

FIRST NATIONS FINANCIAL
MANAGEMENT BOARD



The RoadMap.. Project

CHAPTER THREE: CLOSING THE INFRASTRUCTURE GAP



First Nations
**FINANCIAL
MANAGEMENT
BOARD**

**CONSEIL
DE GESTION
FINANCIÈRE** des
Premières Nations

FNFMB.COM





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EXECUTIVE SUMMARY

Innovative infrastructure solutions are needed given First Nations' growing populations, anticipated growth in the reserve land base, and proximity of reserves to growing urban centres.



AS THE GOVERNMENT OF CANADA seeks to implement the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), it faces the staggering challenge of an estimated \$30 billion First Nations infrastructure gap.

This gap has been created by colonial policies that made Indigenous people wards of the government. Their lives have been governed by the *Indian Act* and the resulting policies developed by federal departments. The *Indian Act* dismantled the Indigenous governance and economic systems that were in place before settlers arrived. With Indigenous governments abolished, and then denied access to participate meaningfully in the economy, Indigenous people became dependant on funding provided by Canada through government departments. Indigenous governments were not able to exercise fiscal powers that would have allowed them to provide the infrastructure they needed. The infrastructure gap is the result of government programs and policies failing to recognize and respond to the infrastructure needs of Indigenous communities.

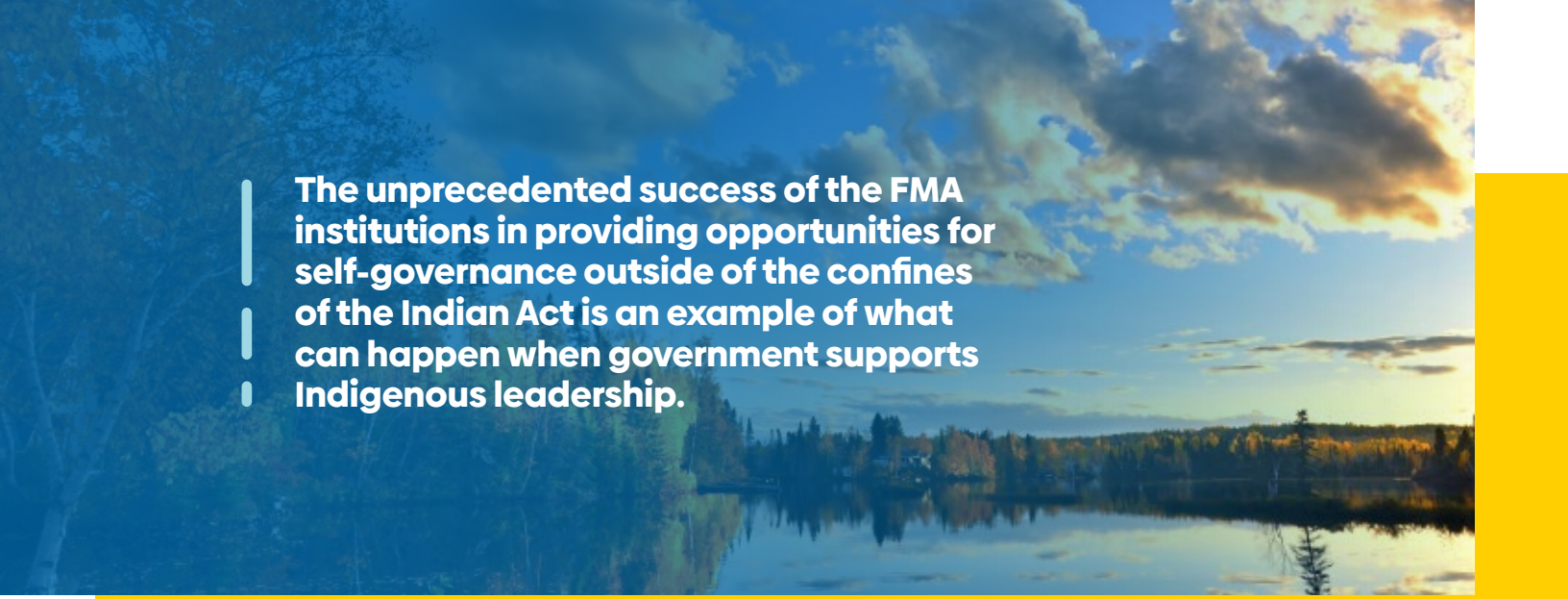
Not only is the current First Nations infrastructure gap unacceptable, but it is likely to become even more severe in future. Innovative infrastructure solutions are needed given First Nations' growing populations, anticipated growth in the reserve land base, and proximity of reserves to growing urban centres. Canada has recently announced commitments to redesign the process for additions to reserve and better address specific outstanding claims. This commitment to reform is welcome, but success necessitates a new approach to First Nations infrastructure governance.

The infrastructure gap represents a failed land management and infrastructure development system. With current approaches unlikely to solve systemic problems, it represents a growing federal liability. It also represents inequality and a legacy of failed colonial policies. For many First Nations, the infrastructure gap sadly represents the reality of living in developing world conditions within one of the richest and most developed countries in the world. For the *First Nations Fiscal Management Act* (FMA) institutions, it represents an opportunity for change.



Systemic failures do not require minor improvements; they require new approaches. Through innovations like the FMA and the *First Nations Land Management Act*, including the *Framework Agreement*, First Nations-led self-government initiatives have created a marketplace of ideas, one in which First Nations can choose to opt out of failed policies and programs towards better alternatives. Within this marketplace of ideas, the 335 First Nations governments who are scheduled to the Act demonstrate that Indigenous-led initiatives are winning out over the status quo. Now with critical mass, we believe the FMA can continue to support First Nations in exercising their inherent right to self-government by providing better public infrastructure to their citizens – infrastructure that supports healthy and prosperous societies.

While surrounding jurisdictions have supportive regulatory environments, technical capacity, and financial tools, First Nations governments have regulatory barriers, imposed limitations, and a broken funding model. The infrastructure gap between Indigenous and non-Indigenous communities is straightforward evidence that the need for change is urgent.



The unprecedented success of the FMA institutions in providing opportunities for self-governance outside of the confines of the Indian Act is an example of what can happen when government supports Indigenous leadership.

The FMA institutions will provide optional pathways for First Nations to meet the infrastructure needs of their communities. Where the First Nations infrastructure system has failed to provide a supportive regulatory environment, infrastructure capacity, or financial tools, the FMA institutions propose long-term solutions to these problems through practical and implementable changes:

- **Support for legislative changes and institutions that promote First Nations' capacity to manage lands**
- **The development of the First Nations Infrastructure Institute (FNII) under the *First Nation Fiscal Management Act* to build capacity, expand procurement options, and secure better operational results.**
- **The monetization of federal transfers, increased fiscal powers, and own-source revenue to create new pathways for infrastructure financing.**

These solutions reduce risk for all stakeholders while promoting the capacity of First Nations governments to plan, build, and manage public infrastructure assets. However, these by-First Nations-for-First Nations solutions cannot be realized without support from the Government of Canada. The unprecedented success of the FMA institutions in providing opportunities for self-governance outside of the confines of the *Indian Act* is an example of what can happen when government supports Indigenous leadership. UNDRIP is about walking together on the path to Indigenous self determination and empowerment with reconciliation through collaboration.

The FMA Institutions work in partnership with the Lands Advisory Board as part of broader efforts of "First Nations Leading the Way." The common element in First Nations Leading the Way is creating options for escaping the limitations of the *Indian Act*, and recognition of First Nations' self government authority, with technical support from First Nations-led organizations. The FMA institutions and Lands Advisory Board both recognize the urgent need for innovative infrastructure solutions.



Many First Nations have opted to take on both the taxation and fiscal powers and land management powers under the *Framework Agreement*. Combined fiscal and lands governance authority can create ideal conditions for innovative approaches to infrastructure governance by First Nations. The Government of Canada needs to support legislative and regulatory changes that the Lands Advisory Board has proposed to ensure effective regulatory support for infrastructure investments. This includes the need to establish effective machinery for enforcement of First Nations regulatory authority. The Lands Advisory Board is piloting Land Code enforcement models. The Government of Canada should be prepared to support this pilot and implement the lessons learned at scale.

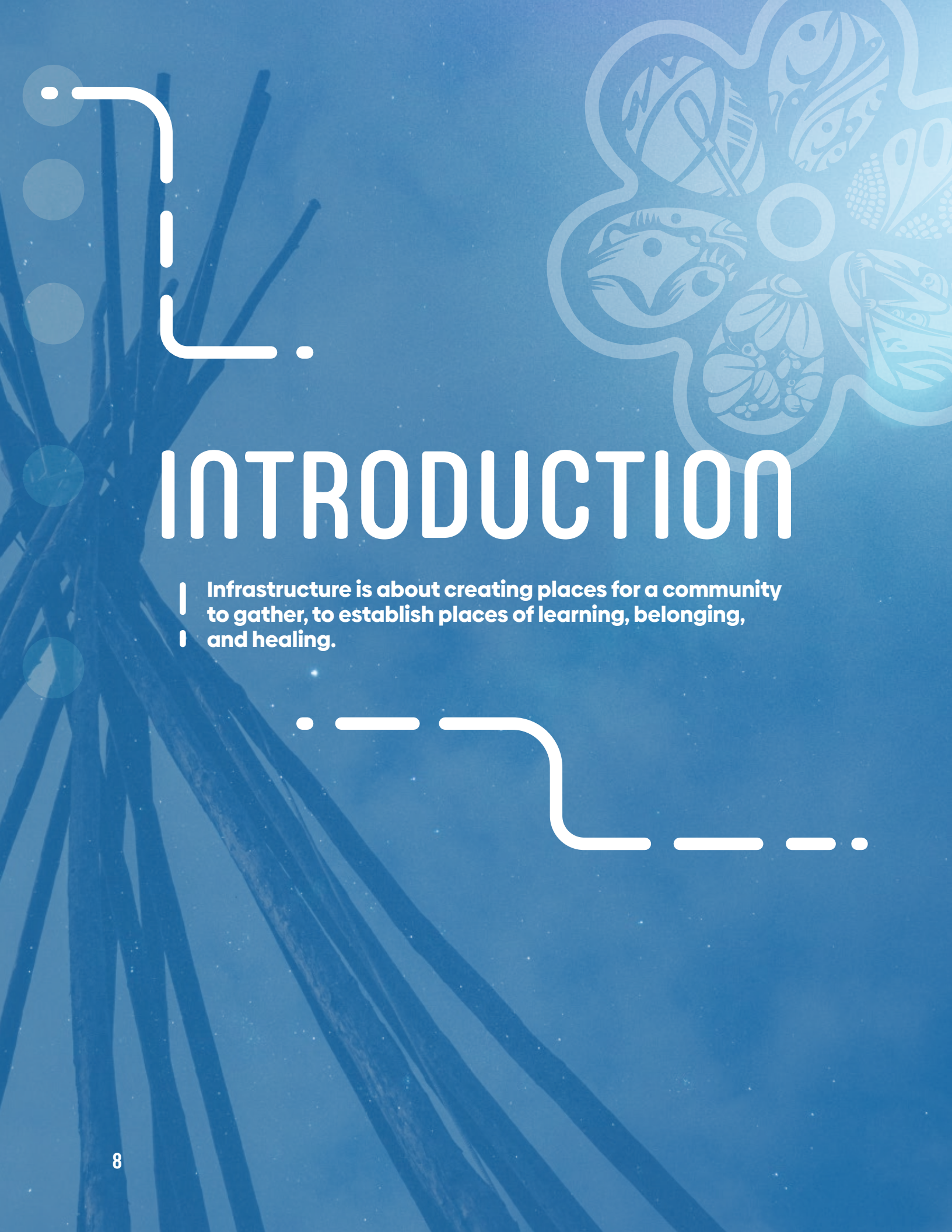
**... by-First Nations-for-First Nations solutions cannot be realized without support from the Government of Canada...
UNDRIP is about walking together on the path to Indigenous self determination and empowerment with reconciliation through collaboration.**



The Government of Canada needs to establish and resource the FNII to provide institutional support to First Nations who wish to move beyond the status quo. This support will produce cost-effective, efficient, and sustainable infrastructure assets: infrastructure constructed on time and on budget; infrastructure that lasts longer.

Finally, the Government of Canada can advance risk-managed opportunities to monetize federal transfers to finance infrastructure over the lifespan of the assets. First Nations governments need access to the same financial tools that other jurisdictions use to finance their infrastructure assets. The Government of Canada can take the first step by supporting monetization in partnership with the FMA institutions.

The FMA institutions are committed to managing risk while providing implementable options for First Nations governments and the Government of Canada. These proposals mean more First Nations capacity, more self-determination, and more socioeconomic growth. We invite First Nations governments, Indigenous organizations, and the Government of Canada to join us in working to bridge the infrastructure gap, resulting in the long-term health and well-being of their communities.



INTRODUCTION

| Infrastructure is about creating places for a community
| to gather, to establish places of learning, belonging,
| and healing.

INFRASTRUCTURE IS MORE THAN water and sewer pipes in the ground or a collection of buildings and the roads that connect them. Infrastructure is about creating places for a community to gather, to establish places of learning, belonging, and healing. Infrastructure supports the higher socioeconomic, health, education, and sovereignty goals that First Nations want to achieve, and that other governments and organizations want to support. But First Nations face unjust barriers to the development of infrastructure that no other level of government faces.

A 2016 report by the Canadian Council for Public-Private Partnerships estimated it would cost \$25-30 billion to close the infrastructure deficit that First Nations governments face.¹ This gap contributes to economic, social, health, and education disparities between the Indigenous and non-Indigenous populations in Canada. It has also created significant liabilities for the federal government. Without institutional support, it currently takes five times longer for an Indigenous infrastructure project to become shovel ready, compared to provincial systems.²



UNDRIP enshrines the right to self-determination and the free pursuit of economic, social, and cultural development.³ As Canada seeks to implement UNDRIP, the systemic Indigenous infrastructure deficit remains a major challenge.

The challenges with Indigenous infrastructure projects have been well documented: they take too long to build, cost too much, and don't last very long. The infrastructure gap describes the difference in infrastructure we see in Indigenous communities compared to the infrastructure we see in other parts of Canada.



The effects of infrastructure challenges in First Nations communities are diverse and widespread. While not exhaustive, the following list provides some illustrative examples:

- **Physical health concerns relating to unreliable access to clean, potable water.** This concern is a well-documented situation which continues to receive considerable media attention. In his mandate letter to the Minister of Indigenous Services in December 2021, the Prime Minister asked the Minister to “eliminate all remaining long-term drinking water advisories, and close the infrastructure gap by 2030, with a focus on building sustainable and affordable housing.”⁴
- **Limited facilities for cultural and community gatherings.** These facilities are foundational to the social fabric of First Nations, further the emotional and psychological health of the community and its members, and support the continuation of traditions and culture.
- **Environmental damage caused by poorly functioning wastewater treatment systems.** The environmental effects range from pollution of groundwater wells (with associated health implications) to discharges to streams and other water bodies of insufficiently treated wastewater, impacting the natural environment.
- **Educational and health shortcomings stemming from insufficient facilities available to deliver programming.** First Nations’ desires to educate children in their own language and traditions, as well as the need for culturally based healing to address substance abuse issues, have brought this topic into sharper focus.
- **Limited economic development due to lack of infrastructure to support business** (high speed Internet, roads, electricity, etc.). Lack of infrastructure negatively affects job creation, skills development, and employment income among First Nations members, as well as business opportunities for First Nations enterprises.
- **Fragile infrastructure systems which are more vulnerable to catastrophic failure than systems administered by other governments.** First Nations infrastructure is vulnerable where installations are poorly planned, equipment is inadequate, there are gaps in capacity of trained personnel, and flooding or fire risks are present.

The planning assumptions for infrastructure projects are changing. New infrastructure projects need to be resilient, considering the future impacts of climate change.



The Covid-19 pandemic exposed the infrastructure gap in many Indigenous communities, as restrictions on gatherings, schools, and workplaces forced many to attempt to connect from home. To work from home, people need quality infrastructure like water, wastewater, and telecommunications / Internet connectivity. These resources are not available for all Indigenous communities.

At the same time, climate change is having real impacts. We continue to see fires and flooding affect many communities. The planning assumptions for infrastructure projects are changing. New infrastructure projects need to be resilient, considering the future impacts of climate change.

What do these challenges mean? First Nations require infrastructure improvements across all asset classes. These challenges mean that prior calculations have grossly underestimated the size of the infrastructure gap. The current policy and procurement approach to Indigenous infrastructure projects has failed to

recognize the gap and is unlikely to do so in the future. This failure is allowing the infrastructure gap to widen. The current approach, largely based on procurement policies and funding dependency from Indigenous Services Canada (ISC), will never be successful in eliminating the infrastructure deficit in Indigenous communities.

The current risk-responsibility relationship for Indigenous infrastructure projects is flawed because First Nations are taking on risks and liabilities associated with projects without the corresponding control and decision-making power during project planning and development. This approach is ineffective because many Indigenous communities have not developed the capacity to manage the risks associated with constructing, operating, and maintaining the asset.

Other challenges with the current approach include lack of access to financial tools and institutional supports. First Nations are not able to pay for infrastructure in the same way as other governments.



A new approach to infrastructure development

The current Indigenous infrastructure development system is broken. We need a new approach to close the Indigenous infrastructure gap: an innovative, Indigenous response to a complex problem. This new approach must provide pathways that support First Nations to opt out of the colonial regulatory system. This new approach will encourage innovation, support capacity development, and advance self-government. It will support First Nations in providing public infrastructure at the same standards that other jurisdictions enjoy. This new approach will support Indigenous communities and organizations to plan, procure, own, and manage infrastructure on their lands. This Indigenous solution will require systemic change and government wide support.

As the Government of Canada implements UNDRIP, the FMA institutions will support this effort by providing tools, resources, and frameworks that will advance the capacity of Indigenous communities to govern themselves. The right to self-govern is meaningless without the capacity to exercise that right. Capacity to govern includes the ability of First Nations governments to provide their citizens with public infrastructure that promotes healthy economies and societies. The FMA institutions offer a risk-managed solution for First Nations governments to opt out of the failed infrastructure procurement and financing system and pursue optional pathways towards health, wealth, prosperity, and control over their reserve lands.

The FMA institutions will empower Indigenous governments to overcome systemic infrastructure gaps through:

- **Support for legislative changes and institutions that promote First Nations' capacity to manage lands**
- **Development of the FNII under the FMA**
- **Creation of pathways to infrastructure financing through the monetization of federal transfers**

The centrepiece of the FMA institutions' proposal is institutional support for efficient and sustainable First Nations infrastructure through FNII. The establishment of an infrastructure institution through the FMA would provide more tools and capacity support for Indigenous communities and organizations to close the infrastructure gap. FNII will support Indigenous governing bodies to maintain cost-effective, efficient, and sustainable infrastructure assets.



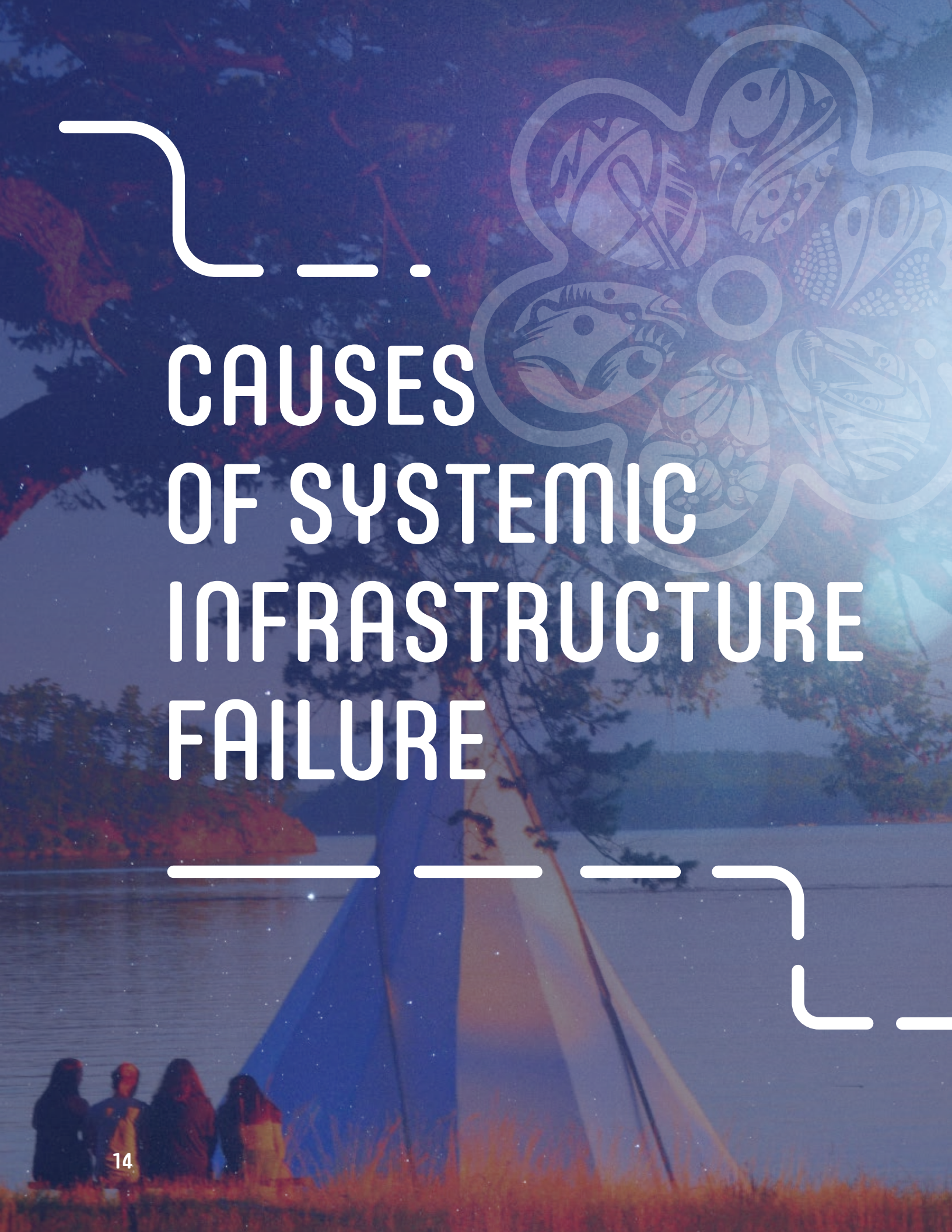
As Canada prepares to implement UNDRIP, FNII will support Indigenous governing bodies to plan, build, and manage infrastructure assets by pursuing the following objectives:

- Reduce time and costs to develop infrastructure by standardizing best practices and implementing a risk-management regime
- Plan for whole-of-life costs, asset management, and operations and maintenance to ensure more sustainable assets
- Provide a centre of excellence to increase Indigenous capacity and skills in infrastructure management
- Improve the ability to diversify and share risks using insurance
- Maximize economic benefits of infrastructure

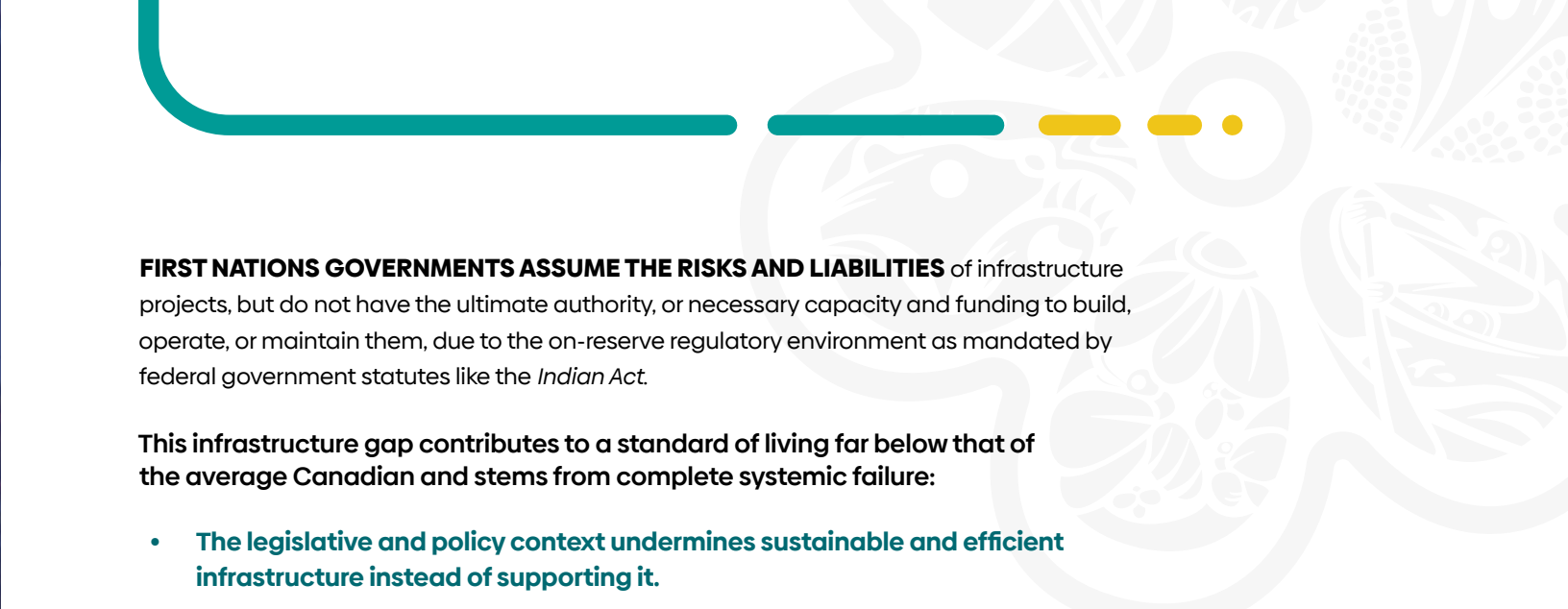
The federal government could build on this work by empowering First Nations governments with the same financial tools that other jurisdictions use to finance infrastructure. With risk managed by FMB certification and FNII support, the Government of Canada could enable the securitization of federal transfers for long-term infrastructure financing.

**The right to self-govern
is meaningless without
the capacity to exercise
that right.**





CAUSES OF SYSTEMIC INFRASTRUCTURE FAILURE



FIRST NATIONS GOVERNMENTS ASSUME THE RISKS AND LIABILITIES of infrastructure projects, but do not have the ultimate authority, or necessary capacity and funding to build, operate, or maintain them, due to the on-reserve regulatory environment as mandated by federal government statutes like the *Indian Act*.

This infrastructure gap contributes to a standard of living far below that of the average Canadian and stems from complete systemic failure:

- **The legislative and policy context undermines sustainable and efficient infrastructure instead of supporting it.**
- **A colonial legacy has denied many First Nations the capacity to plan, develop, and manage public infrastructure assets.**
- **First Nations do not have access to the financial tools enjoyed by other jurisdictions and are limited to a failed pay-as-you-go infrastructure financing model.**

Statistics Canada, in its report on the housing conditions of Indigenous people in Canada, found that 24% of First Nation households needed major repairs, compared to 6% in the non-Indigenous population.⁵ While this difference is stark, it is also far more prevalent in the dwelling conditions of those who live on a reserve. The proportion of registered or treaty status First Nations people who lived in a dwelling that needed major repairs was over three times higher on reserve (44.2%) than off reserve (14.2%).⁶ Other than overall well-being indexes, data on the state of conditions in Indigenous communities is hard to come by, and this is true globally, contributing to a “data desert.”⁷ Despite the scarcity of potentially useful data, which is also a systemic failure that needs remedy, First Nations governments and members, provincial and federal governments, and organizations across Canada recognize the massive infrastructure gap that exists for First Nations, particularly on reserves.



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The landscape of on-reserve infrastructure

A paternalistic and colonial legislative and policy agenda laid the foundation that created the infrastructure gap that is burdening many First Nations across Canada today. This is a significant contributor to the visible poverty in Indigenous communities, created by limited economic opportunities. Critical infrastructure and tangible capital asset projects are doled out piecemeal from federal stipends where and when they can be spared. In many cases, First Nations lack the necessary capacity to finance and plan new projects or maintain and upgrade current ones.

Research shows that “there is a positive relationship between the presence of core public infrastructure (roads, streets, bridges, highways, water treatment and distribution systems, sewers, airports and mass transit) and productivity growth.”⁸ Unfortunately, many First Nations find themselves in a regulatory environment that undermines efficient and sustainable infrastructure development, stemming mainly from the *Indian Act*.



Legislative and policy context

Various sections of the *Indian Act* govern First Nations’ abilities to plan, design, construct, operate, and maintain infrastructure on their reserve lands. In addition, the ability to raise funds through taxation to pay for infrastructure during its life cycle was set out in the *Indian Act*, specifically Section 83. Deployment of relevant sections of the *Act* required much interaction with relevant federal departments (currently Indigenous Services Canada; formerly referred to as Indian and Northern Affairs Canada as well as other names).

The Government of Canada provides funds to develop and operate infrastructure that serves First Nations members living on reserve lands. Various arms of the government are involved, from the formation of the budget and allocations to individual departments (such as ISC), to policy direction with respect to where these allocations are to be focused over certain time frames (such as clean drinking water, improved housing conditions, other priority policy areas). These and other aspects of financial policy have implications for infrastructure on First Nations reserve lands.

Government of Canada funding has focused on the immediate needs of First Nation members rather than economic development initiatives that Nations can choose to advance on portions of their reserve lands. While there has been less attention paid to economic activities, some Nations have received contributions from Canada through programs such as the Lands and Economic Development Services (LEDSP) and Community Opportunity Readiness (CORP) programs.



Within this broad context and the role of the Government of Canada within it, many First Nations governments have moved to exert enhanced jurisdiction over their own infrastructure affairs. Two key pieces of legislation, and the institutions they created, are critical in this regard.

The first is the FMA, which birthed three vital First Nations-led institutions: the First Nations Tax Commission, First Nation Financial Management Board, and First Nations Finance Authority. Together these institutions provide Nations with the opportunity to markedly expand their jurisdiction over their financial affairs, including those related to infrastructure.

The second is the *Framework Agreement on First Nation Land Management*, through which Nations may re-establish their lands governance via a land code and, pursuant to that land code, establish laws respecting many aspects of infrastructure development such as local services provision, subdivision control, land use regulation, and user fee systems. These have made new infrastructure development and funding tools available to First Nations, but there remain opportunities to take these improvements further since key infrastructure challenges continue to confront Canada's First Nations.

Government of Canada funding has focused on the immediate needs of First Nation members rather than economic development initiatives that Nations can choose to advance on portions of their reserve lands.



CAUSES OF SYSTEMIC INFRASTRUCTURE FAILURE





Current legislative and policy context contributes to infrastructure gap

The *Indian Act* regulatory environment creates barriers to First Nations socioeconomic development, including the development of on-reserve infrastructure. This regulatory framework grants only nominal control to First Nation governments while undermining First Nations' capacity to exercise those nominal rights. The legislative and policy context creates an isolating environment that erodes a First Nation's ability to provide sustainable and efficient public infrastructure to its citizens.

For any community to fund and plan their infrastructure projects, the regulatory environment must support them in addressing their needs. The regulatory environment should be constructed carefully and collaboratively, with inputs and approvals from all stakeholders, and must allow the creation and implementation of laws that "affect the quality of local services and the financing, construction and maintenance of local infrastructure."⁹ If the regulatory environment does not meet these simple criteria, it ceases to be a supportive regulatory environment and becomes something else: a barrier to progress.

Infrastructure development plays an enormous role in the health and well-being, safety, and economic feasibility of any community. The successful implementation of infrastructure depends on a supportive regulatory environment that promotes planning, predictable timelines, stakeholder engagement, and access to capital. In contrast, a 2016 study by the Government of Canada found issues with 100% of projects sampled on reserve lands. It determined that the regulatory environment and bureaucratic control of First Nations lands caused infrastructure delays and cost overruns in more than 50% of the projects sampled, while the remaining projects had to be downsized to stay within the funding allowances.¹⁰

The Government of Canada controls infrastructure on the lands of most First Nations governments across Canada. While First Nations have the authority to pass by-laws and administer zoning and other elements of infrastructure, there is a vast difference between nominal ability to create by-laws and the practical ability to implement those by-laws. With the Crown's



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failure to provide sufficient resources or support for infrastructure assets, First Nations “lack the revenue options needed to provide infrastructure comparable to other jurisdictions.”¹¹

Federal control of reserve lands includes *Indian Act* regulations permitting the Crown to take or use reserve lands without the consent of the First Nations government. The Government of Canada has exercised this right on various occasions, and portions of reserve lands have been expropriated to other local governments or entities for resource extraction, harvesting, or ironically infrastructure projects like power-generating facilities or transmission networks. In short, the *Indian Act* grants the federal government the ability to split reserve lands and assets if they deem it necessary, eroding a First Nation’s sovereignty rights on reserve lands, and demonstrates a cavalier attitude towards First Nations government jurisdiction over the small tracts of reserve lands.

Federal control over First Nations’ reserve lands has created a confusing and inefficient bureaucratic quagmire. In practice, even if a project receives federal approval, various aspects of the project may be funded and regulated by separate government departments. This bureaucratic labyrinth is a significant burden for many First Nations. The result of this regulatory framework is uncertainty for many First Nations and an unsupportive environment that sets them up for failure.

Where supportive regulatory environments promote financial visibility and long-term planning, the current legislative and policy context promotes dependence and political instability. First Nations require data, individually tailored for their regions, but are left with an imposed set of regulations designed to homogenize the Crown’s approach to First Nations. Data empowers meaningful analysis that informs effective policies - these policies can deliver stronger outcomes for First Nations communities compared to federally imposed regulations. They require networked infrastructure but many are unable to integrate with local economies or link in to nearby municipal or provincial systems without great cost. First Nations governments require the capacity to govern and provide for their citizens, yet the regulatory environment undermines their capacity to build and maintain the projects they choose, and there is little in the way of accessible resources or institutions for infrastructure. First Nations require access to long-term capital but federal control over reserve lands means that they have few assets to leverage, and often little own-source revenue to monetize for financing. The current regulatory environment, set primarily by the *Indian Act*, is a hostile place for the development of First Nations’ infrastructure, societies, and economies. The growing infrastructure gap between First Nations communities and non-Indigenous jurisdictions is evidence of systemic failure.

Specific challenges to infrastructure development

This colonial regulatory system has created numerous barriers to First Nations infrastructure by asserting control of First Nations lands while failing to resource First Nations governments. The first of these infrastructure challenges is the time it takes First Nations to develop infrastructure on their reserve lands, from the point where the infrastructure need is identified to the point where it is constructed and operational. ISC is the Government of Canada's key agency responsible for delivering infrastructure projects in First Nations communities, as well as supporting their operation and maintenance. This role is centred on serving the needs of First Nations members. As part of the normal course of events – that is, in the absence of natural disasters, accidents, or other damage requiring short-term action – ISC requires First Nations to move through a multi-step process.

This process is depicted in the following graphic.

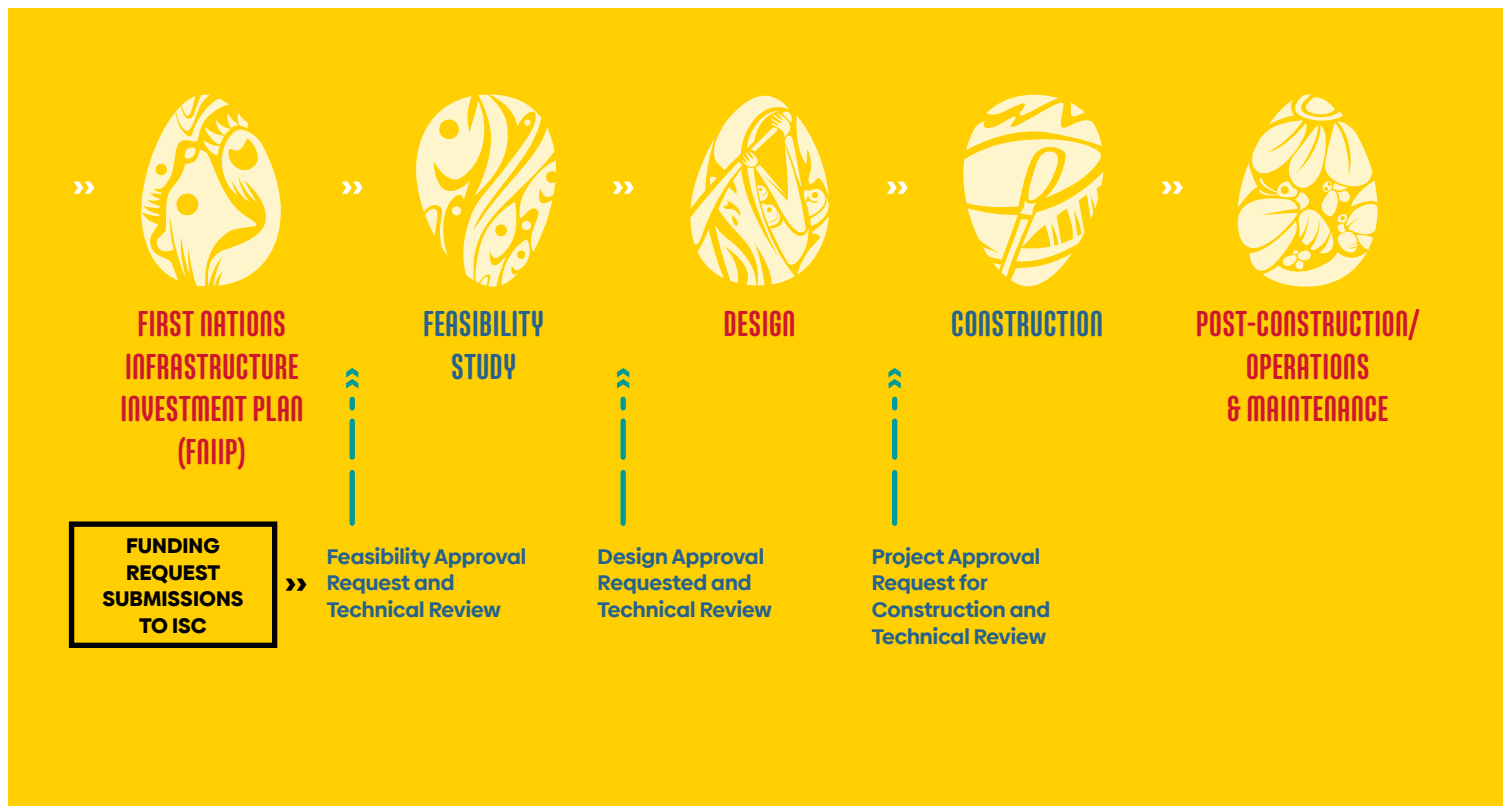


Figure 1 – Overview of process for funding from Indigenous Services Canada



First Nations often experience significant delays in a project moving forward at pace. In an assessment of the First Nation Infrastructure Fund, the Canadian government cited case studies and interviews showing instances where First Nations communities did not always have access to the capacity or expertise to review infrastructure project designs and construction contracts. According to the assessment, this weakness “left First Nations vulnerable to overpricing and poor design from contractors and consultants.”¹² Common explanations provided by the federal government include insufficient funding availability, constraints placed on the First Nation’s engineering consultants related to preferred technical solutions, and the need for multiple studies, each of which requires a new submission for funding support.

The second key infrastructure challenge faced by First Nations under the current legislative and policy regime is cost. The focus of this discussion is initial capital cost. There are numerous factors that contribute toward high capital costs. The optimum solution to an infrastructure challenge is not always available to First Nations due to constraints imposed by Government of Canada guidelines, regulations, and funding programs

as part of contribution agreements at various stages of infrastructure development (in particular, feasibility studies). Capital costs are typically a significant criterion in the selection of an optimum solution.

The time frame within which funding is made available for capital project construction is another common dimension of this challenge. For example, project approvals for construction may not be made available until spring or summer of one year (sometimes in late March toward the end of the Government of Canada’s fiscal year, when unspent budget allowances are identified), with the approval stipulating that construction must be complete by March 31st of the following year. This leaves less than one year to procure a contractor, have that contractor mobilize and complete construction, and commission the facility. Procurement processes for contractors are better conducted in the fall compared to the spring or summer when they already have a committed workload, resulting in higher costs. In addition, contractors place a premium on winter construction, which would be necessitated by the situation described above and is a reality in much of Canada.

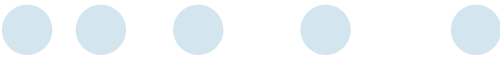


The third challenge is that infrastructure on First Nation reserve lands is generally not as durable and long-lasting as that constructed in other public and private sector realms. There are several dimensions to this challenge. Winter construction of infrastructure due to funding program time constraints can lead to less-than-optimal outcomes. Limited access of First Nations infrastructure operators to a robust network of required expertise and support is also a factor. A third and vital consideration is the insufficiency of operation and maintenance funding provided by the Government of Canada for infrastructure developed to serve First Nation members. The Crown's operations and maintenance model needs improvement, as currently the Crown “only approves infrastructure projects once it has the cash on hand, essentially meaning that no leveraging of dollars or spreading a project's costs over many years can occur.”¹³

Project funding rarely covers project costs. Whether a First Nation has chosen to receive annual or block operations and maintenance funding allocations, the amounts provided do not reflect actual costs. This situation was partially addressed in 2021 with

Canada's decision to increase the notional costs for First Nations to operate water and wastewater systems from 80% to 100% of those costs. There remain two key issues in this regard: the difference between notional and actual costs, and the lack of funding for infrastructure rehabilitation, which will be required during the asset's lifecycle (such as roof replacement on a building).

Infrastructure needs for those First Nations that have chosen to use portions of their reserve lands for economic development are often not able to be neatly packaged into ‘member-serving’ and ‘economic development-serving’ bundles as is often required. Consider, for example, improvements to a water treatment plant which supplies clean, potable water to both members and economic development activities. This blending of infrastructure user groups presents an additional challenge, because it requires the allocation of infrastructure capacity, associated costs (both capital and operating), and funding sources (Canada, First Nation local and own-source revenues) to different groups.



Capacity challenges contribute to infrastructure gap

The colonial legacy of the Crown-Indigenous relationship means First Nations governments not only face numerous inefficiencies and regulatory barriers to infrastructure, but also capacity challenges. Many First Nations do not have the capacity to plan, develop, and manage public infrastructure assets. This legacy has led to an unacceptable status quo, represented by multiple systemic gaps in Indigenous infrastructure.

These capacity challenges include high turnover of elected and staff positions, location of the community (with remoteness being a contributing factor to construction costs), and absence of effective organizational processes within the Nation's government. Several of these factors contribute to a higher-risk situation for construction contractors working on infrastructure projects in First Nations communities. These factors can deter interest from well-qualified contractors, result in higher costs, and have other negative outcomes.

The current risk-responsibility relationship for Indigenous infrastructure projects is unjust and inefficient because many First Nations are taking on risks and liabilities associated with projects without the capacity to properly manage these projects, or the corresponding authority and decision-making power during project planning and development. This approach is inefficient because Indigenous communities may not have developed the capacity or opportunity to effectively manage, mitigate, or transfer the risks associated with designing, construction, operating, and maintaining the asset.

Infrastructure outcomes in many First Nations communities are among the worst in Canada. In terms of comparison of economic outcomes for First Nations, a typical Canadian community can finance more in new infrastructure from annual revenues than First Nations governments, as demonstrated in the table below:¹⁴

Typical Canadian Community	• \$1 million Annual Revenues = Can finance \$6 million in new infrastructure
Typical First-Nation Community	• \$1 million Annual Revenues = Can finance only \$2 million in new infrastructure
Typical Canadian Community	• \$1 million in new infrastructure spending entices \$5 million in private investment
Typical First-Nation Community	• \$1 million in new infrastructure spending entices only \$1.5 million in private investment

	Typical Canadian Community	Typical First Nation Community
Leveraged financing from \$1 million in Annual Revenue	\$6 million in new infrastructure	\$2 million in new infrastructure
Private Investment from \$1 million spend on Infrastructure	\$5 million	\$1.5 million

This challenge contributes to a host of socioeconomic challenges. These inadequate infrastructure outcomes and poor socioeconomic conditions have been well-documented in the media and in reports by the Auditor General, the Senate Standing Committee on Aboriginal Peoples, the National Indigenous Economic Development Board, the Assembly of First Nations, and many others. The challenges and conditions described in these reports are the result of a systemic issue: the inheritance of a colonial and patronizing Crown-Indigenous relationship.

Government programs cannot solve the problems with this system. Government programs may temporarily improve circumstances in some cases, but will not produce broad-based and permanent improvements in a sustainable manner. A sustainable solution must target the systemic gaps.



There are multiple Indigenous infrastructure development systemic gaps:

Resiliency Gap	• On-reserve infrastructure is less resilient and durable than infrastructure in other jurisdictions. • Infrastructure in Indigenous communities often does not operate at full design capacity for intended lifecycles.¹⁵
Capacity Gap	• Infrastructure in Indigenous communities is typically unsupported by integrated planning processes, resulting in longer project development timeframes, less appropriate facilities, and under-sized infrastructure.¹⁶ • Indigenous governments tend to have less experience developing infrastructure projects, lower access to infrastructure development expertise, and access to fewer specific technical and professional supports, often resulting in projects that take longer and cost more than similar projects built by other governments.¹⁷ • Indigenous governments and organizations do not have access to the same range of procurement models that other governments often use to appropriately engage experienced design and construction teams and allocate project risks to the parties better able to manage them.
Financial Gap	• Indigenous governments typically utilize fewer fiscal tools and rely more heavily on transfers than other governments that more effectively recover all types of infrastructure costs throughout project lifecycles.¹⁸ • Indigenous governments more frequently pay capital costs of projects on a pay-as-you-go basis and typically have less access to lower-cost financing, compared to other governments.¹⁹
Information Gap	• Indigenous governments typically have less access to the infrastructure-specific data, statistics, and information required for better project planning and better management of existing assets (preventative maintenance, minor repairs, replacement of major components, significant rehabilitations, end of life decisions, and decommissioning) than other governments.²⁰
Insurability Gap	• Indigenous governments typically have less access to insurance for infrastructure and facilities than other governments enjoy and are usually required to pay higher premiums or simply operate with higher numbers of uninsured assets as a result.

Infrastructure development in many First Nations communities is far less sustainable than infrastructure development in other communities. First Nations require the capacity to fill these gaps and create infrastructure that is sustainable, supports First Nations jurisdictions, and promotes ownership of the infrastructure development system. First Nations need an Indigenous-led solution to these systemic issues, and a sustainable alternative system that embeds capacity-building tools and products into its service delivery model.



How the pay-as-you-go funding system contributes to the infrastructure gap

HOW OTHER LEVELS OF GOVERNMENT FINANCE INFRASTRUCTURE

Municipal governments own and maintain two-thirds of all public infrastructure assets in Canada.²¹ Municipalities pay for public infrastructure assets through a combination of dedicated revenue, federal and provincial transfers, and long-term financing.²² Municipalities finance infrastructure by leveraging their fiscal powers through debt debentures. They achieve low borrowing rates because the debentures are based on stable revenue (tax base), good fiscal management, policies, and planning. Rather than pay for infrastructure assets up front, municipalities spread the cost of infrastructure projects over their useful lives, to be serviced by both current and future taxpayers. First Nations governments, on the other hand, do not have access to the basic financial tools that support infrastructure financing in surrounding jurisdictions.

Table 1: Comparison of Infrastructure Financing by Government Type

PAYMENT METHOD	PAYMENT TYPE	Government Type:		
		FIRST NATION	MUNICIPAL	PROVINCIAL OR FEDERAL
Pay-as-you-go LIMITATION: unable to plan long-term infrastructure needs	Cash	Pay with cash up front, which requires large cash reserves. This is an uncommon payment type for most government types.		
	Grants and Transfer payments	Funds are often sourced from other levels of government, with limited local input into how infrastructure dollars are spent. Grant-funded infrastructure is usually project-based, which limits the opportunity for long-term infrastructure planning. First Nation governments rely on grants and transfer payments far more than other government types – a reliance that was forced on First Nations through the <i>Indian Act</i> .		
Financing BENEFIT: allows governments to fund needed infrastructure today with future years' revenue and enables long-term planning	Short-term borrowing	Available from FNFA if the First Nation has a Financial Performance certificate from FMB and has quality own-source revenues (e.g., local property, sales tax, or other reliable revenue) to pledge as security. Also available from commercial lenders in limited situations.	Available through municipal finance authorities (MFA), usually on a per capita basis.	Available through a variety of short-term financing instruments, such as treasury bills.
	Long-term borrowing	Available from FNFA with similar requirements when seeking short-term borrowing. Also available through commercial banks or the Canada Infrastructure Bank in limited situations.	Available through the provincial MFA and requires a municipal bylaw, authorization from a provincial inspector, and a local referendum (in some cases). Property tax and other local revenues are often pledged.	Available through issuance of government bonds, which are often issued in financial markets.

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- First Nations typically depend on a combination of grants, own-source revenue, alternative borrowing arrangements, and the federal pay-as-you-go infrastructure funding model.

HOW FIRST NATIONS GOVERNMENTS FINANCE INFRASTRUCTURE

First Nations do not have the fiscal powers that municipalities leverage for infrastructure financing. As a result, First Nations typically depend on a combination of grants, own-source revenue, alternative borrowing arrangements, and the federal pay-as-you-go infrastructure funding model. Without fiscal powers, First Nations do not have stable revenues to monetize for long-term infrastructure financing. This absence of fiscal powers is a main contributor to the \$30 billion infrastructure gap faced by Indigenous communities.

Furthermore, First Nations governments are responsible for broader public infrastructure needs than municipalities, but without comparable fiscal powers. The *Indian Act* regulatory framework does not permit private property on reserve. As a result, most on-reserve housing is owned by First Nation governments. As de facto property owners, these under-resourced governments are not only responsible for public infrastructure, but for providing housing units that meet the needs of the community.²³ In 2016, Indigenous Services Canada reported that 40%²⁴ of First Nations housing required major repairs, while for more geographically remote communities, that figure was 48%.²⁵

The pay-as-you-go infrastructure funding model has failed. First Nations already face the burden of a colonial land management regime and an immense infrastructure deficit; the pay-as-you-go model compounds this complex problem with an outdated procurement and financing model. While Canada has made improvements to the traditional financing and procurement models used by other levels of governments, its pay-as-you-go model for First Nations has remained the same.²⁶ This outdated model undermines innovation. Since the projects are cash managed, the federal government does not move projects ahead until it has the money on hand. Unfortunately for First Nations governments, this system does not look far into the future and incentivizes reactionary rather than long-term infrastructure planning.²⁷

The pay-as-you-go infrastructure funding model has led to the following shortcomings:

- Significant delays to infrastructure projects
- Imposed time frames that impact cost and durability (winter construction, for example)
- Redundancy and confusion; requirement for multiple studies and separate submissions for funding
- Insufficient operations and maintenance funding that reflects cash on hand rather than actual costs
- Lack of funding for infrastructure rehabilitation required during an asset's lifecycle



First Nations already face the burden of a colonial land management regime and an immense infrastructure deficit; the pay-as-you-go model compounds this complex problem with an outdated procurement and financing model.



SOLUTIONS TO SYSTEMIC INFRASTRUCTURE FAILURE. — — — — .

REGULATORY ENVIRONMENT CHANGES TO EMPOWER INDIGENOUS INFRASTRUCTURE

THE BEST PATH FORWARD is to support First Nations-led legislation that empowers First Nation governments to opt out of portions of the *Indian Act* pertaining to the management of lands, local revenues, jurisdiction, governance, and financial administration. The *First Nations Fiscal Management Act* and the *Framework Agreement on First Nations Land Management* are two examples of the success of First Nations-led legislation.

The Government of Canada must continue to support emerging and existing Indigenous institutions that support self-governance of:

- **Financial administration, local revenue, and financing (First Nations Financial Management Board, First Nations Finance Authority, First Nations Tax Commission)**
- **Infrastructure development (FNII)**
- **The development and implementation of Land Codes (Lands Advisory Board, First Nations Land Management Resource Centre)**

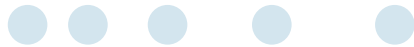
These Indigenous institutions and organizations are already doing the work necessary to support First Nations' self-determination over their governance, their systems, their development, and their lands. As partners in the long-term success of First Nations, they are assisting First Nations to gain real control in making and implementing laws that facilitate self-determination, including infrastructure development. They provide the resources that make projects viable, efficient, and sustainable.

The Government of Canada should fully resource these institutions and organizations to be the main artery of support for participating First Nations. The FMA institutions will fortify First Nations' mastery of financial structures and high-level planning, and provide an avenue for leveraged, low-cost financing. FNII will work with First Nations to build expertise in long-term infrastructure planning, technical capability, procurement, risk management, operations and maintenance, and other systemic improvements. The Lands Advisory Board (LAB) and Resource Centre (RC) will support the creation and implementation of land governance, administration, and law, as well as work to resolve aspects of the enforcement crisis on First Nations' lands. The RC is currently running pilots on enforcement, and implementation at scale should be initiated based on lessons learned.

These institutions and organizations bolster First Nations governance and administrative practices – foundational to socioeconomic development – and provide valuable resources to support capacity. These institutions have critical mass: to date, 194 First Nations governments have chosen to become signatories to the *Framework Agreement* while 335 opted into the FMA.²⁸ It has been demonstrated that First Nations-led institutions and legislation are the best option for both First Nations and the Government of Canada.

The federal government can promote a more supportive environment for First Nations infrastructure through the following actions:

- **Support the creation of a First Nations controlled, independent Lands Registry**
- **Resource and support LAB's pilot projects on Land Code enforcement and implement the lessons learned**
- **Dedicate resources to empower more First Nations governments to pursue Land Codes**



First Nations Infrastructure Institute would increase technical capacity of First Nations governments

OVERVIEW OF FNII

Infrastructure development in many First Nations communities is far less sustainable than in other communities. The mission of the FNII is to provide the skills and processes necessary to ensure that First Nations can efficiently and effectively plan, procure, own, and manage infrastructure assets on their lands.

FNII's role is to fill the systemic gaps and offer interested First Nations an approach to infrastructure development that is sustainable and supports First Nations jurisdictions and ownership of the infrastructure development system. The role of FNII, as an Indigenous-led institution, is to solve the systemic issues, package solutions into a sustainable alternative system, and embed capacity-building tools and products into its service delivery model.

FNII would build on the successful model used by the FMA institutions:

- **First Nations-led**
- **Infrastructure focused**
- **Legislation backed**
- **Standardized best practices**
- **Centre of excellence**

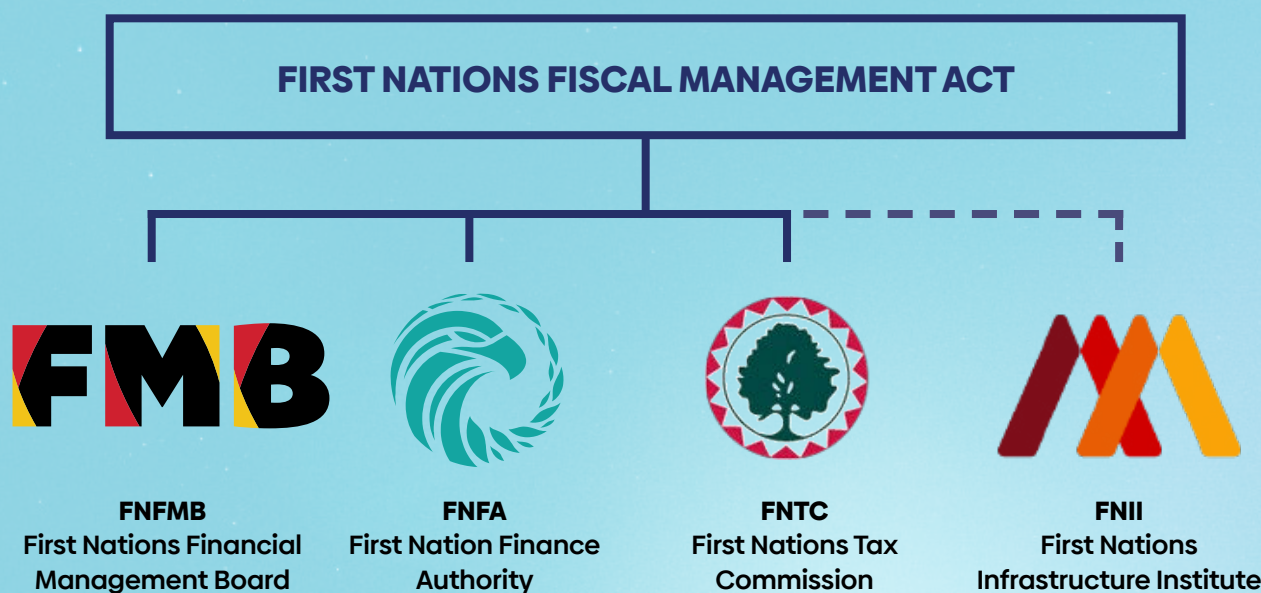


Figure 2 - Establishing FNII as a fourth institute through an amendment to the FMA

FNII will support regional Indigenous initiatives aimed at assuming responsibility from the Government of Canada for certain functions related to infrastructure. For example, the Atlantic First Nations Water Authority (AFNWA) will assume responsibility for water and wastewater infrastructure for 15 member First Nations. The member Nations have led the establishment of the AFNWA to support planning, design of improvements, management of construction contracts, and support for operations and maintenance. AFNWA will better manage risks by undertaking these activities associated with the provision of water and wastewater services.

FNII is working collaboratively with AFNWA to develop approaches for planning, procurement, and cost recovery. This work can help member Nations utilize FMA tools and build a business case for projects to establish a fair and equitable allocation of costs among users of the water and wastewater systems (i.e., membership and economic development activities). Implementing such business cases will provide confidence that AFNWA funding is not subsidizing economic activities and at the same time provide tools for economic development to proceed.

Another example is how FNII is working collaboratively with the First Nations Health Authority (FNHA) to support individual Nations to develop a business case for a project that uses funding from FNHA, Canada, and local revenue.

For greater clarity, the following table describes what FNII is and is not.



Table 2 - What is FNII? What FNII is NOT?

What FNII <i>IS</i>	What FNII <i>IS NOT</i>
• Optional • A First Nations-led institute to support use of best practices in planning, procurement, and delivery of projects • Body supporting partner Indigenous communities and/or Indigenous organizations to develop projects on time and on budget • Capacity developer • Provider of technical support / advisory services • Complementary body to existing First Nations-led institutions established by <i>First Nations Fiscal Management Act</i> • Body supporting due diligence on monies invested in infrastructure	• Mandatory • Not a funding body • Not an engineering / architectural firm • Not a contractor or builder • Not an operator of infrastructure projects • Not an owner • Not a decision-maker • Not replacing other groups or stakeholders (Tribal Councils, PTOs, technical bodies, etc.)

BEST PRACTICES THROUGH AN INFRASTRUCTURE PROJECT LIFECYCLE

To strengthen technical capacity for First Nations, FNII has identified a set of best practices. FNII can provide support to First Nations when, where, and how they want it.

These best practice guidelines include:

- **Project Identification** – developing a project charter: the guiding or vision document for the infrastructure project setting out purpose, governance, roles and responsibilities, key stakeholders, etc.
- **Business Case Development** – a one-stop shop to describe an infrastructure project. Includes other cases like a strategic case, economic / technical case, commercial case, financial case, and management case.
- **Procurement** – following a sufficiently rigorous procurement process, and issuing contract award.
- **Implementation and Operations** – construction, operations and maintenance, lifecycle and asset management, decommissioning, replacement or renewal.



At the request of a participating First Nation, FNII can review an infrastructure project business case to ensure that it meets best practices. There are tangible benefits from a signal that the business case is complete, including: building confidence in membership that due diligence on the project is complete, instilling confidence in funders and lenders that the business case is sound, and instilling confidence in firms considering bidding on the project.

The objective of FNII is to reduce the burden of work for Indigenous communities by supporting capacity development and providing tools and templates. Communities that already have the capacity to undertake this work may simply be interested in a review to see that their business case meets standards for best practices. There may be others that do not presently have the experience or capacity within their administration and are looking for more support. FNII will be flexible in its service offering, tailoring these to individual communities' needs.

LEGISLATIVE REQUIREMENTS

Federal legislation is required to create the jurisdictional space for interested First Nations to occupy, such as the case with current FMA institutions. This approach respects the right to self-determination of all First Nations. Each First Nation can decide if participation is right for them. Participating First Nations pass their own laws to occupy that jurisdictional space. Indigenous-led institutions are required to offer optional support to participating First Nations to effectively exercise their jurisdictions in a manner that supports each Nation's own objectives.

The success of the FMA institutions demonstrates that Indigenous-led institutions created by federal legislation are an effective option to address systemic issues. There are many reasons for the success of this framework, but one important reason is that these institutions were created by federal legislation that received all-party support. This demonstrated the political will of Parliament to address systemic Indigenous gaps related to fiscal powers, financial management, and access to capital for participating First Nations. It is highly unlikely that the participation of First Nations, which now numbers over half of all First Nations in Canada, would have occurred without this legislative commitment to more permanent systemic change.



The institutional design of FNII is being guided by a Development Board comprised of First Nations leaders from across the country. Members of the Development Board, as well as the FNTC's Chief Commissioner and the FMB's Executive Chair, agree that FNII should be established as a federal statutory board with a shared governance structure, similar to the FNTC and FMB. This will ensure the achievement of several objectives:

- i. **Standard-making** – To contribute to improved infrastructure outcomes and achieve its mandate, FNII will establish national standards in a number of areas (including infrastructure planning, business case development, procurement, operations, maintenance, and asset management). On request, FNII will offer a review and certification function against these standards. Standard-making powers and the certification function require FNII to be a statutory organization established by federal legislation.
- ii. **Independence** – FNII will perform functions that require independence from the day-to-day operations of government and must be legislated as an arms-length organization.
- iii. **Permanence** – Planning, development, procurement, and operation of infrastructure projects occur over many years. FNII must be established in a manner that offers a degree of permanence to support projects over time. A structure in which FNII may be subject to future policy changes of government will hinder FNII's ability to achieve its mandate.
- iv. **Maintaining purposes (internally)** – The structure must allow for FNII's purposes to be established and preserved. FNII's mandate to assist First Nations develop more sustainable projects and contribute to the improvement of infrastructure outcomes must be maintained, regardless of changes in FNII leadership. Any future changes in Board composition cannot impact the institution's mandate if its purposes are defined in legislation. This may not be the case with other forms of organizational structure, such as a society or non-profit corporation, where directors would have the ability to alter the mandate in unintended or unanticipated manners.
- v. **Service evolution** – By fixing FNII's mandate in legislation, without prescribing its specific processes and services, FNII will be able to evolve over time in terms of its service delivery process, while ensuring that its primary objectives are unchanged. Other non-legislated structures may not enable this type of evolution of services, or could even allow for evolution of purposes well beyond the initial mandate.

Establishing FNII under the FMA is also required to ensure seamless interoperability with the existing institutions in several areas, including:

- **The FMB and FNTC provide support to participating First Nations in their work to develop and implement financial management systems and implement FMA fiscal powers. The FNII can work collaboratively with the FMB to support components of that work as it relates specifically to the infrastructure projects of participating First Nations.**
- **The FNFA supports participating First Nations to access lower cost capital and the FNII can work collaboratively with the FNFA to support work related to financing the capital components of the infrastructure projects of participating First Nations.**

FNII WILL ADDRESS SYSTEMIC GAPS

Table 3: Gaps and solutions for First Nations infrastructure

Gap	Solution
Capacity Gap: limited expertise to construct and maintain complex infrastructure in some First Nations communities	Provide capacity-development training and support for local First Nations staff throughout the lifecycle of capital assets and provide access to technical and professional experts as infrastructure is being developed and maintained.
Resiliency Gap: lower resiliency and higher risk of First Nations infrastructure projects	Develop robust infrastructure standards and provide certification for First Nations infrastructure projects – this provides assurance that capital projects will add value for Indigenous communities and reduce the risk of infrastructure failures.
Cost Gap: higher cost to construct and maintain First Nations infrastructure	Establish a platform where First Nations can put forward ideas about collaborative infrastructure projects and facilitate Nations’ ability to work together and aggregate resources for common infrastructure goals. (This will be further explored in a later chapter on Strength Through Working Together).
Information Gap: lack of data and statistics regarding infrastructure needs	Collaborate with the FMA Statistical Initiative to develop quality data and statistics to support better project planning and asset management.
Financial Gap: lack of fiscal tools and access to financing for infrastructure projects	Advocate and develop new capital transfer systems from ISC, including: • Multi-Year Capital Grant that provides greater flexibility for ISC transfers for Nations’ comprehensive infrastructure. Future funds in the Multi-Year Capital Grant could be financed by the First Nation through FNFA to enhance long-term infrastructure planning. • Capital Projects Initiative for standalone capital projects. With future-year pledged revenues, these funds could be financed by the First Nation through FNFA to enhance long-term infrastructure planning. • Capital Projects Strategy for standalone capital projects. ISC would pledge revenues to backstop loans through FNFA to developed needed infrastructure for First Nations communities.

The infrastructure development system to be offered by FNII will close systemic gaps and lead to more sustainable infrastructure assets for participating First Nations. Those First Nations that choose to work collaboratively with FNII will advance projects supported by a comprehensive project development framework. Infrastructure projects will be identified through integrated planning processes that meet community objectives. Projects will be built on robust business cases and supported by sustainable whole-of-life financial models. Projects will be delivered using innovative tools based on national and international best practices. Projects will utilize more effective procurement models that allocate risks appropriately. With standards-making powers, a certification function, and the ability to partner with regional organizations, FNII will seamlessly interoperate with the FMB, FNFA, and FNTC to close systemic gaps.

The operational phase of these infrastructure projects will be supported by operations and maintenance and asset management plans. There will also be FNII support available to implement these plans and protect asset sustainability on an ongoing basis. FNII can work with and rely on the relevant Indigenous regional organizations (technical services) to coordinate appropriate supports for participating First Nations where available and assist Nations to secure other assistance when needed. Participating First Nations will have better, more complete data and information on the current condition of existing assets and the maintenance and renewal activities protecting the long-term sustainability of those assets.



Increased resiliency

The FNII process provides an opportunity to identify infrastructure solutions that respond to needs within the entire community and follows national and international best practices and appropriate technical specifications and guidelines. This process results in infrastructure assets that offer greater resilience to climate change and are better equipped to accommodate changing community needs during public health crises.

The FNII is focused on protecting the long-term operational sustainability of assets through better project planning, development, and implementation. This focus results in infrastructure assets with longer service lives, operating at full design capacity for the intended lifecycles.

Greater capacity

The FNII's capacity support tools, including samples, templates, and workshops, will improve project development timeframes and reduce the number of projects stalling out in the planning stage. The FNII ensures a variety of capacity support tools, workshops, and services are made available throughout the infrastructure development lifecycle, from which

First Nations can utilize as many or as few as required where additional capacity is needed. Greater access to infrastructure development experience and specialized technical and professional expertise will mean projects are planned, developed, and implemented in less time and to the highest standards.

Integrating planning will begin even before a specific infrastructure project has been identified. The FNII's approach ensures that infrastructure projects meet community-defined objectives, identified through integrated strategic planning: land use, capital, and financial planning processes. This results in shorter project development timeframes, more appropriate facilities, and appropriately sized infrastructure.

The FNII will ensure First Nations can access a wider range of procurement models to retain high quality design, construction and/or operation and maintenance services in a manner which best suits the needs of the community and help manage project risks by more effectively allocating risks to those parties best positioned to manage them. This will result in project delivery in a manner that better meets community objectives.

Access to financing

The FNII ensures greater access to financing. Its process provides a comprehensive risk management framework for every project and ensures the development of a whole-of-life financial model that is sustainable. Robust project planning processes will improve access to financing and can contribute to potential improvements in FNFA's credit rating over time, leading to even lower cost financing for future projects. The FNII review and certification function should offer the certainty and confidence Canada requires to enable monetization of federal capital transfers for infrastructure financing.

The FNII process can utilize a variety of fiscal tools, where appropriate, in combination with more stable and predictable capital transfers to ensure sufficient resources will be available to satisfy all expected project costs (capital, operations and maintenance, and lifecycle renewal costs) when they are expected to be incurred. This process ensures long-term financial sustainability and results in longer-lasting, better-performing assets.

Better information

The FNII will incorporate an infrastructure-specific data and statistics function to support better project planning and better management of existing assets.

Lower costs

The FNII process will result in better quality infrastructure projects and value for money invested. Firms would be putting their best foot forward to compete for FNII certified projects because they would know that there is a complete business case and that there will be a fair and transparent procurement process.

Developing and maintaining assets to established standards in accordance with best practices should provide the confidence required for insurance companies to offer better coverage at lower premiums. The FNII process will rely on a certification function, indicating projects have been planned, developed,

and implemented in a manner that achieves established standards. This improvement, in combination with better data on asset condition and information on ongoing implementation of maintenance and asset management practices, will offer the certainty required to improve access to better insurance at lower rates.

Certification of operations and maintenance and asset management plans as well as ongoing support to implement plans and protect asset sustainability should lead to opportunities to improve the effectiveness of federal operations and maintenance funding. This could include assurance that periodic asset rehabilitation activities, over and above regular operations and maintenance, will take place and be properly resourced.

Properly functioning infrastructure is a vital component of sustainable communities. The ability of Canada's First Nations to develop robust, long-lasting, and cost-effective infrastructure in a timely manner has been constrained by various factors, including limited ability to exercise their jurisdiction over utilities, roads, energy and communications facilities, and buildings located on their lands. A new First Nations-led infrastructure institution, working in conjunction with those already enabled through the FMA, will offer Nations a new pathway to infrastructure development. This will in turn support the fundamental health and cultural, economic, social, and environmental well-being of First Nations communities.



Monetization to close the infrastructure gap

The FMA framework has already narrowed the financing gap for First Nations governments across Canada. It is time to capitalize on that success by leveraging the framework to specifically address the infrastructure gap.

The FNFA has already fuelled First Nations economic and social development through approximately \$2 billion in low-rate, long-term financing. Lack of access to capital is a barrier to socioeconomic development in many communities across Canada. It is difficult to secure traditional financing if on-reserve assets cannot be pledged as loan collateral. FNFA's innovation is to pool the borrowing needs of participating First Nations and issue debentures in the capital markets. These loans are fully supported by First Nations' self-generated revenue streams, rather than tangible capital assets.

According to the Canadian Council for Public-Private Partnerships, it would cost \$30 billion to provide First Nations with the same level of infrastructure that the rest of Canada enjoys.²⁹ The FMA institutions believe that the FNFA financing model can be an option for First Nations to pursue alternatives beyond the status quo, and an integral part of the solution to the problem of infrastructure disparity.



FINANCIAL TOOLS TO NARROW THE INFRASTRUCTURE GAP

The infrastructure deficit between First Nations communities and the non-Indigenous communities in their regions will persist until First Nations have access to the same financial tools that other levels of government enjoy. The FMA institutions believe that monetization, or the securitization of revenues, can be a valuable tool for addressing the infrastructure gap. The issue, of course, is lack of securable revenue. Where municipalities have a tax base, First Nations typically have federal transfers and a patchwork of own-source revenue from government business enterprises, royalties from natural resource development, or other sources (government policies on transfers need to allow those transfers to be included in a monetization scenario that would include multiple revenue sources).

First Nations governments have the inherent right to raise revenue. Until there is greater recognition and exercise of that right, the Government of Canada could address this market failure by providing the financial backstop for long-term infrastructure financing. The provision of dedicated federal revenue streams to guarantee debt service would empower First Nations governments to access long-term debenture financing the same way a municipality monetizes its tax base.

The FMA framework is well-positioned to support monetization as an option for interested First Nations governments. The First Nations Financial Management Board can support participating First Nations to practice sound fiscal management and debt servicing, reducing risk to the lender and the party guaranteeing the loan. This framework has already risk-managed approximately \$2 billion in debenture financing at an A credit rating.

The FNFA, with a borrowing model based on municipal finance authorities, could provide access to debenture financing through an existing or dedicated borrowing pool. The FNFA could provide both bridge financing for project construction and long-term infrastructure financing, with loan terms appropriate to the expected lifecycle of the asset.

The FNII would provide capacity as well as ongoing monitoring and assurance of the infrastructure project planning, construction, and maintenance. This role will support communities to manage infrastructure construction on time and on budget, while assuring all stakeholders that infrastructure assets will last the expected lifespan.

The FMA data and statistical initiative would further support monetization by providing a formula-based process to determine standard comparability for public infrastructure on reserve. These formulas would ensure fair and transparent processes for determining infrastructure funding levels across regions.



Any models for monetization should adhere to the following principles for financing First Nations infrastructure projects:

- **Securitization of federal revenue streams for long-term infrastructure financing**
- **Prioritization of First Nations' infrastructure planning**
- **Risk management and assurance through FMA framework**
- **Fair and transparent formulas to determine infrastructure funding levels across regions, based on the research of the FMA Data and Statistics Initiative**

First Nations should also have the option to monetize other revenue sources to extend their financing ability beyond federal provisions by bundling or stacking eligible revenue sources. This additional option would empower First Nations governments to exceed standard regional comparability to provide a public infrastructure standard of their choosing. Eligible revenue may include own-source revenue and other federal transfers.



CONCLUSION

- | We believe the FMA can continue to support First Nations with the capacity to exercise their inherent right to self-government by providing better public infrastructure to their citizens



AS THE GOVERNMENT OF CANADA SEEKS to implement UNDRIP, the systemic Indigenous infrastructure gap will remain a key challenge. The challenge stems from a system that is not merely flawed, but unrealistic. It requires systemic changes, an Indigenous solution to an ever-expanding problem. A new approach to infrastructure must move beyond systemic failures to provide new pathways that support First Nations to opt out of the colonial regulatory system. This new approach must include tools, resources, and frameworks that will advance the capacity of Indigenous governing bodies to govern themselves.

Through innovations like the FMA, the FNLMA, and *Framework Agreement*, First Nations-led solutions have created viable alternatives to colonial systems. With 335 First Nations governments scheduled to the Act and 194 First Nations signatory to the *Framework Agreement*, by-First Nations-for-First Nations alternatives have achieved critical mass. We believe the FMA can continue to support First Nations with the capacity to exercise their inherent right to self-government by providing better public infrastructure to their citizens – infrastructure that supports healthy and prosperous societies.



To bridge the infrastructure gap through a First Nations'-led approach requires a supportive regulatory environment, technical capacity, and financial tools. Currently, First Nations governments live with regulatory barriers, imposed limitations, and an unrealistic funding model. This systemic failure has led to a growing federal liability and the shocking reality that many First Nations communities experience developing world conditions within one of the world's wealthiest nations. The need for change is urgent and the FMA institutions have solutions.

The FMA institutions propose long-term solutions to a systemic failure through practical and implementable changes:

- **Support for legislative changes and institutions that promote First Nations capacity to manage lands**
- **Development of the FNII under the *First Nation Fiscal Management Act***
- **Monetization of revenues from multiple revenue sources including federal transfers to create new pathways for infrastructure financing**



The federal government needs to support legislative and regulatory changes that the Lands Advisory Board has proposed, including pilot Land Code Enforcement models.

The Government of Canada needs to establish and support the FNII, the centrepiece of the FMA institutions' proposal. Institutional support for efficient and sustainable First Nations infrastructure is critical. The establishment of an infrastructure institution through the FMA would build upon the success of this optional First Nations-led initiative to provide more tools and capacity support for Indigenous communities and organizations to close the infrastructure gap.



Finally, the Government of Canada needs to build on these improvements by empowering First Nations governments with the same financial tools that other jurisdictions use to finance infrastructure. With risk managed by FMB certification and FNII monitoring, the Government of Canada should enable the securitization of federal transfers for long-term infrastructure financing. It should take the first step by supporting a pilot project for monetization in partnership with the First Nations Finance Authority.

The FMA institutions are committed to managing risk while providing implementable options for First Nations governments and the Government of Canada. Despite the challenges, we believe that the success of our organizations is proof that change is possible. We look forward to working with First Nations governments, Indigenous organizations, and the Government of Canada to pursue a RoadMap to more First Nations capacity, greater self-determination, and increased socioeconomic growth.



CONCLUSION

The Government of Canada needs to establish and support the FNII, the centrepiece of the FMA institutions' proposal. Institutional support for efficient and sustainable First Nations infrastructure is critical.



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