ATIKAMEKSHENG ANISHNAWBEK

Community Engagement #4:

Structure and Form of the Draft Trust Deed

PRESENTED BY:

Tony McGregor, CPA, CA, Partner – Freelandt Caldwell Reilly LLP

Nicole Woodward, Partner – Miller Thomson LLP

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Agenda

- Trust Development Working Group (TDWG) – Update
- TDWG – Selection Sub-Committees
  - Legacy Trustees
  - Investment Managers
  - Purposes
- Survey
- Trust Deed - *draft*

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Trust Development Working Group (TDWG) – Update

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TDWG – Update

- The TDWG reconvened in February 2025
  - 3 meetings have occurred in 2025

- Legacy trust drafting continues pending feedback

- Community engagement with Debendaagziwaad
  - Community input
  - Drafted and reviewed by Debendaagziwaad
  - Referendum on the Trust Deed

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TDWG – Timeline

Community Engagement #1

- **Session Kickoff**
- **Introductions:** TDWG/experts
- **Roles, responsibilities, & trust development overview**
- **Survey #1**

Community Engagement #2

- **Recap:** Survey #1 results
- **Focus:** Basics of trust, key trust deed requirements
- **Options:** Customization possibilities
- **Survey #2:** Collect feedback on session

Community Engagement #3

- **Key Topics:** Mission & Vision statements of the trust
- **Mission & Vision:** Encourage alignment with community values/goals
- **Survey #3:** Gather feedback on Mission & Visions

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TDWG – Timeline

Community Engagement #4

- Draft trust deed
- Feedback/Input to shape final version
- Survey

Community Engagement #5

- Final Engagement
- Official Info Session
- Final Trust Deed

Ratification by Community

- Voting on final trust deed
- Online via OneFeather
- In-person voting

Final Trust (Operational)

- Community Initiatives
- Purposes
- Drafting subsequent policies

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TDWG – Timeline

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TDWG – Timeline

- **Expected steps moving forward**
  - Continuing monthly meetings
  - Review/incorporate Debendaagziwaad feedback
  - Preparation for engagement sessions #5
    - Announcement of Legacy Trustees/Investment Firms
  - Community Engagement Session #5
    - Review of Atikameksheng Legacy Trust
  - Ratification of the Legacy Trust

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TDWG – Selection Committee Updates

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Legacy Trustees

- Call for Interest Deadline: Closed on May 23, 2025
- Information Session: 2 sessions held for Debendaagziwaad
- June 4, 2025: Selection Committee meets to shortlist candidates
- June 2025: Interviews to take place
- End of June 2025: Final recommendations to Gimaa & Council

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Investment Firm(s)

- RFP response deadline: closed on May 2, 2025
- Total responses received:
  - 10 Investment firms specializing in the indigenous sector
- Early June 2025: Subcommittee meets to review and analyze proposals
- June 2025: Interviews based on shortlisted firms
- End of June 2025: Final recommendation to Gimaa and Council

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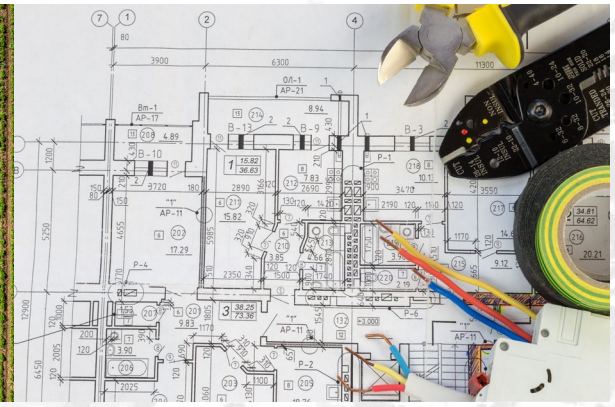
Purposes Sub-Committee

- TDWG committee
  - Created to explore the costs associated with feedback on how to spend trust income
  - Preliminary research and information gathering stage
  - Working with an actuary to calculate future costs and needs



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Survey

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Survey

- Legacy Trust Survey follows along with slideshow
  - Providing more context to the questions being asked

- Seeking direct feedback from the Debendaagziwaad
  - Specific and general

- Throughout slideshow, green coloured wording will indicate **Survey Questions**

- Three cash prizes of $1,000 – Please fill your name to be entered

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Draft
Atikameksheng Legacy Trust Deed

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Understanding the Relationship the Trust Creates

Atikameksheng Anishnawbek
(Settlor)

Legacy Trustees
(First trustees appointed)

And

TD Wealth Private Trust
Rachel Bayley
(First Administrative Trustee)

The Beneficiaries

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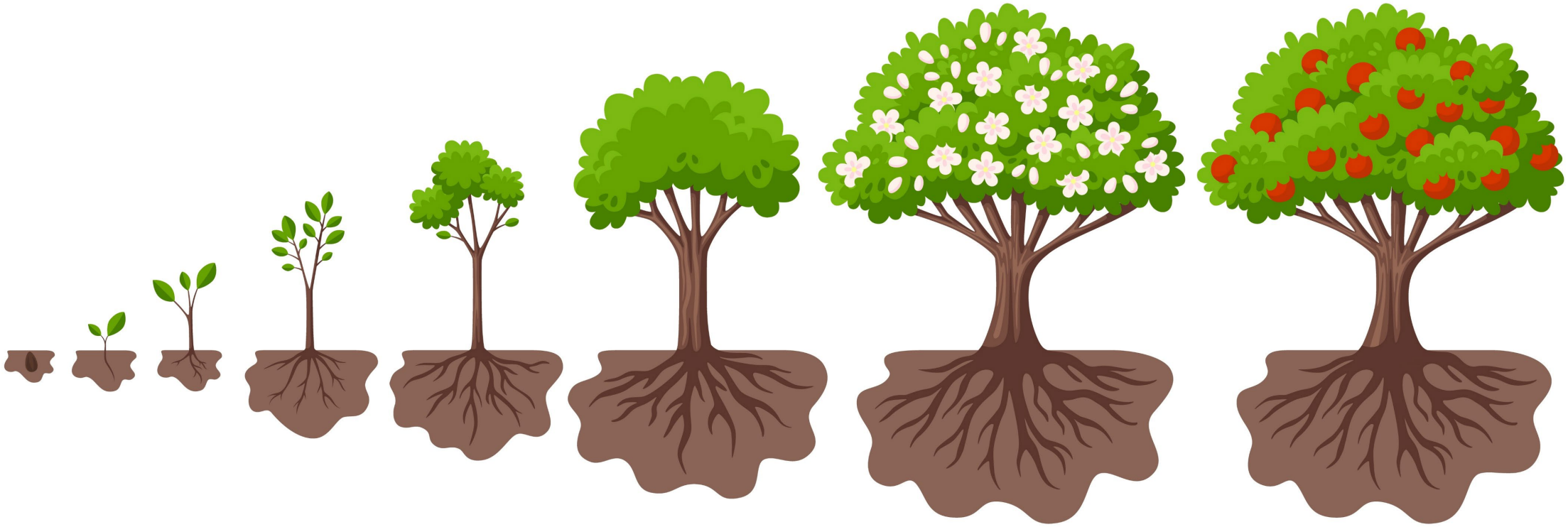
Generational Wealth



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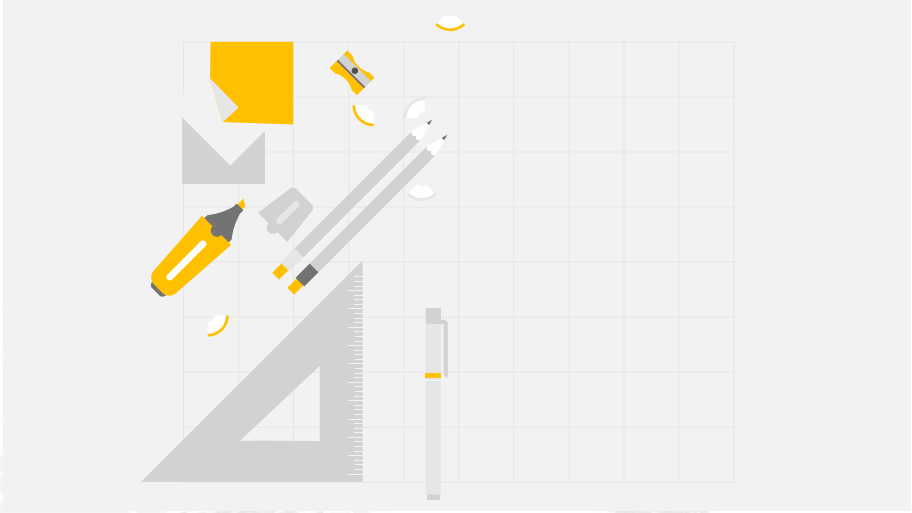
PRE-AMBLE



- Introduces the background/purpose of the trust
- Details on why the trust was settled
- Reasons or Objectives for the trust's existence
- Provides context
  - Thrive together, strong & proud Nation
  - Value the gift of Anishabemowin
  - Value Mino Minadsowin
- Understanding the intent of parties involved

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Incorporating the 7 Grandfathers' Teachings

Zaagidiwin
(Love)

Minwaadendamowin
(Respect)

Aahodewewin
(Courage)

Atikameksheng Anishnawbek

Debwewin
(Truth)

Nibwaahawin
(Wisdom)

Dabasendiziwin
(Honesty)

Dibaadendiziwin
(Humility)

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Difference between the trusts?

- Drafted with modern practices
- Flexibility for the future
- Ability to accept additional contributions
- Protects against inflation and promotes growth
- Community driven process
- Considers inter-generational wealth

- Created in 1999
- Required as part of the settlement with Canada
- Does not factor in need for inflation protection
- Limited funds = limited spending ability
- First years emphasized paying for PCDs
- On-going eligibility for new PCDs as one-time distribution paid out of income

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Section 1

INTERPRETATIONS

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Key Definitions

- **People**
  - Administrative Trustee
  - Beneficiaries
  - Council
  - Council Liaison
  - Elder Liaison
  - Family
  - Guardian
  - Investment Manager
  - Legal Counsel
  - Member/Members

- **Legacy Trustees**
- Minor
- **Off-Reserve Trustee**
- **On- Reserve Trustee**
- **Senior**
- **Youth Liaison**

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Survey Questions

Currently trustees are called “Legacy Trustees”, select a name you’d wish to call the trustees from Atikameksheng Anishnawbek.

What should on- and off-reserve trustees be called?

Is there an alternative name you would prefer for the Senior Liaison Position?

Is there an alternative name you would prefer for the Youth Liaison Position?

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Key Definitions

- **Operational**
  - Accumulation
  - Administrative Trustee
  - Annual Comprehensive Budget
  - Approved Expense
  - Comprehensive Plan (CP)
  - CPI
  - General Meeting
  - Investment Statement Policy (IPS)
  - Notice
- Request
- Trustees' Resolution
- Trust Property
- Uncooperative Trustee

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Key Definitions

- **Deferred Per Capita Distributions**
  - Accumulation
  - CPI
  - Deferred Per Capita Distribution
  - Deferred Per Capita Distribution Date
  - Guardian
  - Legal Personal Representative
  - Mentally Incapable
  - Minor
  - Taxable Income

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Key Definitions

- **Spending Purposes of the Trust**
  - Comprehensive Plan (CP)
  - Economic Development Guidelines
  - Economic Development Initiatives
  - Natural or Other Disaster
  - Purposes

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Section 2

CREATION OF THE TRUST

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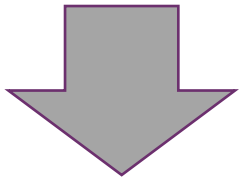
Legal Name

Legacy trust



What should your trust be called?

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Creation of the Trust

- **Settlement of the trust**
  - Settled upon trust settlement property
- **Acceptance by Trustees**
  - Signed trust deed & duties
- **Trust irrevocable**
  - Shall be irrevocable by the Settlor
- **Termination date**
  - Trustees shall pay/transfer the whole trust property to Atikameksheng Anishnawbek

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Section 3

ADDITIONS TO THE TRUST PROPERTY

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Acceptance of Additional Property

- Acceptance of **future** settlements, claims or monies from the Settlor or other sources
- Legal advice required before acceptance

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Section 4

PURPOSES OF THE TRUST

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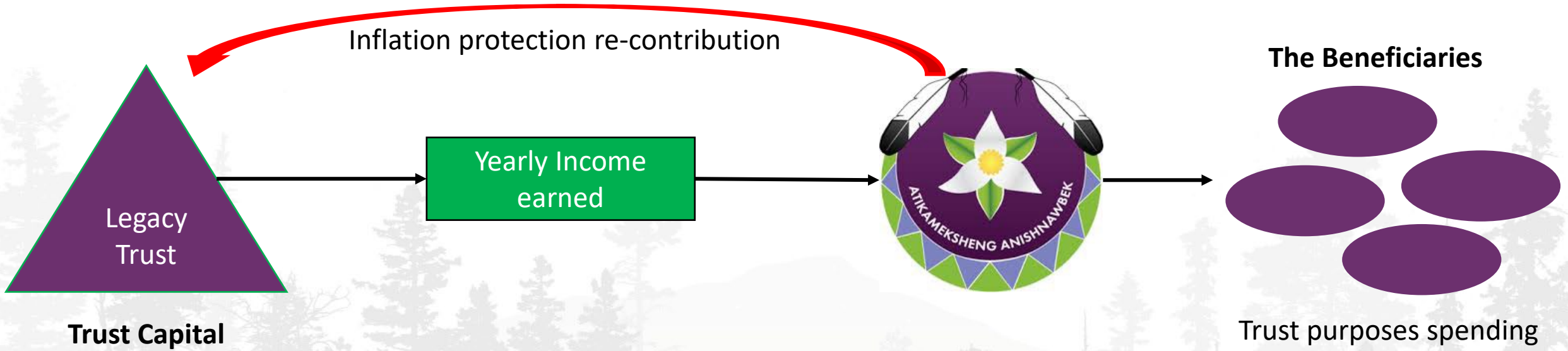
Purposes of the Trust

- Managed by Trustees
- Trust capital and income distributions governed by Trust Deed & Comprehensive Plan (CP)



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Distribution of Trust Capital

- **Capital Definition** – total amount held in trust, separate from annual income

- **Distribution usage**

Disasters

Economic Development Initiatives

Collateral for Other Funding

Infrastructure Loans

Acquisition of Land

- **Approved requirements**

Up to $10 Million

Approved by trustees & Council

Vote

Over $10 Million

Approved by trustees & Council & voted by Debendaagziwaad

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Loans & Leveraging Limits

- **Cannot** exceed **20%** of the **investable assets** at **end** of the **prior fiscal year**
- Repayment terms will be outlined in the CP
  - Consider commercial terms
  - Strategic reasons why commercial terms would be discounted

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Distributions of Trust Income

- **Annual Distributions**
  - Made yearly in alignment with the Comprehensive Plan
- **Mandatory Distributions**
  - Required over the trust's duration to reduce taxable income within the trust to $0
- **Tax Compliance:**
  - Any undistributed taxable income must be paid to the First Nation
  - Payments to First Nation must be in the form of non-interest bearing note
  - Note must not restrict the holders right to immediate payment
- **Beneficiary Allocation**
  - Trustees may distribute income to any entity that is a beneficiary of the trust under the CP.

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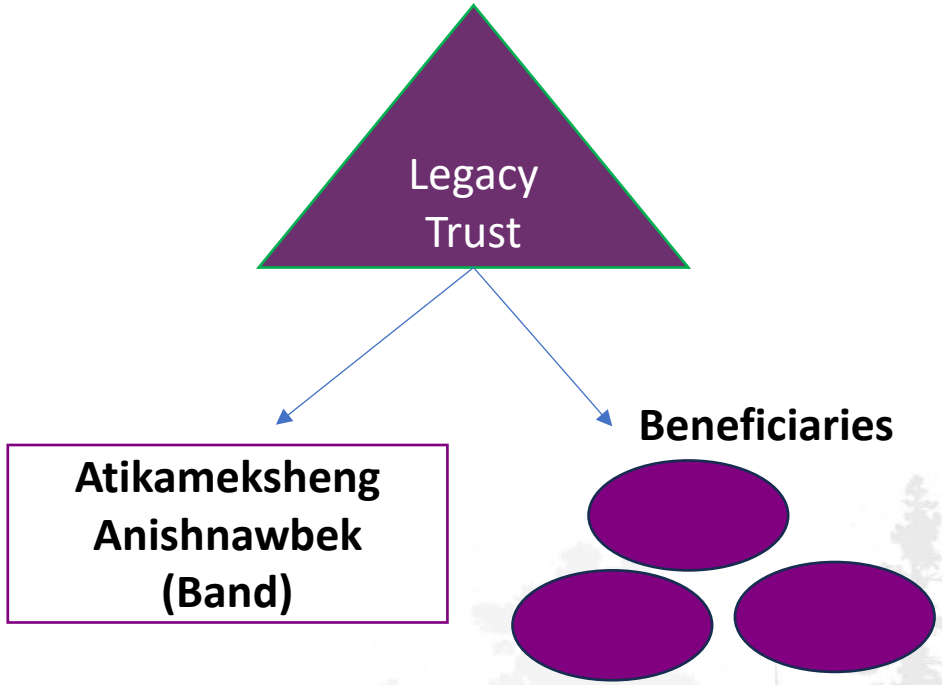
Distributions of Trust Income

- Use band's existing systems to deliver programming
- Create programming that aligns with trust purposes
- Accountability to the trustees on performance
- Trust funds flow into services people already use
- Streamline delivery – no need to build or duplicate systems



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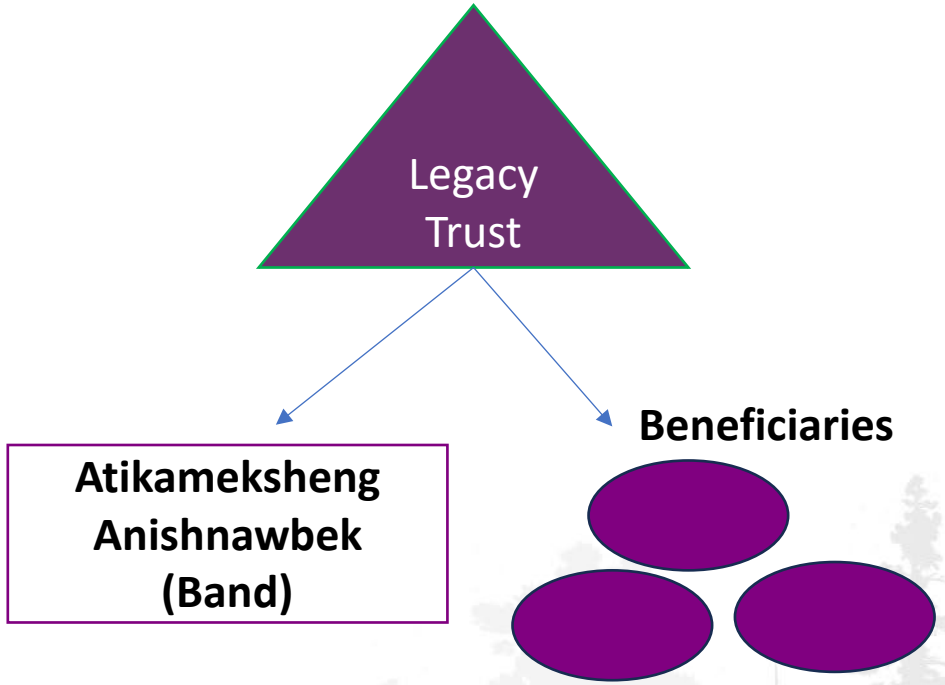
Distributions of Trust Income

- Reduces costs by using current staff and programs
- Enables larger, strategic initiatives
- Service all Debendaagziwaad, no matter where they live
- Builds unity & fairness
- Efficient Oversight: audits & reporting to the Debendaagziwaad



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Initial Use of Trust Property

- Trust will pay Atikameksheng Anishnawbek for professional fees and disbursements made on its behalf for the settlement of the Trust

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Discretionary Use of Income – Purposes

Education	Economic Development Initiatives	Social programs
Infrastructure	Acquisition of land	Health and wellness
Recreation	Housing	Facilities, Services and support for Seniors
Public services	Funding business and employment opportunities	Public Safety, and emergency services
Protection of Treaty & Aboriginal rights	Culture and language	Environmental protection initiatives
Governance & Capacity building	Capacity to consult with industry	Funding for community infrastructure
Natural or Other Disaster, pandemic, endemic, epidemic outbreak	Further Legal Claims	

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What Could Spending Look Like?

Education	Health and Wellness	Housing
Top-up existing programs	Glasses, dental, hearing aids	Supporting and expanding existing programs
Tuition	Ramps, grab bars, lifts	Repairs
Living expenses	Ambulance	Housing units and capital construction
Masters and PHDs	Mobile health clinic	Off-reserve housing
Apprenticeships and Vocation schools	Cultural wellness retreats	Emergency housing

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Survey Question

What key areas should the trustees prioritize and concentrate on developing and investing first?
Choose up to 3, empty boxes below to add your own suggestions

What specific ideas do you have for the use of trust income that fall under the trust purposes?

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Section 5

DEFERRED PER CAPITA DISTRIBUTION

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Legacy Trustees & Deferred PCDs

- Trustees will manage the $100,000 PCD for those that have not received their payment
- Transfer of PCD related duties previously held by Gimaa and Council
- Hold and invest funds for **Minors** and **Mentally Incapable Debendaagziwaad**
- Eligibility will remain unchanged as previously announced
- **Deferred PCD**
  - Interest will be earned – Accumulation Request
  - Management of funds and compliance with the distribution eligibility required

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Section 6

PAYMENT OF EXPENSE

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Payment of Expenses

- Ability to pay for expenses related to the operations of the Trust
- Anything approved in the budget (**Subject to the thresholds below**)

- Examples

Professional Fees	Trust administrator	Investment Management Fees

- **Approved Requirements**

Up to $100,000	Up to $999,999	→	Over $1 Million
Approved by trustees	Approved by trustees & Council		Consent of Debendaagziwaad

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Section 7

COMPREHENSIVE PLAN

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Comprehensive Plan (CP)

- **Purpose** – Strategic document outlining community goals and priorities
- **Creation** – Drafted by community trustees in compliance with trust deed
- **Approval –** Presented to members annually, update and approval on 5-year basis
- **Sections Include:**

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Survey Question

How should Debendaagziwaad help determine the key priorities for how trust income are spent?

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Section 8

DUTIES OF TRUSTEES

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General Duties

- **Trustees must:**
  - Act honestly, in good faith, and exercise a standard of care
  - Carry out the terms of the Trust
  - Act independently
  - Cannot delegate responsibility

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Specific Duties

- Invest trust property in accordance with Investment Policy
- Make decisions about the use of income for the trust's purposes
- Approve trust expenses
- Work with the Administrative Trustee
- Prepare and follow a budget
- Keep records and accounts
- Get financial statements audited
- Report trust activity to members at least annually

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Section 9

POWER OF TRUSTEES

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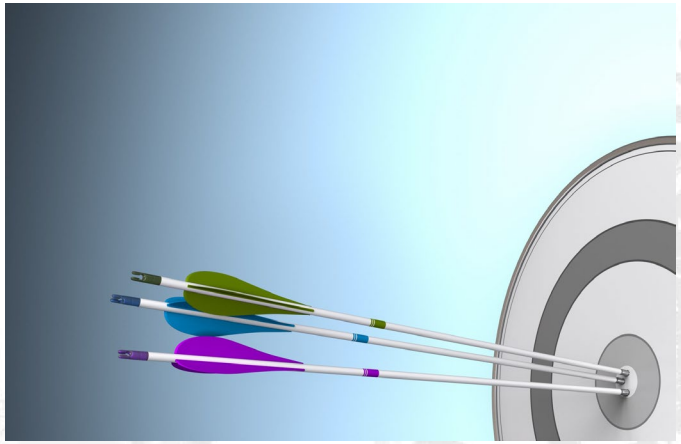
General & Specific Powers

- Trustees can establish a charitable or not-for-profit organization
- Vary the trust because of tax legislation
- Invest under the Investment Policy Statement
- Facilitate the acquisition of land for Atikameksheng Anishnawbek
- Retain professionals
- Contract on behalf of the trust



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Section 10

INVESTMENTS

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Investments

- **Hiring & firing of investment manager(s)**
  - Trustees, Gimaa & Council
- **Remain arm's length**
- **Put agreements in place**
  - Investment manager(s) to abide by Investment Policy Statement

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Survey Question

What guiding principles should the trustees rely on when deciding on how to invest the funds to generate income and support the wellbeing of our people and future generations?

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Section 11

FIRST ADMINISTRATIVE TRUSTEE

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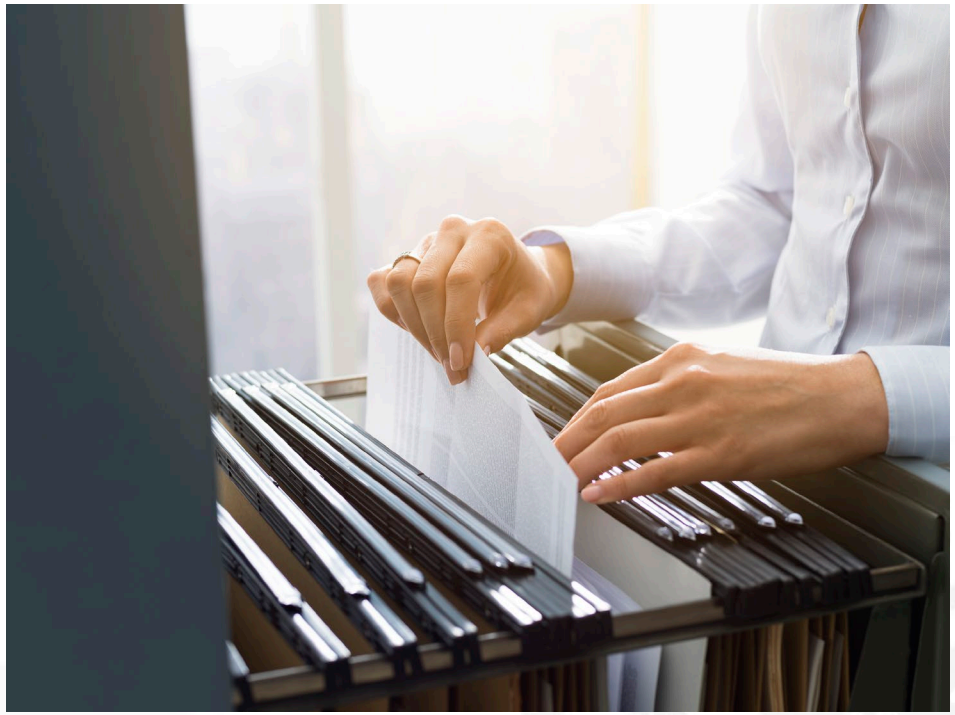
First Administrative Trustee

- **TD Wealth Private Trust**

- **Responsibilities**
  - Compensation
  - Term of office
  - Resignation or removal
  - Successor
  - Duties
    - Opening of accounts
    - Custody of assets
    - Record keeping
    - Administering payments



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Section 12

ADMINISTRATIVE TRUSTEE

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Administrative Trustee (CONTINUED)

- Must be experienced and a trust company
- Clarification of the role of a successor administrative trustee

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Section 13

REAL PROPERTY VALUATION

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Real Estate Appraiser

- Trustees can hire real estate appraisers
- Insight into value of property
- Valuation is not required for transferring real estate to a trustee for the trust

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Section 14

TRUSTEE PROCEDURES

Section 15

TRUSTEES

Section 16

ELDER LIAISON & YOUTH LIAISON & COUNCIL PERSON LIAISON

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Trustee Procedures

- Meetings
- Notice
- Virtual and in-person
- Quorum and Chair
    - (**Corporate Trustee tie-breaking vote**)
- Decisions
- Minutes
- Developing Rules

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Trustees

- **Prohibitions**
  - Can not be an undischarged bankrupt
  - Can not be convicted of any indictable offence
  - Can not be convicted of a summary offence involving fraud, false pretenses, theft or property held as a trustee or fiduciary
- **First Trustees**
  - Appointed
- **Subsequent Trustees**
  - Nominated and elected

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Survey Question

Should the termination of a Trustee's term of office be based solely on a conviction?

Or should being charged with certain offenses also be grounds for removal?

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Trustees

- **Representation**
  - 3 on-reserve members
  - 3 off-reserve members
- **Staggered 4-year terms**
  - 2 term maximum
- **Vacancies**
  - Appointment of replacement
- **Termination of Office**

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Liaison Positions

- All eligible member have the opportunity to be a trustee

- In addition
  - Elder & Youth Liaison positions will have a **non-voting** voice at the table
  - Provide input & guidance
  - Appointed by Gimaa & Council in accordance with the process set out in the Comprehensive Plan

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Survey Question

How should the Elder Liaison be chosen?

How should the Youth Liaison be chosen?

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Section 17

TRUSTEES CONFLICT OF INTEREST

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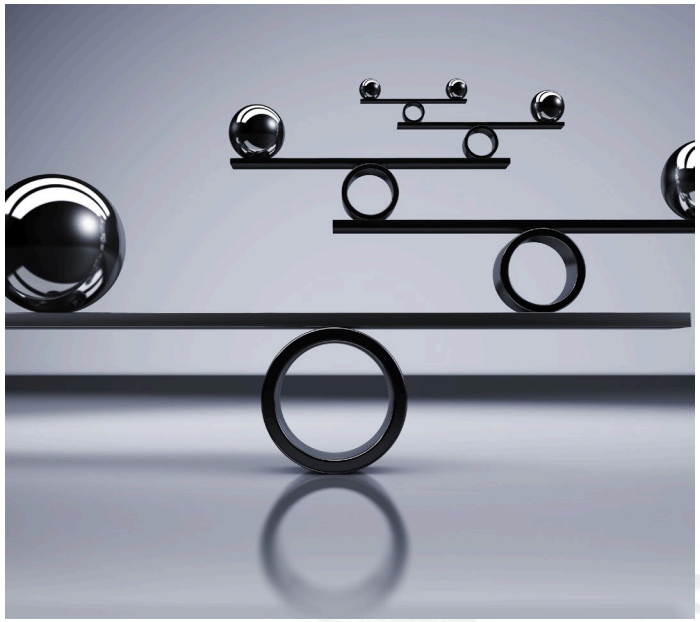
Conflict of Interest



- **Disclosure requirements**
  - Perceived vs. actual
  - Non-participation
- **Timing of disclosure**
  - Immediately upon becoming aware
- **Further outset and process set out in the Comprehensive Plan**

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Section 18

LIABILITY AND INDEMNITIES

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Liability & Indemnities

- **Liabilities of co-trustees**
  - No trustee who exercises a standard of care should be liable for the acts of a co-trustee

- **Limitation of Liability**
  - A trustee, observing a standard of care will not be liable for:
    - Losses of investments
    - The activities of others, provided the person was selected with reasonable care and they were supervised
    - Any claim against the trust in the payment to Atikameksheng Anishnawbek
    - An inability to meet the requirements of the Comprehensive plan

- **Litigation**
  - The trust will pay any necessary costs in connection with the cases brought against the trustees in their capacity as trustees or against the trust
  - Trustees would repay if its determined they acted in bad faith or breached a standard of care

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Section 19

TRUSTEE REMUNERATION

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Compensation

- **Reasonable expenses are reimbursable**

- **Honorarium paid to Trustees and Liaisons**
  - Set amount based on policy laid out in the comprehensive plan
  - Amended through council resolution
  - Administrative trustee charges based on service agreement

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Section 20

AUDIT & TRUST RECORDS

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Audit & Trust Records

- **Access to information for Beneficiaries**

- **Trustee Responsibilities**
  - Keep documents up to date and detailed
  - Establishment of an office location
  - Record storage and maintenance

- **Inspection and Audit**
  - Records open for inspection by Council
  - Annual Financial Statements audited by independent qualified CPA, appointed by Trustees
  - Post audit financial statements available for members review

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Audit & Trust Record

- **Records Maintenance – Stored by the trustees**
  - Trust deed copy
  - Receipt of settlement monies
  - Trustee records, meeting minutes and resolutions
  - Contractual obligations and financial records

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Section 21

VARIATIONS

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Amendments to the Trust Deed

- **Levels of amendment**
  - **Trustee and C&C with complementary resolution**
    - Change the name
    - Continued compliance with legislation
    - Remove conflicts or inconsistencies
    - Clerical in nature
    - Changes to tax legislation
  - **Members' consent (vote requirement) – large (substantive) changes**
    - Complementary resolution
    - Vote by a majority of members voting and **50%** of eligible members participate in the vote
- **Restrictions on Variation**
  - PCD changes
  - Inconsistencies with the purpose of the long-term benefit of Atikameksheng Anishnawbek
  - Amendments to the amendment section
  - Changes to definitions that will impact the amendment section

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Questions?