. The Self-government Agreement ensures that the *Charter of Rights and Freedoms* and the *Canadian Human Rights Act* will apply to WFN government. Neither the Council nor the Administration may discriminate against members.

**13. Do WFN powers under Self-government exceed the powers of municipal governments in Canada?**

First Nations are not municipalities and cannot be directly compared to municipalities. Many aspects of First Nation government are more provincial or federal in nature than municipal. Consequently some areas of WFN law making powers will exceed typical municipal powers.

**14. With Self-government do the monies the Federal Government provides to Westbank First Nation for programs such as social assistance stop?**

No. WFN does not assume jurisdiction over social services as a result of self-government. This area of jurisdiction remains with Canada. As was the case prior to self-government, WFN will continue to administer social service programs on behalf of Canada and will receive contribution agreements from Canada to do so.

**15. Is WFN asking the Federal Government under the Self Government Agreement to own land?**

WFN believes in property rights and private property rights are protected in the WFN Constitution. The Canadian Constitution does not explicitly protect property rights and this has been of concern to some Canadians. While the self-government agreement cannot change or amend the Canadian Constitution it does give WFN all the rights, powers, responsibilities, and privileges of an owner in relation to Westbank Lands.

**16. Where is the definition of a non-Member in the Self Government Agreement?**

There is not a definition of ‘non-Member’ in the WFN Constitution. Rather the WFN Constitution sets out and defines who is a ‘Member’. Anyone who does not fit this definition is a non-Member.

**17. How will the Self Government Agreement enforce accountability as stated by the Chief and Council for the members and non-members?**

The Self-government Agreement sets out that there will be a democratically elected Chief and Council and that the government of the WFN must report to its members in a manner expected of other governments of a similar size, providing similar services in Canada. The system of accountability required by the Agreement is fully set out in the WFN Constitution. Part IV of the Constitution sets out the Duties and Responsibilities of the Council. Part IX sets out detailed conflict of interest rules for elected officials. Part X provides for financial reporting and disclosure of financial matters to Members. The Constitution also provides for the recall of elected officials if they do not perform their duties according to the Constitution and makes elected officials personally liable for any use of monies contrary to the Constitution. Through these and other mechanisms, there is under self-government a significantly improved accountability regime. This is of benefit to both Members and non-Members alike.