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## Briefing Note

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Date: June 18, 2019                      Our file: 2067  
To: Lax Kw'alaams Indian Band Settlement Trustees  
From: Christopher Devlin and Melodi Alopaeus  
Re: Lax Kw'alaams Settlement Trust Agreement Amendments

### I. BACKGROUND

In 2003, Lax Kw'alaams established the Lax Kw'alaams Indian Band Settlement Trust Agreement (the "Agreement"). From 2015 to 2018, the trust funds under this Agreement were not used owing to frustrations over the funding process and the resignation of all of the former trustees. Specifically, trustees felt that the funds were not being used to benefit the community as a whole.

In the fall of 2018, the newly elected Lax Kw'alaams Band Council appointed new trustees with a mandate to propose changes to the Agreement that would restore members' confidence in the funding process and ensure that trustees could do meaningful work in their roles.

This briefing note provides an overview of the proposed amendments.

### II. PURPOSE OF AMENDMENTS

The proposed amendments are intended to amend the Trust Agreement to achieve the following goals:

- To focus trust fund spending on projects that benefit the community as a whole rather than individual band members.

- To create a more transparent process for approving funding for band developments and benefits.

### III. OVERVIEW OF AMENDMENTS

#### ***No direct loans to members***

Several of the amendments to the Agreement are intended to redirect individual members' access to funding from the trust through band programs and projects proposed by the Council and approved by the Trustees.

First, changes to definitions of "Band Benefit" and "Band Development" under s. 1.1(f) would mean that trust funds may no longer be used to provide direct loans or mortgages to members (although trust funds may be used to provide grants to individual members). Instead, funding would be directed to First Nation departments for activities and projects that benefit the membership. This funding is restricted to the following categories:

Band benefits:

- education and vocational training;
- housing on and off Reserve;
- health including dental benefits and drug and alcohol counselling or rehabilitation;
- social, cultural and recreational programs;
- grants to Members for education, housing, or health; and
- loans to the Trust.

Band developments:

- purchase or construction of lands buildings, infrastructure; equipment and related assets for the benefit of the Band; and
- construction of facilities and infrastructure related to social, cultural and recreational programs.

Second, under s. 4.4(c), Trustees would no longer have the power to extend loans to members.

All other references to or opportunities for direct funding to individual band members from the trust would be removed from the Agreement.

### ***Band governance and administration ineligible for funding***

Activities related to Band governance and administration would no longer be eligible for funding. The definitions of Band Benefit and Band Developments under s. 1.1(f) have been adjusted to exclude these terms.

### ***Trustees can authorize larger disbursements for Band Developments***

Subsection 8.2(c) would be amended to allow Trustees to transfer up to 25% of the previous year's Net Income to a single Band Development. This would allow the Trustees to accommodate more significant Band Development needs. Any request for funding that exceeds 25% of Net Income would still require authorization by referendum.

### ***Trustees have powers to impose a thorough review process***

Subsection 8.2(d) would be amended to allow Trustees to create policies that impose further requirements on program and project applications submitted by the Council, in addition to the minimum requirements under the Agreement.

At the same time, amendments to s. 8.2(f) would clarify that the Trustees have no continuing role over projects and programs once applications are approved and funding has been transferred. The Band Council, working with the designated Band department, would be responsible to ensure that the funding is used appropriately. As a part of this responsibility, Band Council would be required under s. 8.2(g) to provide annual audited statements to the Trustees demonstrating how funding for each application was used.

### ***Funding application submission and review dates***

The Trustees propose to revise s. 13 to indicate that Trustees will receive applications by March 31 and September 30 each year only. The Trustees would review and approve applications in April and October of each year.

### ***No minimum requirement for "ordinarily resident on reserve" Trustees***

Less than 25% of Lax Kw'alaams members currently live on reserve. To reflect this reality, the requirements under ss. 10.3 and 10.4 that a minimum number of Trustees must live on reserve would be removed entirely. The quorum requirements under s. 12.1 would be similarly adjusted.

## ***A Band Council Member may not serve as a Trustee***

Subsection 10.3(c) would be revised to ensure that none of the Trustees may also serve on the Band Council. There is a conflict of interest between these two positions because the Trustees receive instructions from Band Council. Separating these roles helps to protect the integrity of the application process.

## ***A Trustee may not be in arrears with the Band***

Under the proposed amendments to s. 10.3(f), a candidate for Trustee would not be considered “in arrears with the Band” if the Band has accepted a payment plan by the candidate to pay off the debt.

## ***Trustees filling a vacancy will hold a term of two years***

Under the proposed amendments to s. 10.4, the Band Council would have the power to appoint Trustees if not enough members stand for election. Without a full complement of trustees, no trust funds can be paid out for community programs and projects. However, the term of any appointee would be limited to two years. After that two-year term is up, the Council would have to call a by-election to provide the community with another opportunity to elect a trustee.

These proposed amendments are intended to strike a balance between the need to fill positions in the event no one is nominated and the need to ensure the community is represented by trustees elected to scrutinize and review Council applications for funding from the trust for community purposes.

## ***New voting procedures***

The proposed amendments to s. 20 would encourage in-person and electronic voting as the default voting procedure for referendums under the Agreement. Mail-in ballots would still be available to members, but only upon request and only within seven days after the delivery of the Notice of Referendum.

The intention is to create a more accessible system that enables more members to vote which is also more cost-effective for the trust. Members live in various locations, and significant improvements have occurred in recent years with on-line voting systems. The proposed amendments are intended to improve voter turnout at a lower cost while still allowing three different ways for members to cast their votes.