

Considerations for Commercial & Residential Leasing (A-to-A Leasing) under Land Codes

ZOOM POLL Q&A RESULTS – March 9-10, 2022

Day 1

Land Interests under Land Code & Framework Agreement

Q - Is there any advantage to giving a member a CP?

A - we (at) Haisla view them as archaic instrument, under land code we are developing our own "home ownership/lot ownership documents", we do continue to recognize existing CP's around 15 out of 200 lots for us

A - We still issue CPs under our Land Code because that is what our members are most familiar with.

A- Regarding the question whether there are any advantages to giving a member a CP, it can be advantageous for members to have legally recognized rights to parcels on reserve. Many CP holders have been able to use those lands for their own residential or framing or business purposes and in some cases to develop those lands even on a large scale. Framework Agreement First Nations can provide in land codes for some new form of individual holdings for members on a go forward basis as well.

Having said that there are some potential advantages for the individual through CP's, there can be challenges if for example all or most of the reserve lands are granted as individual CP holdings, leaving little left as community lands. Similarly, it can be difficult to establish a system that is seen to be fair in deciding who should get CPs. Later in this workshop there will be a discussion of land use planning, which might help assist with balancing individual CP holdings with community wide objectives. This is also an issue likely to come up in land codes discussions.

A- agreed, CP are part of the old regime we feel, land code is control to the First Nation so we want to exercise that with our own customized documents. we will soon be seeking existing examples from other FN's regarding home ownership/lot allocation etc. this would be good to share with all on the LABRC or perhaps some info exists already?

Leasing on First Nation Lands

Q - In regards to the CMHC Coverage, is there any amendments needing to be made to existing Land Codes to have this provision?

A- First Nations would need to adopt provisions in their land code or constitution that permit members holding an allotment of land to lease the land to themselves with an A to A lease. We will be reviewing this tomorrow morning also.

Q- Could you explain a bit about GAP insurance?

A- An important feature of title insurance is that it covers what is called "the gap", (this is off reserve as well). It can take time to register a transfer – on reserve, for those under the Indian Act, it can take months for a transfer. During this time, there could be an intervening registration such as lien, judgement, or encumbrance hit that impacts ownership. The primary feature of title insurance is this gap coverage – it facilitates a quick closing.

Q- Rate for GAP – is there a flat rate?

A- Up to a million dollars, it's a fixed fee. But it is a bit of a sliding scale.

Q- Barry, what could lenders (specifically Banks) do to ease the mortgage process?

A - The form of lease has evolved and has become more secure & protected. However, some of the older leases are difficult to finance. Lenders have gotten better with the leases that we can create today under LC; there's large buy in from almost every financial institution. They recognize that there is a market for it and that they need to cater to the market.

Q- Has anyone outside of Atlantic seen that CMHC is requiring appraisals on any on res residential mortgages? Not sure how a fair market value can be determined for appraisal purposes given that the property is on reservation.

A- I believe CMHC has required appraisals with some A to A leases in the Fraser Valley.

A - I can confirm - members at Tzeachten (Chilliwack BC) had to have an appraisal for their A to A lease.

Subdivision & Development Considerations for Leasing on First Nation Lands

Q- Very interested in the appraisal discussion as we have had that question posed to us. It is a requirement under our Leasing process, but we would like to know the weight it holds when a CP is negotiating the terms. If a lease interest is negotiated and does not reflect the appraisal.

A - RE: CMHC appraisal questions. We may require an appraisal when needed to support our underwriters review of the property characteristics, cost to build and land value when there is a land value used. They may be requested for an MLG, FNHMF or leasehold lending application on a case-by-case basis. CMHC covers the cost of an appraisal when one is required for our review.

Q - There appears to be a common perception that First Nation Economic Development Corporations are "immune" to Land Development procedures under Land Code. For example, economic development corporations are known to pursue land development on-reserve without seeking any authorizations from (or even speaking to) a Lands Department, as they are under the impression those rules don't apply to them. Does the RC have any recommendations for improving the relationship between a Lands Dept., Chief & Council and Economic Development Corporation, with the aim of promoting and achieving compliance with FN Laws?

A - A First Nation could pass a resolution or law that states all requests for development, either by an ec dev authority or outside agency have to go through the lands office.

A- The relationship between the Lands Department and Economic Development Corps. is often strained to say the least. We often hear that Ec Dev. Corps do not view their operation as being a proponent and therefore should be exempt from the typical development procedures. Certainly, open regular communication amongst all departments and Council is ideal but not always an available option. An interdepartmental policy could be created that would require the EC Dev to have dialogue with lands and when that dialogue is required. Another suggestion is to hold a group workshop with all parties to review the laws and important development procedures that have been implemented by the First Nation for the protection of the lands, members and First Nation

Q - How is Highest & Best use determined? Does an appraisal provide this for commercial development?

A- We are working together with our appraiser to determine highest & best use. As it's not strictly based on potential economic output. Environmental protection can be considered a component of highest & best use. For example, pasture lands are far less environmentally impactful than crop lands.

A- You can also use "Master Planners" to help design and decide what best to use on your lands, I guess this helps also in determining highest and best use. However, an appraisal is also very helpful.

Foundational Exercise

Scenario 1

Question 1: Community concerns about the project design, when is this information considered? Can a lease be signed with ongoing community concerns regarding the project?

A - *Most times we would like this information considered before a project, but sometimes within the funding agreements, especially federally, we won't find out until approval until late. And then we are pushing in the time. In terms of a lease being signed with ongoing community concerns, I think that legally, no. But I think that some of the concerns of the community would be answered through the development of the Land Use Plan.*

A - *[In our experience], They have signed/registered a lease but the project itself (in the lease it would be very specific) says that it must conform with the particular zone or go through a rezone process. We wouldn't issue a development permit until studies are concluded and must fit in the zones. All documents must be submitted before the lease is provided/ before construction is started.*

Question 3: When will you need to finalize servicing agreements with neighbouring governments, before or after the lease is signed?

A- *We rely on service agreements with the city of Chilliwack – developer has a lease – no permit yet as they are working through getting all of the documents and doing their due diligence. The city of Chilliwack will not issue a water and sewer service agreement until they actually know what is happening on the site.*

A- Service agreements should be done before a lease is signed to know how kind of costs are involved.

A- yes, I agree as well, you need to negotiate with the neighboring community before you sign an agreement. You can also work together with Fire and Policing Agreements. Be good to have two access points in a parcel for fire and safety purposes.

Scenario 2

Poll 1: Can a lease be signed without the zoning laws being amended?



Poll 2: What are the next steps with respect to zoning?



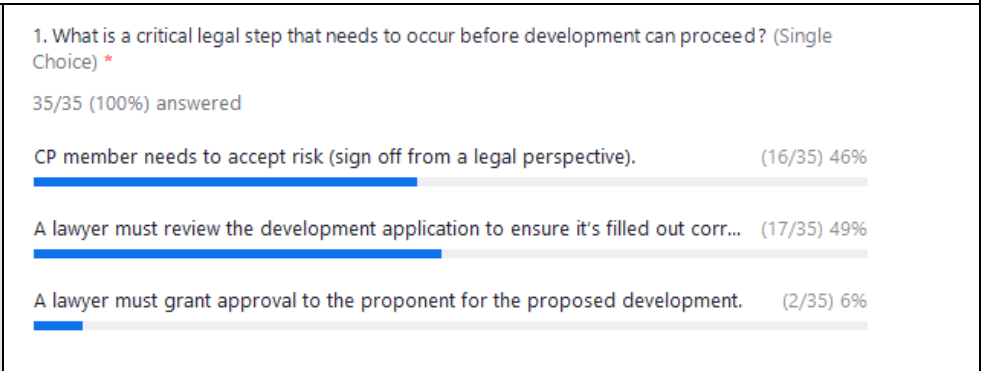
Q - We have Land Code and implement Land Use Plans (LUP) and Environmental Management Plans – LUP was already implemented and because of that, we don't have to do any community engagement. Consulting would happen during the LUP.

A - When the LUP is completed, the community's voice should come through in this document. Including the zoning – however, when you're at the stage of amending, you need to consider how large of a change. A significant change probably needs some community engagement.

A - In the absence of having a Zoning Law, a Land Use Plan (with members input) is important to ensure situations like heavy industrial development isn't in the heart of a culturally sensitive area, or a preferred future residential area etc.

A- Yes we will be relying heavily on the LUP and development/subdivision laws

Poll 3: What is a major legal step that needs to occur before development can proceed?



A - This is more a two-phase answer where the do need to amend the zoning but during this time they also need to involve the community for their input so it can be included in the amending of the zoning.

A - Our Land Code requires community engagement for any amendments. We do not have a Zoning Law yet, but my presumption would be that we would have a consistent clause for amending a Zoning Law.

A - Zoning Amendment procedures are in our Law, includes engagement with adjacent property & interest holders.	
Poll 4: When is information provided to community members?	<p>1. When is project information provided to community members? (Single Choice) *</p> <p>37/37 (100%) answered</p> <p>Through the application phase and at every point during the Land Developme... (33/37) 89%</p> <p>Whenever a community member ask questions. (2/37) 5%</p> <p>Project related information can be found at the band office, if communities want... (2/37) 5%</p>
Poll 5: What happens if proponent builds without getting approval?	<p>1. What happens if proponent builds without getting approval? (Single Choice) *</p> <p>47/47 (100%) answered</p> <p>Based on wording in the Land Code and LUP laws, building can be torn down ... (40/47) 85%</p> <p>Nothing, what's done is done. (0/47) 0%</p> <p>Proponent pays a fine and building is left standing. (7/47) 15%</p>

Day 2

CMHC – Assisting First Nations & Lenders on the A-to-A Leasing Process	
Q - Can A to A leasing be used for home renovations?	
<p>A - Tzeachten members have used A to A lease for Home Reno - but that would have been through the financial institution... not CMHC</p> <p>A - Westbank members have also used A to A lease for Home Reno</p>	
Q - who does the inspections on the construction and is there provision for draw down as it progresses?	
<p>A - The appraisals are completed on a draw basis throughout the construction and completed by certified approved appraisers for CMHC. We allow up to four draws so definitely drawing on funds as it progresses.</p>	
Q - Would an 80-year lease be considered an allotment? (for CMHC to answer) ie A has a 80 year lease not a cp and leases to himself for 30 years.	
<p>I want to ensure I understand your question. If the 80-year lease is registered as a sub/head (AtoB) and has been reviewed by CMHC and it meets our policy the units/or unit would be eligible for sale to a first nation or non-first nation (if allowed with community) and the lease mortgageable. If the individual has an AtoA lease the only lease length we would be ensuring is that the lease is amortization+5 years. So if the lease is set for 30 years this would meet our requirements for 25 years.</p>	
Financing Options on First Nation Land	
RBC	
Q - Does this criteria work across Canada or just BC Region?	
<p>A - The criteria would be similar across Canada.</p>	
BMO	
Q - Is there a minimum size for new houses or townhouses? What about mobile home on leased land ie individual on his own leasehold or cp ? is there a size or sq footage requirement ?	
<p>A - CMHC does not have a minimum square footage requirement.</p> <p>A - Under the BMO On Reserve Housing Program we have had tiny homes and Sea-Can homes so below the 850sq ft approved</p>	

TD Bank

Q - Are these initiatives across Canada?

A - Yes, these are national programs (for lease lending, commercial lending, and personal banking).

First Nation Government Financing Options on First Nations Land

Q - what seems to be the best approach to coordinate financial management rules in the FNFMAct system with those in the FAFNLM system for example: if there is a conflict between FN's Financial Act or FN Land Code which would it seem best to prevail the FNFinAct or Land Code?

A - The standards for the LM are very similar to those required under the FMA and the 2 organizations try and work together with the nations to not impede progress

Q - What are some tips on how to make them work well together? One community had their land code then Financial Administrative Law (FAL) several years later. They referred to the FAL in their amended land code and that seems to be working well.

A - There is an opportunity to have the FAL imbedded into the Land Code (LC) – under LC, there are accountability processes in place. It's the same First Nation government making these financial administration laws and LC, and First Nation laws under LC – working with your legal counsel there should be, fundamentally, an effort to make sure that there are no conflicts between these laws. Often what's done in LC in terms of financial accountability is to make a cross reference to the FAL of the First Nation. And by doing that, you can guarantee that there is no conflict. It makes sense to put it into one law – then you'll never have a multiplicity of laws that are conflicting on the single issue of financial accountability