

BUSINESS PLAN IN BRIEF

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Background

The problems with the current First Nation infrastructure system are well known – infrastructure takes too long to develop, costs too much to build, and does not last long enough. This contributes to a series of poor health, social and economic outcomes. First Nations, tribal councils, technical services groups and provincial and territorial organizations have been working for years to improve this infrastructure system.

The First Nations Fiscal Management Act (FMA) provided an important innovation to the First Nation infrastructure system – access to long-term capital and more fiscal powers to build more sustainable infrastructure sooner. Other innovations are still required to make this option more widely available to interested First Nations. There are now 230 FMA First Nations and several proponent First Nations asked the First Nations Tax Commission (FNTC) to work with them to build a fourth optional FMA institution; the First Nations Infrastructure Institute (FNII). They proposed that FNII would work with the FMA institutions and interested First Nations and First Nation organizational partners to provide at least 10 innovations to the First Nation infrastructure system. It would be an optional, First Nation led institution that would focus on implementing innovations that reduced time and costs, built and maintained more sustainable infrastructure and supported healthier First Nation communities and economies.

In 2017, the First Nations Tax Commission (FNTC) assembled a First Nations Infrastructure Institution Development Board (FNII DB) to provide advice on the development of this Business Plan and to support FNII's development. This Business Plan in Brief and associated Background Papers have been prepared by the Development Board's Technical Working Group (TWG). All content flows from FNII DB advice and experience, TWG research, engagement with indigenous infrastructure experts, focus groups and a review meeting with representatives from the federal government known as the Joint Working Group (JWG). The elements, features and innovations within these documents have all been approved by the FNII DB throughout the development process. This Business Plan in Brief is divided into six short sections, each of which is supported by a longer paper(s) for interested readers.

- Problems with the Current System – These are the problems that FNII and other First Nation organizations are trying to fix;
- A Better System – This is a summary of the better systems proposed by FNII in cooperation with interested First Nation partners;
- Learning from Others – The FNII DB conducted significant research and engagement in the development of the proposal to date;
- Innovations and Implementation – Ten innovations are proposed with an implementation strategy based on the success of the FMA institutions;
- Implementation Strategy – A two-part FNII implementation strategy is proposed; and
- Opportunities to Participate – The FNII DB is inviting participation in the design and development of FNII from interested First Nations and partners.

Problems with the Current System

There are several well-known problems with the current approach to develop, operate and maintain infrastructure on First Nations lands. Any proposal to improve First Nation infrastructure must address at least the following challenges:

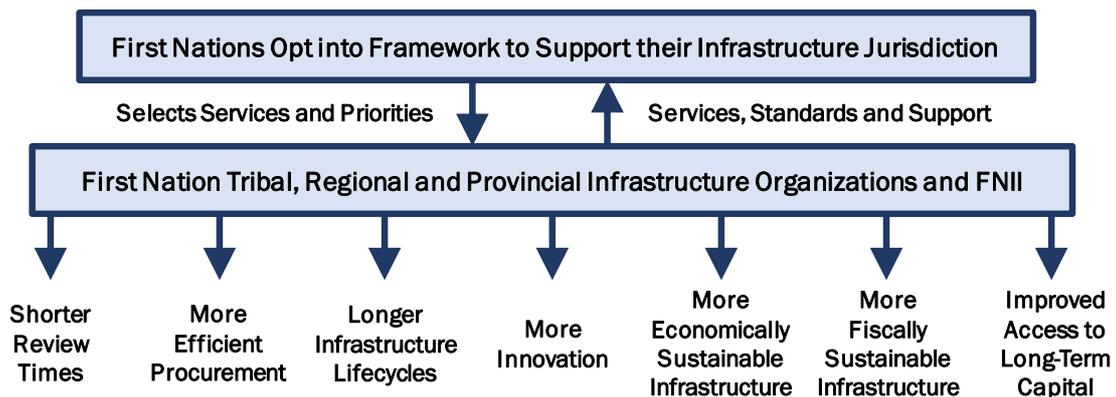
- **The Worst System** – A 2017 comparative analysis conducted by Urban Systems found (i) the development of infrastructure on First Nations lands generally takes longer; (ii) the life cycle of infrastructure within First Nations communities is generally shorter; and (iii) the initial capital cost of infrastructure in First Nations communities is generally higher than comparable infrastructure initiatives within a local government setting.
- **No One to Blame** – There is considerable uncertainty associated with the liability, ownership and jurisdiction of infrastructure in First Nations communities. Canada's position is that First Nations are the owners of, bear sole responsibility for, and carry all liability associated with infrastructure built on reserve funded by Indigenous Services Canada or Health Canada. Many First Nations do not share this view.
- **Doesn't Support First Nation Economies** – The economic sustainability of infrastructure is not considered under the current approach. Economic growth opportunities are not prioritized or even present in DISC's National Priority Funding Evaluation Matrix. As a result, little economic infrastructure is built on First Nation lands.
- **No Jurisdiction** – First Nation governments don't have jurisdiction over the planning, operation, maintenance and replacement of their infrastructure in the same way other governments do. As a result, there are significant regulatory, legal, administrative, planning and fiscal gaps.
- **Not Fiscally Sustainable** – Under the current approach, funding for new capital projects is not separate from funding for O&M of existing infrastructure. As a result, every new infrastructure project constructed increases pressure on future O&M funding demands. As future O&M costs rise, fewer and fewer resources will be left to fund needed new projects. The current Capital Facilities and Maintenance Program (CFMP) is not fiscally sustainable. Based on CFMP Budget information, planned spending on proposal-based capital is declining, as a percentage of total CFMP budget. Projecting this trend forward, funding available for proposal-based capital will reach zero around the end of 2020/21.
- **Poor Access to Capital** – First Nations do not enjoy the same access to capital as other governments in Canada. This limits financing options and has a significantly negative impact on the infrastructure development process, which becomes reliant on federal funding as a result. The CFMP budget is divided into formula-based and proposal-based streams, with further divisions for project size. This stove piping limits the efficiency of federal funding, which is an issue not faced by other governments in Canada.
- **Switching Costs are High** – Existing mechanisms to transfer jurisdiction to First Nation governments has been costly and time-consuming. Reducing these costs requires an orderly legal and administrative process and significant capacity support for indigenous governments. National First Nation institutions have proven to help successfully implement First Nation jurisdictions.

See Background Paper: Business Case (Tab 2)

A Better Infrastructure System

A better First Nation infrastructure system would have more jurisdiction, revenues and capacity at the local level to speed decisions, better manage projects and costs, improve operation and maintenance and generate sufficient revenues to replace infrastructure. A better system would have tribal, regional and provincial First Nation institutions provide necessary professional support for all parts of the infrastructure cycle, to encourage cost efficiencies through aggregations and standards and to ensure community sustainability through integrated planning and better access to revenues and resources. A better system would have a national institution to improve access to infrastructure financing capital, encourage and promote innovations, develop standards, support local and regional capacity development, increase revenues available for all parts of the infrastructure cycle and provide insurance options to manage risks. This better First Nation infrastructure system would reduce time and costs of infrastructure development, increase durability, improve health and social outcomes and support the growth of First Nation economies and revenues to build sustainable communities and nations.

The work towards a better First Nation infrastructure system is well underway. Several First Nations have begun to use long-term financing through the Fiscal Management Act (FMA) to build more sustainable infrastructure. There are several tribal, regional and provincial organizations who have begun to collect information, develop capacity and support aggregation and other infrastructure efficiencies. It is proposed that FNII be established as an optional FMA institutions as part of this better system. As illustrated it would work with First Nation partners to deliver shorter review times, more efficient procurement, longer infrastructure lifecycles, more innovations, economically and fiscally sustainable infrastructure and improved access to capital.



Learning from Others and Engagement Summary

Overview of Research

The lessons from similar initiatives to implement more local jurisdiction and support decolonization are a good starting point to inform the possible design of FNII. The TWG drew lessons from a wide range of sources, including:

- Why Nations Fail – The popular book by Acemoglu and Robinson that examines the institutions established by post-colonial governments in the 1950s and 60s.
- Provincial Governments' Experience – The experience building the capacity of local governments in the late 1960s and early 1970s when many provincial governments wanted to turn over infrastructure responsibility, ownership and jurisdiction.
- Reports of the Auditor General of Canada – The findings, and largely failed efforts to correct the problems, provide an understanding of the challenges to implement change.
- Infrastructure Canada – The successful institutional development experience of Infrastructure Canada provides several lessons.
- FMA Institutions – The success of the FMA institutions and growth in participating First Nations provide several lessons related to innovations, legislation and governance.
- Comparative Analysis – A study by Urban Systems comparing infrastructure development processes identified reasons for poor infrastructure outcomes.

See Background Paper: Possible Lessons (Tab 3)

Summary of Engagement

The FNII DB and TWG have conducted an extensive outreach and engagement process to discuss the FNII business case, proposed purposes and how FNII would work with existing national and regional First Nation institutions. FNII DB and / or TWG members have:

- Met with infrastructure experts including: Ehren Cory (CEO, Infrastructure Ontario), Bert Clark (formerly Infrastructure Ontario), Glenn Campbell (Canada Infrastructure Bank);
- Received advice from participants during a C2P3 Roundtable in January and from industry experts invited to participate in the FNII Focus Group in Toronto in February;
- Discussed partnership options with groups like the First Nations Technical Services Advisory Group (Alberta) and the BC First Nations Housing and Infrastructure Council;
- Made presentations and engaged with participants at the AFN's National Housing and Infrastructure Forum in Montreal and the C2P3 Conference in Toronto;
- Discussed approaches to community capital with the First Nations Health Authority;
- Met with and heard advice from the First Nation Major Projects Coalition;
- Continued to work with the other FMA institutions; and
- Communicated with officials from Finance and DISC, including Minister Philpott.

See Background Paper: Engagement to Date (Tab 4)

Principles and Purposes

Based on this research, advice received from experts during the extensive engagement process, and their own experiences, the FNII DB has identified six principles and 16 purposes.

Principles include:

- FNII's design will continue to be directed and controlled by First Nations;
- FNII will be optional and respect the right of self-determination;
- FNII will work with and support existing First Nation infrastructure institutions and other possible partners to help First Nations build more sustainable infrastructure.
- FNII will be a national institution;
- FNII will be an FMA institution; and
- FNII will support First Nations to implement their infrastructure jurisdiction and support projects that increase economic and fiscal benefits.

Preliminary Purposes include:

- Assist First Nations to build more economically and fiscally sustainable infrastructure;
- Support First Nations to exercise their jurisdiction over infrastructure;
- Work to deliver secure, stable, long-term infrastructure transfers;
- Develop formulas and processes for effective and efficient infrastructure funding;
- Support long-term infrastructure financing;
- Help to transition ownership of infrastructure to First Nations;
- Support aggregations or nation groupings to achieve economies of scale;
- Promote understanding of infrastructure's linkage with economic and fiscal sustainability;
- Provide support for the implementation of standards and laws;
- Assess infrastructure project readiness and support infrastructure planning;
- Develop training programs and build capacity and administrative efficiencies;
- Support more integrated infrastructure planning;
- Work with the FMA institutions to support improvements throughout the project lifecycle;
- Advocate for new revenue streams within an improved fiscal framework;
- Assess infrastructure risks and develop risk management strategies; and
- Achieve administrative efficiencies.

See Background Paper: Preliminary Design (Tab 5)

Proposed Innovations

FNII will support at least the following improvements in the First Nation infrastructure system:

- Longer Term Federal Transfers – Work with FMA institutions and First Nations to develop a better system of federal contributions and ensure transfers can be monetized;
- New Revenues for Financing – Enable new, more stable revenue sources to enhance infrastructure sustainability;
- Improved Access to Capital – Help participating First Nations access longer-term, lower rate financing through the FNFA, to be combined with improved long-term transfers;
- Standards, Laws and Templates (SLTs) to Reduce Costs and Time – Develop and efficiently implement standards, sample laws and templates required to support all elements of the infrastructure cycle;
- More Efficient Review Processes – Support more cost and time effective review processes through professional certification and other innovations;
- Support Innovations – Provide the opportunity to implement more innovations through regional partnerships and a national data base that enables better research;
- Support Nation Building – Help lower costs through economies of scale and First Nation aggregation that achieve infrastructure system efficiencies;
- Better Insurance Options – Develop affordable options for infrastructure insurance;
- Incorporate Economic and Fiscal Potential – Incorporate economic and fiscal potential into planning to build more economic and sustainable infrastructure and;
- Develop Efficiencies to Support Possible PPP Options – Provide a mechanism to combine smaller projects into a larger vehicle to achieve more favorable financing. See *Appendix A: Funding Process Slide Deck attached to Background Paper: Preliminary Design (Tab 5)*.

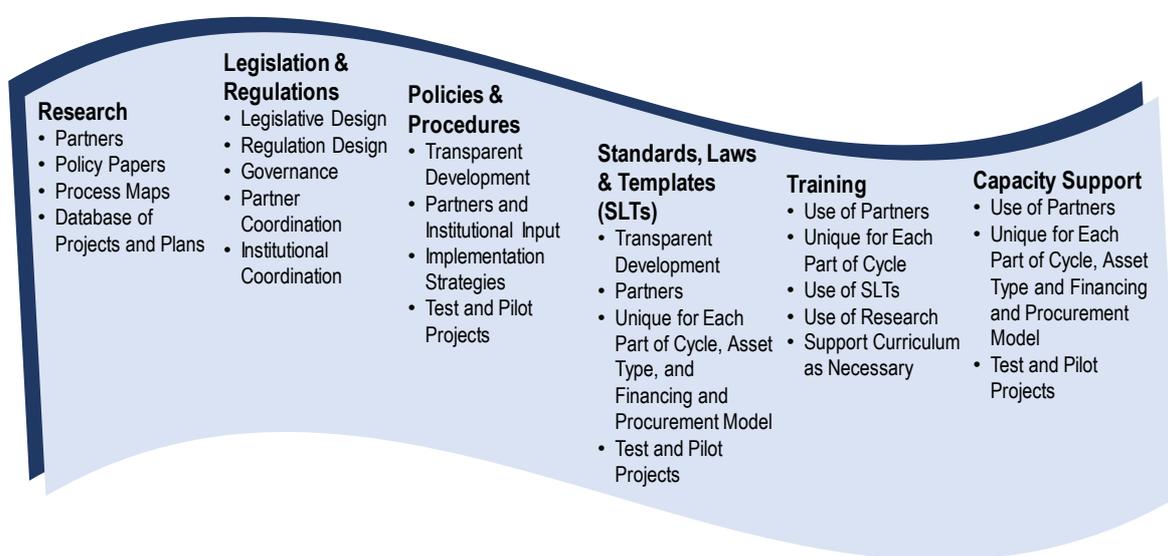
Implementing Innovations

FNII will build on the successful approach to implement innovations used by the other FMA institutions and provincial infrastructure agencies. The FMA approach to support innovations is based on a continuum that begins with quality research. This research initially supports legislation and regulations which eventually support sound policies and standards. These form the basis for best practice standards, sample laws and templates. These are tested, implemented and updated as necessary through research and test projects. Standards, templates and sample laws are the foundation that allows institutions to provide accredited and standardized training to support capacity development and other capacity support tools and services in support of innovations.

FNII will employ a similar process to implement all its proposed innovations as is illustrated below. It will work with its partners and use a national data base to conduct improved research about the proposed and other innovations. This research will ensure more effective First Nation partnerships, better FMA institutional coordination and inform the FNII legislative and regulatory design and framework to implement these innovations. FNII will use this framework to develop policies and procedures in a transparent manner to that support the proposed innovations.

These policies and procedures will be tested with partners through pilot projects. Standards, laws and templates arise from successfully tested policies and procedures. These SLTs will be further tested and refined to make sure they support infrastructure innovations. FNII will work with its partners to provide training related to the framework, policies and SLTs to ensure participating First Nation have the capacity to implement infrastructure innovations. Finally, FNII will employ all elements of this continuum to provide capacity support to participating First Nations so that they maximize the benefits from the proposed innovations.

The FNII Innovation Implementation Continuum



See Background Paper: Innovations (Tab 6)

The Two Stage FNII Implementation Plan

The FNII DB has approved a two-stage Implementation Plan.

Stage I

In the next year, FNII will further test and prove the proposed innovations with proponent First Nations and regional partners. There are two elements to this work:

- Partnering with Regional Initiatives – The FNII DB and TWG will continue to develop working relationships and explore partnership opportunities with First Nation regional service delivery organizations with the goal of establishing formal protocol agreements. The FNII DB will rely on these regional organizations for advice on FNII design details, potential efficiencies, service delivery experience, and methods to maximize the value of these arrangements.
- Prove Concept – The FNII DB will work with regional partners and First Nations to specific innovations in demonstration projects. Projects from various regions involving a variety of asset types and of different size and scope will be identified. A planning, engineering, project management or another contractor will act as a FNII advocate for each project. FNII services and innovations will be applied and utilized in the execution of each of demonstration project. The results of these projects will inform Stage II of the FNII implementation plan.

Stage II

During the next year, FNII will continue work towards the legislative framework to establish FNII as an optional national First Nation institution for interested First Nations. There are three elements to this part of the implementation plan.

- Detailed Business Plan – The FNII DB will continue to work with its First Nation partners to develop and refine its detailed business plan. Elements will include the proposed FNII business lines and services, the FNII logic model to implement innovations [See *Background Paper: Logic Model (Tab 7)*], the proposed governance and operation of FNII, the proposed strategy to grow optional participation, considerations for the proposed FNII financial plan and possible legislative requirements to support FNII.
- Legislative Development – The FNII DB will develop a proposed legislative outline for FNII for consideration by partners and proponents. It will contain the proposed FNII mandate from its proposed purposes and principles, proposed FNII governance model, the necessary regulatory framework to support the proposed innovations and the system to ensure FNII transparency and accountability to participating First Nations.
- Governance and Operation – If the FNII legislative proposal is supported by proponents and partners, FNII will be implemented as a national FMA institution for interested First Nations. This will require that FNII's permanent board of directors be selected and that FNII begin operations in support of an improved infrastructure system.

See Background Paper: Growth Strategy (Tab 8)

Opportunities to Participate

In this Business Plan in Brief and the Background Papers document, the FNII DB has outlined its vision of the proposed institution. Principles and purposes have been defined; business lines and a logic model have been identified; and some ideas for possible FNII innovations and services have been described. But, significant work remains in many areas. Many elements of FNII's design require further engagement and additional input from experts in infrastructure development, financing, operations and maintenance. For these reasons, the FNII DB and TWG are continuing outreach activities and seeking to engage with additional participants through the following mechanisms:

- Review Design Elements on Website – The FNII DB will utilize the fnii.ca website to share infrastructure research, descriptions of potential innovations, service ideas, proposed policies, business plan elements, and FNII design objectives and concepts with interested First Nations and First Nation organizations. Your feedback and contributions will improve FNII design, proposals and business plan elements.
- Present Concept in More Detail at National Meeting – The FMA fiscal institutions have teamed up with the First Nations Lands Advisory Board to host a National Meeting of FMA and FNLMA First Nations in Vancouver in May. The FNII DB will present the concept in more detail and gather feedback on the proposed policy and design issues. The discussion at the National Meeting and the feedback from the First Nation representatives will be incorporated into an improved FNII design.
- Work with Partners Through Demonstration Projects – The engagement process to date helped identify some potential First Nation and tribal and regional organization FNII partners. The FNII DB will rely on partnerships for advice on FNII policy and design details, potential efficiencies, service delivery experience, and methods to maximize the value of these arrangements. The FNII DB will formalize partnership opportunities with these groups and work with them to define an ideal regional service delivery model. The FNII DB will implement some demonstration projects to prove the FNII concept and verify and raise the value of proposed infrastructure system innovations.
- Present Legislative Outline – The FNII DB will develop and release a proposed legislative outline to establish a new FMA institution. It will present this outline to interested First Nations. Opportunities to comment and improve on this outline will be available through fnii.ca and at these presentations.

FNII is a proposed First Nation institution intended to support a better First Nation infrastructure system. It is designed by First Nations for interested First Nations. The FNII DB hopes you can take advantage to participate in FNII's development and design. Please contact us with your comments and questions at: First Nations Tax Commission at 1 (855) 682-3682 or mail@fntc.ca