

Submission to the Ministry of Infrastructure Consultation on the Long-Term Infrastructure Plan

Community Benefits Ontario

July 2017

Who We Are

This submission to the Ministry of Infrastructure consultation on the Long-Term Infrastructure Plan was developed collaboratively through participants in the Community Benefits Ontario network, a broad network of Ontario nonprofits, foundations, labour groups, community organizations, municipal representatives and social enterprise leaders. This brief is brought forward by the following:

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Introduction and Context

In 2015, the Province of Ontario passed the *Infrastructure for Jobs and Prosperity Act*, S.O. 2015, c. 3 (the “IIPA” or the “Act”). Sections 4 and 5 of the Act require the Minister of Infrastructure to table and publish, on the government’s website, a long-term infrastructure plan (“LTIP”) that describes the state of the infrastructure owned by the government, outlines the government’s anticipated infrastructure needs for the next 10 years, and creates a strategy to meet those needs.

In developing that strategy, the Minister is required to consider the principles set out in section 3 of the Act, which includes, at ss. 13, that “Infrastructure planning and investment should promote community benefits...” Section 7 of the Act lays out criteria for prioritizing infrastructure projects, including whether the construction of an asset would reasonably be expected to, among other things, stimulate productivity and economic competitiveness and support “any other public policy goals of the Government of Ontario or of any affected municipalities in Ontario.”

Minister Chiarelli’s mandate letter directs him to ensure that “infrastructure priorities for the province align with provincial priorities relating to growth planning and community benefit agreements.”¹ And, the Province has committed, in Budget 2017, to creating a broader community benefits framework, “guided by the principle that public procurement can create community benefits that go beyond simply building infrastructure.”²

The recommendations in this document set out how community benefits can most effectively be included in the LTIP, understanding that they may also help inform the creation of the wider community benefits framework contemplated in Budget 2017. They were created collaboratively by the members of Community Benefits Ontario (CBO); a broad network of Ontario nonprofits, foundations, labour groups, community organizations, municipal representatives, consultants and social enterprise leaders.

Our objective is to help the government implement community benefits such that they become “business as usual” in infrastructure procurements, leading to more equitable and sustainable economic growth, social inclusion and shared prosperity. Our recommendations address how to include community benefits in the LTIP strategy; how an internal governance model could work; and how to begin implementing a community benefits program.

As the Premier of Ontario has noted, through community benefits, “we’re building partnerships and pathways that are creating more opportunities for people to thrive in the economy.”³ In an era of fiscal restraint, community benefits provides an opportunity for the government to leverage the dollars it is already spending on infrastructure to achieve boldly progressive social, economic and environmental outcomes, in accordance with the needs expressed by local communities.

Executive Summary

Our recommendations fall into three groups: strategy, governance and implementation.

We lead with **strategy**, proposing language to address community benefits in the LTIP that will act as a policy driver to create an ongoing program in alignment with other policy priorities. We also suggest amendments to the OPS and BPS Procurement Directives to enable necessary changes to procurement practices.

With respect to **governance**, we recommend the designation of a senior level community benefits “champion” within the Ministry of Infrastructure (“Mol”). An internal working group should include designated officials from other ministries whose involvement will be essential to the success of the program. We propose a mechanism to provide resources and information to communities across Ontario to enable their engagement in determining benefits for infrastructure projects as is required by s. 3(13) of the IJPA. We also recommend a results-based accountability/evaluation framework to track progress from the inception of the policy.

Finally, we make a number of recommendations respecting **implementation**. These include key definitions and initial suggestions for scope and criteria to advance a sustainable community benefits program housed within Mol, as well as initial considerations respecting process, policy alignment, and trade agreements.

We conclude by providing a short description of what, in our view, would constitute success.

Recommendations at a Glance

1. Strategy

Create the policy drivers and framework for the development of a sustainable community benefits program within the Ministry of Infrastructure.

- a) Ensure language in the LTIP specifically directs the establishment of a policy framework to incorporate community benefits in infrastructure projects.
- b) Align parameters for community benefits with policy priorities of the government, to inform the creation of the community benefits policy framework and program.
- c) Amend the language of the OPS and BPS Procurement Directives to provide for the assessment and evaluation of community benefits.

2. Governance

Build and/or strengthen the internal and external capacity required to support the policy, program, results-based accountability mechanisms and evaluation for the implementation of community benefits on infrastructure projects.

- a) Build and/or strengthen the capacity of government officials and create internal guidelines and processes for implementation, including cross-ministerial partnerships.
- b) Create mechanisms to support community engagement in the design, development, implementation and outcomes of community benefits.
- c) Assign resources to build external capacity, including support for municipalities, contractors, existing community organizations and other partners who can help ensure community benefits commitments are delivered.
- d) Create a robust accountability framework for the evaluation of community benefits that can be shared with broader public sector entities undertaking community benefits in infrastructure projects, including mechanisms for the monitoring, tracking and evaluation of individual project outputs and longer-term outcomes.

3. Implementation

Suggested scope, criteria and process for a phased community benefits program.

- a) Create a phased program for the implementation of community benefits, housed within the Ministry of Infrastructure.
- b) What should be the scope of an initial program?
 - Defining key terms, scoping a pilot phase according to classes of infrastructure or geography, and outlining required resources.
- c) What criteria and other considerations should the program use to determine which projects are suitable for community benefits clauses?
 - A threshold of \$10M, criteria by which to assess projects, and when to use “core” vs. “non-core” requirements (i.e. part of the assessment of a bid).
 - Initial considerations respecting process, policy alignment and trade agreements.

4. Defining success

What does success look like?

In ten years:

- Community benefits will be part of “business as usual” in provincially funded/approved infrastructure projects.
- There will be a measurable increase in the employment of workers from historically disadvantaged groups, and a corresponding reduction in poverty.
- There will be tangible increases in social and economic development, and in some cases environmental benefits, in areas where infrastructure is built or renewed, with thriving and growing small and medium-sized enterprises hiring more local workers.
- Social enterprises will see revenue growth, increased hiring and greater investment.
- Participating communities will be empowered and have the capacity to define their community benefit priorities, working with supportive partners, governments and contractors to achieve them.

Recommendations: Strategy

1. Create the policy drivers and framework for the development of a sustainable community benefits program within the Ministry of Infrastructure.

- a) Ensure language in the LTIP specifically directs the establishment of a policy framework to incorporate community benefits in infrastructure projects

Language in the LTIP that specifically requires the creation of a strategy (pursuant to s. 4(3)3 of the IJPA) will act as a policy driver to ensure that internal government structures, programs, results-based accountability mechanisms and guidelines are set up to ensure success.

It will also send a signal to partners and the marketplace that the government is serious about ensuring wider benefits for communities are part of infrastructure procurements going forward.

Example:

To give effect to section 3(13) of the Infrastructure and Jobs for Prosperity Act, the government commits to establishing an appropriate policy framework within 12 months of the approval of this plan to incorporate community benefits into infrastructure projects.

Such a policy framework will promote the use of community benefit mechanisms that create tangible economic, social and environmental benefits for communities, within a results-based accountability framework that will form the basis for a robust evaluation of measurable outcomes that can be adopted by the government and public agencies in Ontario.

Evidence and Experience:

- The Ontario Public Service Procurement Directive requires alignment with “policy/program and/or legislative and regulatory requirements”.⁴
- Best practices in the United Kingdom (U.K.) notes the importance of legislation to provide a legal foundation for procurement requirements, develop the knowledge and commitment of staff and contractors whose support is needed in order to deliver the benefits, and alert the market to upcoming requirements.⁵
- Useful precedents elsewhere include policy statements and legislative guidance in Scotland, Northern Ireland and Wales.⁶

- b) Align parameters for community benefits with policy priorities of the government, to inform the creation of the policy framework and program.

Community benefits parameters can be scoped to align with policy priorities of the government. Thresholds can be established to help guide the creation of a phased community benefits program to be housed within the Ministry of Infrastructure, with support from a proposed cross-ministerial working group, as discussed in section 3, below.

Example:

Community benefits clauses inserted into tenders for infrastructure projects will address policy priorities of the government, including: building a skilled workforce through job creation and apprenticeship opportunities; reducing poverty; local economic development; carbon reduction or sustainability initiatives; and expanding job creation opportunities for social enterprises. These and other types of supplementary benefits

may be included as determined in consultation with the local community consistent with section 3(13) of the IJPA.

Evidence and Experience:

- Alignment of policy work with other priorities helps prevent “policy drift,” where the intended outputs are lost over time because the strategy is not sufficiently designed to meet core objectives.⁷
- Setting thresholds can help the government scope the initial phase of a program and ensure that obligations are realistic and can be met by the contractor community.⁸
- Examples in Scotland and Northern Ireland set thresholds based on the value of the project and the amount of labour required.⁹

- c) Amend the language of the OPS and BPS Procurement Directives to provide for the assessment and evaluation of community benefits.

The draft OPS Procurement Directive (December 2016) proposes changes to the Value for Money (VfM) assessment to include such non-price attributes as social, environmental and economic benefits, where applicable. Relevant infrastructure projects should be required to use community benefits clauses in tenders, and tender evaluation should assign points to community benefits to ensure these non-price attributes are taken into account in the assessment of the bid. Language should be added to the VfM section of the OPS Procurement Directive to ensure this is the case; analogous changes should be made to the BPS Procurement Directive.

The current language of the OPS Procurement Directive states:

Value for Money

Procurement processes apply a value for money evaluation that takes into account price as well as other costs and benefits, including life cycle costs and relevant non-price attributes such as quality. Where applicable, these non-price attributes can include:

Social Benefit: to secure wider social benefit in support of the government’s social policy objectives.

Environmental Benefit: to secure wider environmental benefit in support of the government’s environmental policy objectives, including climate change.

Economic Benefit: to promote the economic well-being of the people of Ontario, in alignment with commitments in the province’s trade agreements.

The language below could be added to the OPS Procurement Directive to address consideration of community benefits.

Example:

Procurements for infrastructure projects that meet relevant criteria under the province’s community benefits policy framework will include community benefits clauses requiring bidders to demonstrate one or more of these non-price attributes. Such clauses will be assigned a point value, assessed as part of the VfM calculation, and incorporated into the project agreement.

Evidence and Experience:

- Several helpful precedents address elements of good procurement practice. For example, the Northern Ireland “Buy Social Toolkit” requires that the specification in the tender set out the required outcomes, that they be capable of measurement or assessment, that the bidder provide a method statement saying how they will deliver the specifications, and that a standard scoring framework be published and used when that statement is being scored as part of the quality assessment of a tender.¹⁰
- Community benefits clauses can either be included as “core” to the contract – meaning they are included in the tender, assigned points and scored in choosing the contractor – or as “non-core”, in which case they are part of the contractual conditions and deliverables, but are not part of the assessment of the bid. Experience in the U.K. shows that when clauses are “core”, contractors taken them more seriously.¹¹ Making requirements “core” builds social capital, and leads to changes of practice that have spillover effects in the private market.¹²
- Similarly, experience shows that defining reasonable targets for workforce opportunities and ensuring that they are an enforceable clause of the contract is much more effective than relying on contractors to suggest or abide by voluntary targets.¹³
- The question of costs has often arisen in the context of VfM assessments in the public sector. While data is limited, an external analysis of 13 contracts let by the Glasgow Housing Association (GHA), which has been using community benefits clauses for a decade, demonstrated that costs of the GHA’s investment program are below national benchmark levels. Moreover, those contractors who scored highest on the community benefits portion of the tenders were also among those who scored highest on quality measures.¹⁴

A key characteristic of social/community benefit requirements is that they are innovative: they extend the contract requirements beyond what has been procured conventionally. This implies a need to develop new text for the specification that:

- *will achieve the social/community benefits, including local targeting;*
- *is measurable, or at least capable of comparative evaluation;*
- *will not disadvantage non-local bidders through their lack of local knowledge.*

- Macfarlane & Cook, “Tackling Poverty Through Public Procurement”. Joseph Rowntree Foundation, 2014

Recommendations: Governance

- 2. Build and/or strengthen internal and external capacity required to support the policy, program, results-based accountability mechanisms and evaluation for the implementation of community benefits on infrastructure projects.**

- a) Build and/or strengthen the capacity of government officials and create internal guidelines and processes for implementation, including cross-ministerial partnerships.

It is important that staff are well versed and positioned to implement community benefits. Skilled and committed leadership within government is essential. A senior level community benefits “champion” within Mol should be responsible for creating a team dedicated to driving results, including ensuring appropriate training and resources.

Mechanisms to leverage internal resources (e.g. Employment Ontario) will be needed. Accordingly, results-based partnerships should be established with, and designated officials assigned from, other ministries whose involvement will be essential to the success of the program (e.g. MAESD, OGS, MTO, MEDG, MOHLTC, MMA). Professional development and coaching relationships could be established with outside sources of expertise, including staff within other governments and/or organizations who have experience implementing community benefits in their home jurisdictions. A supported network of procurement and other staff could help to grow and share best practices.

Example:

A Community Benefit Champions Network, started by the Scottish government around 1998, brought together procurement officers from public organizations and agencies to exchange best practices about community benefits. Today, over 100 individuals and 70 organizations (including all 32 local authorities, as well as health, education, libraries and cultural agencies) are members. The Network provides a forum for the discussion of issues and good practices and allows members to convene around new developments like legislation.

Evidence and Experience:

- CEIS (Community Enterprise in Scotland) runs workshops for the procurement divisions of authorities and agencies that are learning how to implement community benefits clauses.¹⁵
- AnchorTO is a network of 18 public sector anchor institutions, led by the City of Toronto and the Atkinson Foundation, collaborating to develop and champion social procurement practices in their respective institutions. Member institutions include government departments and agencies, postsecondary institutions, and non-profit community builders. Each institution has an identified executive sponsor to drive change, and staff “champions” who meet on a regular basis to share knowledge and co-create a social procurement blueprint.

- b) Create mechanisms to support community engagement in the design, development, implementation and outcomes of community benefits.

Engagement of communities in the geographic areas where infrastructure will be built is key. Section 3(13) of the IJPA gives workforce and training and public space as examples of benefits, but also goes on to say “**and** any specific benefits identified by the community” (emphasis added), pointing both to the potential range of benefits, and to the need to engage the community in determining them. Similarly, BuildON 2017 states “In developing the [long term infrastructure] plan, the Province will emphasize the evolving needs of Ontario’s regions and communities and how approaches to planning and creating infrastructure must evolve with them.” The government

will need to engage with affected communities directly to support the development of benefits that are relevant and reflect those evolving needs.

Community engagement, and the resulting assessment of needs and priorities, needs to be done early in order to inform what goes into the tender document. Addressing community readiness to participate in community benefits discussions entails ensuring that those who define themselves as “community” are, in fact, representative; that a wide net has been cast to ensure inclusion of diverse and historically disadvantaged groups; and that communities are empowered and able to articulate their needs. That will require either staff on the ground in locations where infrastructure is being planned (which is highly labour-intensive), support for existing community coalitions, or an alternate mechanism to give communities a voice in the process.

A variety of models could be adopted to serve this purpose. They range from internal resourcing (such as the Community Hubs Secretariat set up by the Ontario government) to collaborative partnerships (such as the workforce intermediary being set up by the Province, the City of Toronto and Metrolinx, with support from philanthropy, described below), to nonprofit or arm’s length organizations.

International experience shows that the most successful models are third-party organizations that sit outside of government and play an intermediary role to build capacity, provide resources and support communities and other stakeholders (particularly in areas where strong community networks and infrastructure that could otherwise be supported do not already exist). In these cases, creating or resourcing a nonprofit organization as an arm’s length intermediary that can support communities and other key partners could streamline the process considerably for government. Such a body could partner with local groups and agencies, and provide information and resources to community associations, local businesses, social enterprises and other stakeholders.

While in some areas such an organization does negotiate on behalf of the community, our recommendation would

be that this intermediary not take on this role. Rather, it would act as a neutral resource to enable community and stakeholder participation, which will allow communities to self-organize and help government and contractors manage the process more effectively.

Funding for this organization could come from a variety of existing sources within government, be drawn from several different ministries, or could be a contribution built into the cost of the capital infrastructure budget itself. For example, one report has suggested that 0.1% of the proposed \$156B¹⁶ spend over the next ten years would provide sufficient funding for an intermediary over that time period.¹⁷

Beyond an intermediary, the government should consider offering funding directly to community groups to help them build capacity. This could be a grant stream as part of an eventual community benefits program. The intermediary could play a role in disseminating information

Who represents community?

Community can be defined by geography, identity, or interest, or any combination of these.

...

The guiding principle for those seeking representation is “no decision about me without me”.

- A. Yalnizyan, “Community Benefits Agreements: Empowering Communities to Maximize Returns on Public Infrastructure Investments”, IFSD 2017

about such grants and encouraging relevant groups to apply; however, all decisions should be made directly by government, in order to preserve the neutral status of the intermediary.

Example:

The construction workforce intermediary being created for the Crosstown LRT is an example of a partnership that involves different provincial bodies (i.e. Metrolinx and MAESD) as well as other levels of government (the City of Toronto), the community (Toronto Community Benefits Network) and philanthropic partners (United Way Toronto and York Region, Metcalf Foundation and the Atkinson Foundation). This intermediary will play a critical role in delivering the workforce benefits envisioned in the Crosstown LRT community benefits plan.

Evidence and Experience:

- Organizations like CLEO (Community Legal Education Ontario), funded in part through Legal Aid Ontario, and the Ontario Centre for Workforce Innovation, funded by MAESD, act as neutral intermediaries, providing research, helpful resources and/or advice to communities and agencies.
 - In the U.S., community organizations such as EBASE, LAANE and the Partnership for Working Families help build community capacity and sometimes represent communities in discussions about benefits with governments.¹⁸
 - In Scotland, CEIS supports the social enterprise sector, and runs a program called Ready for Business Procurement LLP¹⁹ in addition to its work building the capacity of procurement officers.
 - In Vancouver, a nonprofit organization that had originally been formed to assist with revitalization of the inner city became the party that represented community interests in the negotiation of a Community Benefits Agreement between Millennium Development, the community, and the City of Vancouver.²⁰
- c) Assign resources to build external capacity, including support for municipalities, contractors, existing community organizations and other partners who can help ensure community benefits commitments are delivered.

In addition to resourcing an external intermediary and supporting existing groups who can assist with community engagement, information and resources should be offered to contractors, municipalities, existing community organizations and other partners. For example, detailed guidelines and toolkits to assist bidders, municipalities and contractors with implementation should be produced. During the procurement process, information sessions for potential bidders should clearly outline requirements and identify external agencies and organizations that can provide support for delivery obligations. All bidders should receive the same information to ensure a level playing field.

Example:

Both the governments of Northern Ireland and Scotland have created toolkits that clearly outline the rationale for community benefits, how to incorporate them into every stage of the procurement process, monitoring and evaluation considerations, and guidelines for bidders. In some cases they also provide lists of organizations (like workforce agencies) that can partner with contractors to deliver on commitments. These documents are available online and stand as excellent precedents that can be adapted here.

Evidence and Experience:

- Industry groups seek certainty, clarity and predictability to successfully carry out community benefits. Clarity in the procurement process has been critical to the success of community benefits elsewhere.²¹
 - Pre-tender market engagement is important in order to share learning, signal that community benefits will be a requirement, discuss what is possible and help bidders tailor their offering appropriately.²²
 - Ensuring that community representatives can meet with bidders in the pre-tender stage to outline their needs has been an effective strategy for Metrolinx on the Crosstown and Finch LRT projects.
 - Partnerships are also key for contractors in all jurisdictions where community benefits have been used. In Vancouver, a \$330M contract for the relocation and expansion of a casino, signed in 2015, included targets for 10% local procurement and 10% local employment. A recent report – at the halfway point of construction – found that both targets have been exceeded, with local employment currently at over 25% and local procurement at almost 12%. To achieve this, the general contractor for construction established partnerships with social development agencies that work directly with people experiencing barriers to employment, assigned dedicated staff, and retained a neutral third party to help meet the requirements.²³
- d) Create a robust accountability framework for the evaluation of community benefits that can be shared with other broader public sector entities undertaking community benefits in infrastructure projects, including mechanisms for the monitoring, tracking and evaluation of individual project outputs and longer-term outcomes.

As governments and public agencies at all levels begin to incorporate community benefits in their work, an overall results-based accountability/evaluation framework should be created and shared to allow data to be aggregated over time in order to track progress. Of prime importance is the creation of clear outcomes to be achieved by the use of community benefits, which can inform and identify the key outputs to be tracked that contribute to the outcomes.

This should be designed as part of the community benefits policy framework and should identify the goals of the evaluation, what will be evaluated, who will conduct it and when. A consistent process for collecting baseline data and a simple, flexible and proportionate approach that focuses on a small number of indicators could be developed in consultation with stakeholders.

A comprehensive approach to results-based accountability and evaluation ensures community benefits are systematically and strategically aligned with legislation and policy; and also allows all parties, including communities and stakeholders, channels to track progress, see results, learn and adapt as initiatives are rolled out.

Different jurisdictions use different methods of evaluation. The province should choose a method that aligns with its results-based management and accountability framework, as well as evaluation frameworks for other areas (e.g. poverty reduction, labour and employment) in order to maximize its value and advance an integrated outcomes approach attributed to various policy priorities of the province. Consideration could also be given to making project evaluation, or the creation of a community impact report, part of the role of a third-party intermediary.

In addition, reporting could be incorporated into existing processes: for example, municipalities could report on their use of community benefits in infrastructure projects as part of their annual Financial Information Returns.

Evidence and Experience:

- A range of methodologies for evaluating both outputs and outcomes has been used for community benefits, particularly in the U.K.²⁴
- In Wales, the federal Procurement Policy Statement requires all public sector procurers to apply a community benefits approach to all public sector procurements, apply a measurement tool that quantifies outputs to all such contracts over £1M, and provide justification for all contracts valued above £1M where the approach has not been used. The first 35 projects to use community benefits, worth £465m, garnered £1.80 worth of benefit for each £1 spent, much of it going to Welsh SMEs.²⁵

Recommendations: Implementation

3. Suggested scope, criteria and process for a phased community benefits program.

- a) Create a phased program for the implementation of community benefits, housed within the Ministry of Infrastructure.

A phased program should begin by conducting and evaluating two major pilot projects that can help inform the creation of community benefits guidelines for procurement, implementation, tracking results and evaluation. Learnings from phase one projects would be incorporated into phase two, which would include all infrastructure projects that meet defined criteria.

As noted below, the Crosstown is a logical pilot project since it is already underway. The government should also incorporate community benefits into a second pilot project either in a different infrastructure class, or in a different geographic area with different demographics than the Crosstown project. This second pilot could focus on the initial development stage, i.e. community engagement, definition of benefits, and other pre-tender activities, since it is unrealistic that more could be accomplished in the period of time recommended for a pilot phase.

In phase two, a cross-ministerial working group would be tasked with assessing infrastructure projects against criteria to determine those projects that are appropriate for community benefits. Suggested criteria are set out section 3(c)(i), below.

Example:

Phase I – pilot projects (2014-2018): The government will treat the Crosstown LRT as one of two major pilot projects and conduct an in-depth analysis and evaluation of the process, its strengths, weaknesses and changes that should inform a future rollout of the program. A second pilot will conduct a similar analysis and evaluation of the pre-tender phase.

Phase II (2019-2021): Taking the learnings from Phase I into account, the Ontario Government will expand the scope of community benefits clauses in infrastructure procurements to all sectors, using defined criteria. Thresholds and parameters for the program will be established that will support and align with goals and regulations respecting apprenticeships. A robust governance structure will be put into place within government to assess projects and drive the program.

Evidence and Experience:

- The City of Toronto’s social procurement policy followed a series of pilot projects, and the learnings from those projects informed the creation of the program.
 - The City chose to focus on two aspects: supplier diversity (which applies to all procurements) and workforce development initiatives. In the latter case, capital projects over \$5 million in value will be reviewed based on criteria that includes suitability, reach, volume and feasibility.²⁶
 - Procurements selected for workforce development will require bidders to commit to engaging in workforce development or will award points to proponents who submit a workforce development plan. The City will leverage existing employment service network partnerships to support these projects.²⁷
- Impact and Benefit Agreements (IBAs) are private contracts negotiated between Indigenous communities and mining and resource companies, which outline benefits that a local community can expect from the development of a local resource in exchange for its support and cooperation.²⁸ The government has experience in this area as well: Ontario Power Generation has signed IBAs, which, like community benefits, are premised on economic, environmental and social benefits.²⁹

b) What should be the scope of an initial program?

We recommend that an initial program use the following definitions of “community” and “benefits”, and be governed and resourced from within the Ministry of Infrastructure.

i. Defining community benefits

“Community” is defined as including those who come together as residents to participate in the process to define benefits, including equity-seeking groups, as well as those who might reasonably be affected by the proposed infrastructure project.

An “equity-seeking group” is one that experiences discrimination or barriers to equal opportunity, including women, Indigenous people, persons with disabilities, newcomers/new immigrants, LGBTQ+ people, visible minorities/racialized people, and other groups identified by the province as historically underrepresented.³⁰

“Benefits” are defined, under the IJPA, as including local job creation and training opportunities, improvement of public space, and “any specific benefits identified by the community.” Other supplementary benefits to be determined through community consultation could include, for example, provisions to promote opportunities for small businesses and social enterprises, carbon reduction or sustainability initiatives, or community facilities.

ii. Defining classes of infrastructure / sectors

The first phase of the program should focus on pilot projects for defined classes of infrastructure development. For example, over the next 10 years, the Province plans to provide more than \$20 billion in capital grants to hospitals, including approximately \$9 billion to support the construction of new hospitals in Niagara, Hamilton, Windsor, Mississauga and James Bay. The 2017 budget also pointed to \$56B in new public transit funding, including light rail projects in Waterloo, Mississauga, Hamilton, Brampton, Ottawa and Toronto, as well as GO Transit’s Rapid Express Rail project.

In the alternative, the government could choose geographic parameters for its pilot projects. Since the Crosstown takes place in Toronto, a second pilot could take place in a different part

of the province with a different demographic profile (e.g. perhaps including both urban and rural populations).

iii. Resources

- a. Resources should be provided to OPS officials for professional development, consulting advice and coaching from experts in the field, including from governments in other jurisdictions, to assist with the creation of internal mechanisms and protocols, changes to procurement processes and guidelines for contractors.
- b. Resources should be committed to MOI and/or Infrastructure Ontario for creating public materials to inform and educate contractors about community benefits, opportunities for participation, and guidelines for bidders.

As discussed above, resources should be allocated to support community readiness so groups can participate in the process of determining benefits prior to the finalization of the tender documents, as well as to help other partners and stakeholder groups like contractors, small business and social enterprises. Resources could be allocated from current funding, or could be embedded as a small fixed cost that forms part of the capital planning process under the infrastructure budget (for example, a percentage of each project cost).

- c) What criteria and other considerations should the program use to determine which projects are suitable for community benefits clauses?

i. Criteria

Between 2019-2021, community benefits clauses should be inserted into all tenders for projects that are budgeted at \$10M or over (overall cost, including design, build, operations and maintenance). Guidelines should ensure that no procurement is prepared, designed, structured, valued or divided in order to avoid reaching the \$10M threshold.³¹

Where workforce benefits are contemplated, projects should also meet criteria with respect to project duration, person-hours of labour, and cost, as set out below.

Projects should further be analyzed according to the following factors:

- a. **Is the project suitable for community benefits?** This should include an analysis of such factors as:
 - *community readiness to participate*, including consideration of whether there are already organized community associations or interest groups in the area of the project, degree of interest and participation by community members and other stakeholders in any early planning or assessment processes for the project, existing community partners/social infrastructure in the area (including third parties representing consortia of community interests), and local government engagement structures. Disadvantaged/equity-seeking communities should be privileged in this process and assisted to participate.
 - *community need*, including review of any needs assessments carried out by governments or agencies in the area, consideration of whether a timely and focused needs assessment should be conducted, whether remedial action may be required to mitigate community displacement, and socio-economic profile of the area.

- *potential for community benefits* related to the project generally, including but not limited to workforce opportunities, economic development for small and medium sized enterprises and social enterprises, environmental benefits, public space or leveraging of public assets, and other kinds of supplementary benefits.
- *alignment with other policy objectives* of the government (see “Policy Alignment” below).

b. **Does the project have the potential to offer employment, training or apprenticeship opportunities during construction and/or operations?** In making this assessment, factors to be considered include:

- *quality and duration* (the degree to which opportunities can offer candidates meaningful experience, learning and skill development, fulfillment of apprenticeship requirements, and/or long-term, sustainable employment)
- *cost and person-hours of labour* (the percentage of costs of a project that is labour vs. materials and the number of opportunities that could be made available)
- *feasibility* (the likelihood that workforce outputs can be achieved within the proposed timeframe of the contract)

ii. Process

- a. The cross-ministerial working group should undertake the preceding analysis well in advance, in order to have the benefit of perspectives from various ministries who can assess specific projects against these criteria and policy priorities of the government. It also enables a needs assessment to be commissioned, if required, to determine community readiness.
- b. Where a project appears to be suitable for community benefits, then the benefits negotiated with the community should be set out in tender documents, evaluated as part of the bid, and made a “core” part of the contract.
- c. Should the community readiness factor be low under criteria (a), but the project otherwise would offer meaningful employment and training opportunities under criteria (b), consideration should be given to making workforce opportunities a standardized contract condition. This condition would not be a requirement in the tender, but would be part of the enforceable conditions of the contract signed with the successful bidder (i.e. “non-core”).

iii. Policy alignment

- a. Section 7 of the IJPA already sets out criteria for the prioritization of infrastructure projects. Once priority projects are chosen, criteria for community benefits could include reference to aligned policy objectives, such as employment of people with disabilities and newcomers,³² connecting social enterprises to new markets,³³ anti-racism and the Black youth action plans,³⁴ greenhouse gas reduction³⁵ and scaling up small businesses.³⁶ Poverty reduction³⁷ is another area that should be considered, as it will ensure compliance with the Canadian Free Trade Agreement (see (iv) below).

- b. Regulations under section 9 of the IJPA will eventually be crafted to address apprenticeships. Accordingly, workforce targets should be seen as an opportunity to pilot an approach that could become the basis for future regulations. The government may wish to consult with labour unions, contractors and the College of Trades, as well as other stakeholders from potentially affected communities, to determine appropriate thresholds for workforce commitments, particularly in view of the fact that they may need to align with upcoming regulations under the IJPA respecting apprenticeships.
- iv. Trade agreements
- a. Perceived barriers to community benefits due to trade agreements have been called “largely theoretical”.³⁸ In any event, properly structured procurement guidelines can ensure that there are no contradictions with trade agreements. The Canadian Free Trade Agreement (formerly the Internal Agreement on Trade) is only applicable over certain thresholds: for departments, ministries and agencies, \$100,000 or greater for services and for construction, or (in Ontario) \$200,000 if the procurement targets poverty reduction for disadvantaged people.³⁹ For Crown corporations and government enterprises, the thresholds are higher: \$500,000 or greater for goods and services, and \$5,000,000 or greater for construction.⁴⁰ There is also an exception to these thresholds for small business set-aside programs, with certain conditions.⁴¹
 - b. The Canada-Europe Trade Agreement (CETA) contains thresholds as well: for construction services, about \$7.7M.⁴² It also allows preferences for Aboriginal peoples.⁴³ More research is required respecting CETA, as its impact is yet to be fully determined.

Recommendations: Defining success

4. What does success look like?

In ten years:

- Community benefits will be part of “business as usual” in provincially funded/approved infrastructure projects.
- There will be a measurable increase in the skills development and employment of workers from historically disadvantaged groups, and a corresponding reduction in poverty.
- There will be tangible increases in social and economic development and, in some cases, environmental benefits, in areas where infrastructure is built or renewed, with thriving and growing small and medium-sized enterprises hiring more local workers.
- Social enterprises will see revenue growth, increased hiring and greater investment.
- Participating communities will be empowered and have the capacity to define their community benefit priorities, working with supportive partners, governments and contractors to achieve them.

“Key policies like Community Benefits continue to play an important role in the delivery of wider Government objectives. Results from the projects measured to date show they are clearly contributing to tackling our poverty agenda.”

- Jane Hutt, Welsh Minister for Finance and Government Business, 2015

Endnotes

- ¹ <https://www.ontario.ca/page/september-2016-mandate-letter-infrastructure>
- ² Government of Ontario, Budget 2017 at 74.
- ³ News Release: Ontario Helping People Facing Employment Barriers Get Construction Jobs – Community Benefits Declaration to Provide Apprenticeships on Eglinton Crosstown LRT Project. Available online at <https://news.ontario.ca/opo/en/2016/12/ontario-helping-people-facing-employment-barriers-get-construction-jobs.html>
- ⁴ OPS Procurement Directive, December 2014 at 6.
- ⁵ Richard Macfarlane with Anthony Collins Solicitors LLP, “Tackling Poverty Through Public Procurement”, Joseph Rowntree Foundation, 2014. Available online at http://readyforbusiness.org/wp-content/uploads/2014/06/lib-JRF_poverty-procurement-social-mobility-full.pdf
- ⁶ Procurement Reform (Scotland) Act 2014, ASP 2014; “Community Benefits: Helping Suppliers Deliver Maximum Value for the Welsh Pound”, Welsh Government, 2011; Northern Ireland “Buy Social” requirements, available online at <http://buysocialni.org/>
- ⁷ Macfarlane, *supra*
- ⁸ Graser, D. “Community Benefits and Tower Renewal”, Evergreen, 2016. Available online at https://www.evergreen.ca/downloads/pdfs/HousingActionLab/TowerRenewal_Report_FINAL.pdf
- ⁹ Macfarlane, *supra*
- ¹⁰ Northern Ireland Buy Social toolkit, *supra* note 6.
- ¹¹ *Ibid.* at 15.
- ¹² Graser, *supra* at 12.
- ¹³ Macfarlane, *supra*; Sutherland, V. et al, “Analysis of the Impact and Value of Community Benefit Clauses in Procurement: Final Report”, Training & Employment Research Unit, University of Glasgow, 2015.
- ¹⁴ Macfarlane, *supra* at 52.
- ¹⁵ CEIS (Community Enterprise in Scotland), <http://www.ceis.org.uk>
- ¹⁶ Ontario Budget 2017, chart 3.2
- ¹⁷ Yalnizyan, A. “Community Benefits Agreements: Empowering Communities To Maximize Returns on Public Infrastructure Investments”, IFSD, 2017. Available online at <http://www.ifsd.ca/web/default/files/Presentations/Reports/17011%20-%20Community%20Benefits%20Agreements%20-%202017%20July%202017.pdf>
- ¹⁸ For more information: EBASE (East Bay Alliance for a Sustainable Economy) <http://workingeastbay.org/>; LAANE (Los Angeles Alliance for a New Economy) <http://laane.org/>; Partnership for Working Families <http://www.forworkingfamilies.org/>
- ¹⁹ See <http://www.ceis.org.uk/sustainable-procurement/>
- ²⁰ The organization was formed as part of a Vancouver Agreement initiative signed by Canada, the Province of British Columbia and the City of Vancouver to coordinate the efforts of the different levels of government in inner-city Vancouver. See K. Peachey, “Building on Success: An evaluation of the Community Benefits Agreement for the Vancouver Olympic Village Site.” Building Opportunities with Business Inner City Society, 2009.
- ²¹ Jamie van Ymeren and Sara Ditta, “Delivering Community Benefit: Achieving Community Benefits in Ontario.” Mowat Centre, 2017. Available online at <https://mowatcentre.ca/delivering-benefit/>
- ²² Holford, L., “Best Practice in Embedding Social Value in Public Procurement,” Action Sustainability report prepared for RSSB, 2017.
- ²³ City of Vancouver Administrative Report to the Standing Committee on Policy and Strategic Priorities, “PARQ’s Annual Report Back to Council on the “Responsible Gaming Agreement” and “Inner-City Local Employment and Procurement Agreement” for the Vancouver Urban Resort at 39 Smithe Street”, November 8, 2016
- ²⁴ For a robust discussion of evaluation methodologies that could be used, see Graser D. and Leanage N., “Realizing Social and Economic Objectives through Infrastructure Planning and Investment”, Evergreen 2017. Available online at <https://www.evergreen.ca/downloads/pdfs/2017/CommunityBenefitsReport.pdf>
- ²⁵ Welsh government, *supra*.
- ²⁶ Specifically: Suitability – the degree to which possible employment-related opportunities can provide candidates with meaningful experience, learning and skill development; Reach – the degree to which candidates can meet the minimum qualifications needed to access possible employment opportunities; Volume – the number of employment opportunities that could be offered as part of the procurement project; Feasibility – likelihood that workforce development outputs can be achieved within the proposed timeframe of the contract.
- ²⁷ City of Toronto Social Procurement Program, available online at <http://www.toronto.ca/legdocs/mmis/2016/ex/bgrd/backgroundfile-91818.pdf>
- ²⁸ See the IBA Research Network, <http://www.impactandbenefit.com/home/>

²⁹ See, e.g. James Bay:

https://www.thestar.com/business/2010/06/09/opg_and_moose_cree_start_new_hydro_development.html

³⁰ *Ibid.*

³¹ This would include activities such as dividing the quantities of goods or services into smaller lots, diverting the funds to other agencies not bound by the community benefits requirements, or any other activities designed to avoid a project reaching the threshold.

³² See, e.g. Provincial Employment Strategy for People with Disabilities, Ontario Bridge Training program

³³ See Ontario 2016-2021 Social Enterprise Strategy

³⁴ See Ontario Anti-Racism Strategic Plan and Black Youth Action Plan

³⁵ See Ontario Climate Change Action Plan

³⁶ See Ontario's Business Growth Initiative

³⁷ See Ontario Poverty Reduction Strategy

³⁸ Van Ymeren and Ditta, *supra* note 21

³⁹ Canadian Free Trade Agreement, April 2017, Annex 520.1, Schedule of Ontario

⁴⁰ *Ibid.* Articles 503-504

⁴¹ *Ibid.* Article 504(13)

⁴² CETA specifies \$5M SDR (Special Drawing Rights), which is roughly equivalent to \$7.7M CD

⁴³ There is also a reservation that states "Canada reserves the right to adopt or maintain a measure conferring rights or privileges to a socially or economically disadvantaged minority," though the scope of its application requires more research. Of note, many EU members have well established community benefits and social procurement regimes, supported by language in procurement directives.