



First Nations Housing and Building Crises: Management of the Change Process.

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The views expressed in this report may not necessarily reflect those of the participants, FNNBOA or AANDC.

Executive Summary

Over the past few years, the First Nations National Building Officers Association has given presentations and produced reports on the importance of building codes and the role of the authority having jurisdiction has for Chiefs and Councils. While some Chiefs and Councils have heard the messaging from these conferences and some communities have passed by-laws on building codes to meet their obligations under the authority having jurisdiction, the majority of homes built in First Nations communities still may not comply with building codes. A recent report by Deloitte entitled “Audit of the AANDC and Attawapiskat First Nation (AFN) Management Control Framework” focused on several critical issues, including the qualifications of a housing inspector and the enforcement of the national building code.

In January 2013, a facilitated session was conducted with building inspectors, builders, the insurance industry, housing managers and elected Council officials. Participants identified a series of factors impacting First Nations communities, including home construction in accordance with the national building code (NBC), and roles and responsibilities for being the authority having jurisdiction. One of the keys to improving the current situation is to move towards a change-management philosophy, remove politics from housing, address risk and focus on providing incentives and performance measures. The group also made a series of short- and long-term action plans that will help to move the communities toward building better homes. Finally, the group attempted to think “outside the box,” and identified the need for a revised compliance framework to ensure homes are built to NBC standards. This approach also focuses on an alternative approach for the federal government to fund the construction of homes in First Nations communities.

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Introduction

Over the years, there have been many First Nations (FN) conferences on housing. The focus has been on the need for additional funds to address the housing shortage, housing/community plans, housing infrastructure. In other cases, participants have learned how to perform activities such as installing air-vapour barriers or framing straps of houses. However, one topic that was almost forbidden to present was the Chief and Council being the authority having jurisdiction, and what this meant for home construction in the communities. This was viewed as challenging the mystique of Chief and Council governance, as it was easier for some Chiefs and Councils to blame others for shoddy construction practices¹. The concern was also that such information shared with community members might result in a “backlash,” which could be viewed as one of the factors behind the Idle No More movement.

The First Nations National Building Officers Association (FNNBOA), with funding from Indian and Northern Affairs Canada, has made several presentations at conferences on building permits, including the authority having jurisdiction. At first, these were received with misgivings, and many challenged the proposition that the Chief and Council are responsible for the construction of homes, not the federal government. Later, these presentations were well attended and the attendees wanted more information. While the topic was finally in the open, and many Chiefs and Councils were receiving the message, little was changing in terms of by-laws, building permits or improved construction practices.

Only about a dozen of approximately 640 FN communities have passed by-laws to ensure the NBC can be enforced in their communities. A recent study by FNNBOA on the life cycle of homes in FN pointed out that many communities are unnecessarily forced to rebuild their homes every five years over the 50-year life cycle. Recently, a report by Deloitte entitled “Audit of the AANDC and Attawapiskat First Nation (AFN) Management Control Framework” focused on several critical issues, including the qualifications of a housing inspector and the enforcement of the national building code.

The purposes of this report are to present background information on home inspections in FN communities, to understand the challenges for why many Chiefs and Councils are not exercising their governance in terms of the authority having jurisdiction, and what the authority having jurisdictions implies with respect to the construction of homes.

Addressing these issues involved the following tasks. A background paper was written that provided research and information on the inspection of homes, the use of building codes and the meaning of authority having jurisdiction. Next, a facilitated session was held for housing

¹ A review of the Assembly of First Nations’ website found no documents where the phrase “authority having jurisdiction” was used. A review using Google search tools found one document where the phrase “authority having jurisdiction” was used once in relationship to a contract with a 3rd party.

inspectors working in FN communities, builders, the insurance industry, housing managers and elected Council officials. Follow-up interviews and research was conducted to provide information to fill in any “gaps” or questions identified by participants. This information was incorporated into the findings of the facilitated session.

Facilitated Session

“The Application of the NBC and Inspections in First Nations Communities” took place on January 22-23, 2013. The session was organized by the First Nations National Building Officers Association (FNNBOA).

Objectives

- Identify reasons why Chiefs and Councils are not building in accordance with National Building Code (NBC) standards.
- Discuss how the inspection of new and renovated buildings functions, and the requirements of the federal government.
- Discuss how the Chief and Council are the authority having jurisdiction, and the application of this authority with respect to inspections and the NBC.
- Engage participants in “thinking outside the box” to find solutions.
- Present practical solutions and recommendations that move away from existing capacity-development frameworks.

Participants

The session included a broad array of experts in the housing field, including inspectors, builders, the insurance industry, housing managers and elected Council officials. For a list of participants, see Appendix A.

Participants received a background paper that focused on key areas to be discussed (Appendix B), and a copy of the Deloitte report, “Audit of the AANDC and Attawapiskat First Nation (AFN) Management Control Framework.”

In addition, several interviews were held with staff from AANDC, prior to the meeting in January. Finally, a self-administered questionnaire was developed and sent to inspectors and contractors. Questions focused on their roles and responsibilities in providing inspections and training.

Challenges

The session began with the participants identifying and discussing challenges and issues facing FN regarding construction practices, building homes in accordance with NBC standards, and the role and responsibilities of inspectors. These concerns were grouped into four broad areas:

1. The principles of the NBC.
2. The roles and responsibility of inspectors.
3. The roles and responsibility of Chiefs and Councils.
4. The roles and responsibility of the federal government (e.g., Aboriginal and Northern Development Canada (AANDC), Canada Mortgage and Housing Corporation (CMHC), Health Canada, (HC).

The Principles of the National Building Code

The following key points relate to the NBC:

- The NBC provides for minimum standards and does not necessarily reflect the construction practices in remote or northern communities.
- There is a lack of technical specifications on how the NBC and other housing standards should be applied in the communities.
- Contractors often use materials that would be unacceptable elsewhere or even prohibited. There was the case where furnaces made by a particular company did not meet the standards and were deemed unsafe. These furnaces, however, were eventually installed in homes in an FN community.
- Contractors are left to determine housing standards and construction practices for a particular community. No clear leadership is provided by the communities or any agency, as this information appears to be unknown.
- There is a lack of due diligence by the Chief and Council, as they allow renovations or contraction practices without consideration given to the safety of the home owner or occupant.
- Contractors object to applying for a building permit in FN communities, but these same contractors know the processes off reserve and adhere to rules and regulations in other municipalities. Contractors do not want to be held accountable to the community or to the requirements under the NBC in FN. Chiefs and Councils unfortunately give in to the contractors, as they want their homes built, but are creating a financial burden for community members, paying for homes that do not comply to code. Eventually, the Chief and Council will need to take funds from another portfolio (e.g., education) to pay for the home that was not built properly a few years earlier. There are also safety concerns for the occupant (e.g., mould, unsafe staircases or improper electrical work).
- Enforcing holdbacks in FN communities based on performance is impossible, since word gets around that the band doesn't pay, leading to cash-only sales. Manufacturers of mobile homes are especially guilty of wanting cash up front. This practice restricts the bands' ability to enforce code compliance.

- The word “building permit²” is a term used off reserve and is not generally accepted in FN communities.
- Current construction practices use building materials that may be approved, but fail to perform in the long term in many FN³. Technical specifications would address this issue. In other cases, materials that are not approved (high moisture content in the wood, green popular logs milled at an unregulated mill) are also used⁴.

The Role and Responsibility of Inspectors

The group discussion covered a range of subjects:

- Issues raised in the 2003 Auditor General’s Report regarding the lack of compliance still apply today. Little has changed.
- The failure of Chiefs and Councils to sign declarations indicating homes are built to code is a serious oversight (see the Deloitte report finding), but a common practice in many communities. Declarations are seldom confirmed or audited by the funding agencies.
- It was agreed that removing unqualified inspectors and replacing them with competent, qualified professionals, as identified in the Deloitte report, would be a positive step. FNNBOA’s certification council requirements would meet the test of a qualified professional.
- From the contractors’ point of view, the paperwork for inspections is not streamlined; they seldom get copies of the inspection reports, or meet the inspector. In addition, the contractors’ invoices are not paid on time, causing problems for them to pay for their materials and staff. The contractors held the view that they are bankrolling the band councils. Federal government agencies responsible for housing lack an understanding of the construction process.
- The group had a consensus that the average life cycle of a home in FN is around five years. This supported the findings in the report produced by FNNBOA⁵. Overcrowding of occupants in homes has a dramatic impact on the longevity of a home.
- Inspectors appear to have no authority to shut down a site or to force contractors to address construction deficiencies that breach the NBC or other housing standards. Inspectors lack the authority, as the community has not passed any by-laws stating that the NBC applies to that specific community.
- Progress payments for a housing project must be based on inspection progress reports on whether the construction project complies with the building code, the contractual

² FNNBOA has also been advocating to the communities to use the words “permission to build”

³ For example spruce pine fir (SPF) are used for decks and landings in many FN communities. While SPF is approved to code it unfortunately, does not perform well in First Nations communities located in areas that are damp or exposed to extreme weather conditions.

⁴ It was further pointed out that wood that has high moisture content is ineligible for inclusion in government funded programs for building houses.

⁵ See: See FNNBOA (2011) *An Exploratory Study on the Life Cycle of First Nations Homes*. www.fnnboa.ca

obligations are not breached (e.g., time lines have changed) and requirements are being met. However, this is seldom the case, as progress payments are based on completion of specific stages, and these may not be based on compliance with the building code.

- Inspectors are unable to give stop-work orders or recommend stopping progress payments as the Chiefs and Councils are relying on the funds to manage their overall cash flow.
- Similar to off-reserve situations, the inspector should have the final say regarding whether the house meets the NBC, and recommend an occupancy permit, and for the funding agency to release the funds, rather than to the Chief and Council.
- Few audit or verification processes are in place to review inspection reports.
- Homes built by funds other than those provided by the federal government seldom meet the NBC.
- There is a lack of funds to pay for inspections. While AANDC pays for inspections as part of capital funds, travel is not paid, nor does the Chief and Council allocate the monies to conduct specific inspections. Often, if inspections are completed, they are done either by the inspector or someone qualified who works for the band, or they are inspected by the builder. Funds allocated for inspection (for both AANDC and CMHC) are well below normal market charges.
- There is a need for multifaceted inspections. Where building inspectors travel to remote communities, they should also be able to verify compliance of the fire code, HVAC, electrical, sewer and water inspections. This approach, however, would involve retraining the inspectors, as well as HC reassigning other practices currently conducted by an Environmental Health Officer.
- Inspectors are sometimes pressured by the Chief and Council to sign off on the housing declaration that is required by either AANDC or CMHC. If the inspectors do not sign off on the declaration, there may be no further employment or inspection work. In other cases, the Chief and Council would attempt to get the report signed off by another inspector or an engineer.
- There will be a need to substantially increase inspection fees to cover any costs for errors and omission insurance.
- Some inspectors may not qualify for errors and omission insurance.
- Asset Condition Reporting System (ACRS)⁶ inspections reports, once completed, are supposed to be given to the Chief and Council. However, few Chiefs and Councils have copies of these reports. These reports can be completed more effectively and efficiently by the private sector, such as the members of FNNBOA, or the insurance industry, which is collecting similar data to determine the conditions of buildings for costing insurance premiums.

⁶ The Asset Condition Reporting System, (ACRS), was developed in response to the Treasury Board request for a better method of determining asset recapitalization requirements, i.e., based on actual asset condition, rather than being formula driven. ACRS involved an inspection of all on-reserve non-residential, O&M funded assets.

- Lack of communication between the Chief and Council and the federal funding agencies that impact the role and responsibilities of the inspectors.
- Housing manager needs to understand the construction process and know when to call the inspector to conduct the required inspection.
- Travel to communities, especially to remote ones, and not receive remuneration for the travel time.
- Inconsistency in the types of forms used by federal departments. There is an imperative need to standardized and automate information, and for it to be shared by everyone.
- The challenge for many inspectors is that some work part time. Consequently, they lack the continued experience or training to conduct proper inspections.
- The inspection and other reports completed by inspectors need to be streamlined and consistent. Reports need to be changed so that deficiencies can be listed on the same page as the progress percentages. Reports should be changed to allow photos to be attached. They should be sent to a centralized department where they can be reviewed and the information verified (similar to a planning department).

The Roles and Responsibility of the Chief and Council

The discussion in the session noted the following points:

- Chief and Council are unaware of their legal obligations to ensure that homes are built in accordance with NBC and other standards.
- Chief and Council are elected members of the community. They were elected because of their involvement in the community and not for their expertise in housing or the NBC. Chief and Council seldom read the comprehensive agreements or the contracts that clearly state they are responsible. In most cases, they are elected and hire officials to be responsible for housing, but they have little to no information on how to manage this portfolio. In other cases, the elected councillor is more concerned with returning the favours of being elected by hiring family members or friends who often have no experience or expertise in housing. This practice further adds to the housing crisis, as there are few contracts or competitive bids. A process needs to be established that prohibits this practice.
- There is also a need to include audits, verifications, and performance measures to ensure the construction process is legitimate and without conflicts of interest.
- Given that the Human Rights Act now applies to FN communities, it was argued that Chief and Council may be susceptible to legal challenges from community members for failure to provide safe and healthy homes. This revised Act may open the floodgate for lawsuits against Chiefs and Councils.
- Few communities have a compliance framework that includes by-laws stating that homes are to be built to NBC standards. Consequently, inspectors have minimum powers to

exercise, such as issuing stop-work orders or ordering hold-back-payments to the contractor.

- The declaration statement that the house is built to NBC standards is farcical.
- In some cases, the contractors are not qualified to build, but get hired to do the project because they are related to someone in the Council.
- Funds are provided to family members to build their own homes, but in most cases they have no clear building plans; or, the family member who wants to build the home instead of a professional contractor is not qualified to build the home. The Council eventually disperses the funds to that member, but in many cases, the home is not built to code. The home owner now has a mortgage for a house that is not built to an acceptable standard.
- No risk-management practices are evident.
- No incentives to members of the community are in place to charge and collect rent.
- No incentives are given to members to ensure the homes are not damaged.
- Over the years, Chief and Councils, as well as the federal government, have lost uniformity regarding funding and compliance under the NBC. Every region has different rules and practices for the Chief and Council.
- Many Chiefs and Councils do not use the services of a certified inspector who can provide advice on construction methods and code compliance.
- Reporting requirements are onerous on FN.
- Unlike home owners who have protection through the home-warranty program off reserve, Chief and Councils and community members have no legislated protection from shoddy and often dangerous construction practices, and no means to make contractors accountable.
- Generally, Chiefs and Councils do not have the expertise or capacity to carry out construction projects. No external advisory groups are available. And where there are external advisory groups, they are generally not that helpful as they may also lack the resources.

The Roles and Responsibility of the Federal Government

The group also discussed the following:

- The current funding process of both CMHC and AANDC undermines the inspection process. Funding is not based on code compliance, but on housing-policy objectives.
- Fees paid by CMHC and AANDC for inspections are below market value. They do not fairly compensate inspectors, especially for those inspections carried out in communities requiring travel into remote communities. If there is bad weather, the inspector can be in the remote location for several days, with no compensation.
- Funding for the construction or renovations of homes needs to be based on the same processes as in off-reserve communities. That is, the Chief and Council should submit construction plans, an approved site plan, and legal contracts between the contractor and

the band to the federal government or to a third party. Based on this information, funds could be released based on completion of the building in compliance with building codes.

- AANDC needs to move away from housing as part of capital funding and should establish a separate housing fund.
- A consensus exists on the validity of the recommendations made by Deloitte in its audit report.
- There are no incentive-based policies, nor any performance measures for the construction process in FN. Funding appears to be based on disincentives, such as not building homes to NBC or other standards, but still receiving monies.
- Funding progress payments are based on cash-flow projections and not performance.
- There is lack of consistency in the interpretation of policies and procedures of both CMHC and AANDC, regarding funding and the required compliance framework.
- The current housing policy further undermines the inspection process to ensure homes are built to NBC standards. It indirectly supports the politics of housing rather than meeting the same construction practices that occur off reserve.
- To date no FN agency is responsible for enforcing or verifying code compliance.

Based on these overall comments, the consensus amongst the group members was that the current mechanisms for funding housing, construction practices and inspections are totally broken. The group felt that there is a need for a major shift in how homes in FN are funded, constructed and inspected: a new process that reflects off-reserve requirements needs to be implemented to ensure compatibility and accountability.

Facilitated Discussions

Based on the challenges and issues raised by participants, discussions focused on how these matters can be addressed by not just tinkering with existing programs and policies. Instead thinking outside the box seemed to be needed. Participants were asked to consider the following four assumptions:

1. The current system for funding, building and inspections is broken.
2. Deloitte's Management Action Plans (page 16) are heading in the proper direction, but need to go much further (i.e., beyond tinkering around the policy and program edges).
3. It is an opportune time to make major changes.
4. Chief and Council are the authority having jurisdiction: How can this be applied in terms of a housing governance model?

Change-Management Approach

The facilitator helped the discussions by focusing on a change-management strategy. The view among the group was that a major transformation is required in how homes are built and the processes for building homes (e.g., funds, inspections). Participants shifted their attention to devising the best strategic directions that move the FN housing sector away from the current system. Participants in groups were asked to answer following questions:

1. What changes are needed to ensure the federal government (i.e., taxpayers) and FN communities get the best value for money?
2. What are the key barriers to change?
3. What are the key opportunities for change?
4. What are the priorities?

Best Value for Money

The following comments were made:

- Chief and Council needs to be held more accountable to community members, and to manage the housing construction portfolio better. The Council needs to understand the importance of their responsibility of governance, and how this is applied to housing.
- Chief and Council are generally not able to build or understand the construction process. Consequently, there is a need for a 3rd party to provide professional advice. Council, however, may not have the funds to purchase professional advice.
- More money for housing will not fix the problem, nor is it the underlying issue. The development of performance measures, understanding risk, the use of incentives, requiring the Chief and Council to build to code (which goes beyond the current tokenism) and an increased role for the inspectors will give the community and the Canadian taxpayer better value for their monies.
- Introduce risk-based inspections. If the community has a low risk, the Chief and Council can continue to be responsible for the construction of homes. If it is a high-risk assessment, Chief and Council may no longer be able to manage the construction process. This would then be the responsibility of another agency working in partnership with Chief and Council (e.g., a mentorship program).
- Chief and Council need to raise revenues to ensure homes can be maintained. This action can include “rent” or maintenance fees. While AANDC housing policy requires rental regimes, few communities have established such a system. Although the word tax is verboten, it is how the off-reserve sector pays for infrastructure and maintenance. Maintaining a reserve fund ensures cash flow to finance repairs.
- Chief and Council should be required to use certified inspectors rather than qualified inspectors. The certified individuals have a higher level of competencies and knowledge when it comes to conducting inspections.

- Federal government employees need to be held more accountable for how monies are distributed to Chief and Council for housing. Funds for housing need to be removed from the capital funding envelope and specifically earmarked for the construction and renovations of housing. Funding agencies may also consider making direct payments to the contractor once the project has been signed off. This will be more likely to make the contractor meet contractual obligations.
- The current declaration sign-off needs to be substantially changed, and should follow the same process that municipalities and banks adhere to when homes are built or renovated.
- The CMHC and AANDC need to become more accountable. There is a need to improve consistency in their interpretation of housing policies, construction practices and inspections. Seldom are the inspection reports included in the files, nor do CMHC and AANDC contact inspectors directly. CMHC claims to be the leader in innovative housing for Canadians. Unfortunately, this is not the case in FN.
- Technical specifications should be mandatory for all contracts in FN. They provide an overview of what requirements the contractor must follow. They also establish constructions standards for the community.
- FN needs to understand the life cycle of housing and the importance of using better building materials. This approach will be critical for Chiefs and Councils as this is where they will save monies in the long term.
- Housing managers and those responsible for the construction process need to become more accountable. This change includes the development of a tendering process to get the best value for the construction process, a risk-management approach to the construction process, a contractor who has the required insurance, and a legally developed contract, to name a few changes. A tendering process should be required, especially where federal government funds are used.
- Many housing managers, unfortunately, do not have basic knowledge of the construction process.
- The mindset of Chiefs and Councils that housing is a community economic asset rather than a political football has to change. Those communities that fail to have the proper compliance frameworks, such as by-laws, have poor construction practices or select members for homes based on votes or political favours, should receive limited funding for houses. One approach to taking the politics out of housing would be to build homes without consideration being given to the potential occupant. This also allows the band to select sites for development that are cost effective. A land-use policy can help by reserving plots for high-density housing.
- There is a need to develop incentives and performance measures.
- While there is no equity in many of the house because of their remote locations, they do have economic value, as people want to live in those communities. Thus, the equity, while it may not be the same as off reserve, does have a market value.

- Housing construction should be treated as a business. This includes the charging of rent or maintenance fees. Shelter allowances should not be the driving force behind funding houses. A shelter allowance is based on individual need and should not be incorporated into the housing portfolio financing, but belongs to the department responsible for welfare and other social needs. Once the construction and maintenance of homes are treated like a business, the Council can further support social housing. Revenues from rent and maintenance charges can be applied to cover some of the costs for social housing.
- There is a need to change the attitude among some communities that a house is a treaty right, and that members do not need to pay for it. FN leaders have failed to explain to their members the importance of making a financial contribution to pay for and repair the homes they live in. Many band members do not understand the responsibilities of credit and borrowing monies. Consequently, the Chief and Council becomes responsible for these debts. There is a need to remove Chief and Council from approving these loans. This action should be the responsibility of a 3rd party organization such as an independent housing authority.
- Every individual or family provided with a home should receive a mandatory course in maintenance and their responsibilities (FNNBOA does give such a course). The home occupants should also make a contribution to paying for this course. There should also be the development of a manual. While this information may be readily available on the internet or on the CMHC website, hard copies should be placed in a binder. The information should be written in plain English, as many individuals have difficulty reading.
- One option would be to develop an independent housing authority for each community. The housing authority could then be responsible for the construction and renovation of homes, assigning homes to members, maintenance and collecting rent. However, the housing authority cannot be viewed as, or become an extension of, the Chief and Council. A process must be in place to ensure transparency, so that an appointed member is not viewed as being a representative of the Chief and Council.
- Payments for construction need to be based on inspections that are code compliant and not based on a housing-policy directive. The payment of construction costs based solely on the submission of invoices for work completed to date should not be allowed. It was pointed out, for example, that Canada's Economic Action Plan (CEAP) allowed for progress payments based on invoices, rather than inspections. In some cases, invoices submitted were used to claim payments from AANDC and then submitted to CMHC. The advancing of funds also prevented the closure of several projects as the monies were spent before the project was completed. In a few cases, progress payments were over-advanced (e.g., kitchen cabinets were paid for but not delivered or installed) because the government had to spend the funds before the end of the fiscal year.

- Increase the fees inspectors may charge to ensure they are properly trained and certified. Make the fees similar to those off reserve.
- Contractors working in FN need to be bonded, certified and covered by the required insurance.
- Contractors need to provide a home warranty similar to those offered off reserve.
- Inspection reports are to be given to the funding agency, the home occupant, Council and the insurance industry.
- A fee structure should be introduced to cover the costs of inspections and other building-compliance activities. Inspections should be based on a cost-recovery formula.

Barriers to Change

The following barriers to change were identified:

- Members living in the community are sometimes barriers to change because they are uninformed about housing issues or who are responsible for them. It appears that Chief and Council seldom share information among their members. There is a need to develop a series of communications targeting the communities (e.g., radio spots, local newspapers, APTN).
- Contractors who live and work in the communities are often not open to change. In this case, for communities that have no journeypeople carpenters, there may be value in hiring a housing crew led by a journeyman/trainer with in-classroom training as a part of the process. These classes can include material on how to build to code, as well as worker's safety. Such an approach may also require funding from Human Resource and Skills Development Canada which has not been all that supportive to providing training at this level.
- Conflicts of interest may exist between contractors and the Chief and Council or housing staff.
- Lack of transparency between the Chief and Council and suppliers of construction materials, as seldom are materials tendered out for competitive bids.
- High attrition rates for project managers, housing managers and some elected officials (only elected to one term) complicate matters.
- Communication and messaging on housing should to be directed at the youth in the community (e.g., the use of Facebook, Twitter and other social media).
- Location of the communities (i.e., remoteness versus urban) is an important consideration.
- Costs associated with construction in remote communities are higher versus urban locations.
- Unqualified contractors and labourers (receiving no basic training for safety issues) are a problem.
- Lack of safety regulations for those working in the community is an important omission. For example, if someone working as a labourer is injured, does Council have workers' compensation? Does the community have a regular safety-committee meeting?

- Failure of the Chief and Council to understand the legal responsibilities associated with being the authority having jurisdiction is a key issue.
- Land registration and the lack thereof is another issue.
- Land use planning and the lack thereof is a problem.
- Zoning laws and the lack thereof is a barrier.

Opportunities

The following comments were made:

- To totally revamp the process for how homes in FN are funded (e.g., AANDC no longer fund housing via capital funds, but directly) is an option.
- To develop incentives and performance measures for the construction and renovations of homes is an option.
- To develop risk-based inspections system is an opportunity.
- To revamp ACRS reports to become more meaningful to the Chief and Council and insurance industry is a need.
- To have the private sector conduct ACRS reviews. Any suggestions for change that are a high risk could be linked to the allocation of resources.
- To reject the current signed declaration and develop a new process whereby the document is signed by a 3rd party working on behalf of both the funding agency and the Chief and Council are a possibility.
- Change the existing policies to ensure a qualified inspector becomes a qualified professional or a certified inspector.
- To revisit AANDC housing policy as the existing one flies in the face of best practices for the construction and financing of homes.
- To develop technical specifications for all FN is a need.
- To revise the NISI program to ensure consistency across the country has potential. NISI needs to adopt the occupational standards as established by the sector (and paid for by CMHC).
- To no longer give Chief and Council the responsibility to sign off on the construction or renovations of homes would be a step forward. This responsibility could be assigned to a 3rd party.
- Develop a series of community incentives to ensure homes are built to NBC and that a maintenance fee is charged. This will replace the current policies and programs that are basically creating disincentives.
- To use the Deloitte report as a springboard to create the required change and fix the system that is broken is a current opportunity. However, it is important to point out that there are FN communities that are NOT broken. Some of these factors include: community housing policies are not “politically” driven or interfered; qualified housing staff are hired to work for the administration and are not removed or fired because there is a change in Council; use

of certified inspectors; have implemented sound housing policies; site inspections and plan reviews are completed; legal contracts are established between the Council and contractor; use of professional contractors rather than hiring relatives or friends sitting on Council; and payments are based on construction activities meeting the national building code.

- To revamp the process for collecting housing data. Data is collected for both CMHC and AANDC, but the forms are different, even though they are asking similar questions.

Priorities

The participants also discussed what should be the priorities to implement the suggested changes:

- Mandatory inspections at key stages, prior to backfill, prior to insulation, prior to drywall. In addition, mandatory plumbing, heating, electrical inspections before components are covered up. Inspections must adhere to the inspection stages as set out in provincial building codes.
- Implement an incentive-based funding procedure where communities have clearly demonstrated they have implemented the framework to ensure homes are built to NBC standards. This approach includes the establishment of by-laws, technical specifications, etc.
- Establish a national council responsible for signing off on the overall construction process, providing technical advice, and assistance to the communities. The council may be able to obtain insurance for the inspectors and others working in the field.
- Make Chief and Council no longer responsible for signing off homes. Chief and Council needs to establish a housing authority. The exceptions to this recommendation are those communities that received a high rating for exercising their authority having jurisdiction.
- Establish a risk-based inspection.
- Establish a framework for risk management in the construction process.
- Only use certified inspectors or qualified professionals.
- NISI inspections need to be revamped to ensure consistency across the country. CMHC needs to adopt the national occupational standards for inspections.
- Increase the fees for professional services and cover the costs for insurance.
- Establish partnerships with key players and stakeholders (e.g., education institutions) to help promote better construction practices in FN.

Main Themes

Upon reviewing all the items identified as part of a proposed change-management strategy, the group was able to isolate three critical themes:

1. Attitude Change – this is needed in FN communities and federal government departments (i.e., AANDC, HC and CMHC).
2. Jurisdiction – while the Chief and Council are the authority having jurisdiction, federal policies regarding the funding and construction of homes is inconsistent across Canada and needs to be standardized.
3. Leadership – the leadership of both the FN and the federal government is needed to resolve the issues.

These were then discussed in groups, to answer the following question: Based on these three categories, what are the current opportunities for change?

Current Opportunities – Attitudes

- Mobilize communities by educating them about the importance of housing. The focus here is to change the attitude of those living in the community.
- CMHC, AANDC and HC need to ensure consistency of housing policy for construction across Canada.
- CMHC, AANDC and HC should develop policies that specifically focus on the construction and renovations of homes (e.g., support the development of technical specifications).
- CMHC is sending out mixed messages when it comes to FN housing and capacity development.
- Need to provide training and opportunities for those working in the construction industry. This action should also include Human Resource and Skills Development Canada.
- Contractors and labourers need to understand the importance of following the same rules and regulations on reserve as off reserve.
- Need for best practices that focus on risk-management construction principles.
- Need to remove the political influence of Chief and Council on the construction and allocation of housing.

Current Opportunities – Jurisdiction

- Establish a FN Housing Council to provide provincial support to FN to develop the authority having jurisdiction.
- Establish a system to simplify the reporting requirements for housing.
- A 3rd party inspection should become responsible for sign off, and this process may include a role for the proposed FN Housing Council.
- Revamp the current funding process for homes. Make the funding processes similar to those off reserve. While this change may increase the work of the federal government, there is also

an opportunity for a 3rd party to become responsible for signing off on homes to ensure they have been built to NBC standards.

Current Opportunities - Leadership

- The federal government needs to determine whether CMHC or AANDC is primarily responsible for First Nation housing. Unfortunately, this confusion is one of the major reasons why the system is broken. If the government is looking to provide any leadership on First Nations housing, it can start by figuring out which agency will be the lead department responsible for it.
- Chief and Council need to put in place a system for the construction of housing that has continuity and is not revised every time there is an election and a new council in place.
- Need for a FN National Housing Council (excluding Alberta and Ontario because they have a provincial organization to provide technical advice to the communities). This organization(s) could take on the role of the development of technical specifications modules that can be given to communities and revised for their specific requirements.
- Need for all inspectors to become certified.
- Need to provide FNNBOA with funds to help follow up with the development and implementation of a certification model, mentorship and training of inspectors and contractors.

Short- and Long-Term Actions

Based on this discussion, the group focused on and short- and long-term plans.

Short-Term Actions

- Provide incentives to those communities that have the proper housing governance in place. For example, a community that requires its members to pay rent or a maintenance fee and ensures payments by taking action against the delinquent accounts should receive more incentives than a community that does not have such a policy.
- Establish a FN National Housing Council to provide technical and inspection advice to FN. The council may be modelled after the Alberta Safety Code Council especially where inspectors are exempt from requiring errors and omission insurance, as they are protected by legislation.
- The Chief and Council can no longer be left solely responsible for signing off on the housing portfolio. This activity can either become the responsibility of the proposed FN National Housing Council, the local housing authority or another 3rd party, such as a tribal council. A Chief and Council should only be responsible if there is a governance framework in place to ensure homes are built to NBC requirements and maintained through the collection of fees. Verification can also be determined by a risk-based inspection framework. The Housing Trust Fund has similar criteria, which were also developed in consultation with FNNBOA.

- Seminars or training on borrowing and mortgages should be organized. This initiative can be assigned to the financial institutions.
- Government needs to move away from one-year funding to a five-year formula. Again, this change can be linked to an incentive if the Chief and Council have the proper governance framework in place.
- Chief and Council need to be required to start construction prior to the winter season as this period appears to be when most code infractions occur.
- Clearly identify and define the roles and responsibility of a certified inspector. This clarification is needed with the Chief and Council and those agencies providing the funding for homes.
- All new and renovation construction projects must be inspected. This work should also include the installation of wood-source appliances.
- Put a framework in place whereby contractors working in FN are certified.
- Develop technical specifications.
- Shelter-allowance payments should not be used as a method to fund housing programs. This approach undermines the core objective of a shelter allowance, which is to provide the individual with assistance. Shelter allowances need to comply with provincial regulations and be funded accordingly.
- FNNBOA can become a clearing house for information, and provide support to communities in terms of construction practices.
- The risk of potential legal action based on the revised Human Rights Act, by members of the community against the Chief and Council, for failure to provide safe and healthy homes, needs to be understood.
- Fully conduct a risk assessment on the construction and inspection practices in FN communities.
- Focus on FN housing as a business and not a political tool. Develop a series of seminars or presentations that will explain the importance of housing as a business, and how to move away from using housing to gain votes.
- FN leadership needs to understand the importance of the continuity of their housing staff and should provide the required training.
- Chief and Council should submit the required documents and plans to obtain approval from a third-party review before building a house. Funds should be allocated based upon factors such as overcrowding and the need to build homes with more bedrooms.

Long-Term Actions

- FN leadership develops a three- to five-year strategic plan for their housing.
- FN leadership needs to take on the responsibility to enforce their rental regime.
- FN be encouraged to establish municipal-type agreements for services such as building inspections or engineering services.

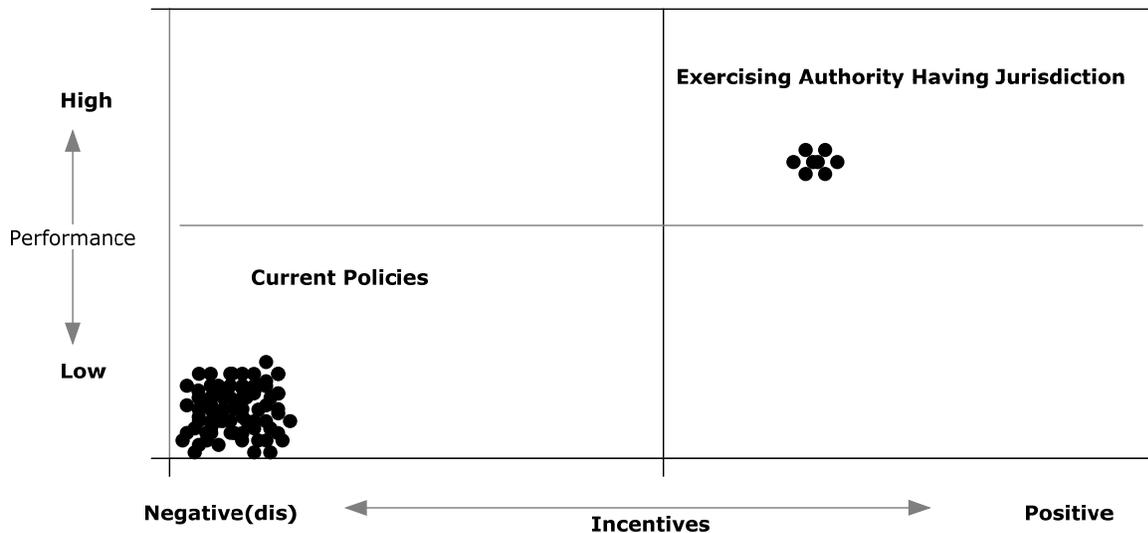
- FN needs information on the importance of building homes and using the proper materials. This material would be identified in technical specifications.
- Homes that are vacant should be assessed to determine whether they can be repaired and occupied or should be torn down to reduce the risk of injuries or fires.
- Contractors should provide performance bonds, and they need to be enforced. This step also includes the introduction of hold-back payments, inspections and the requirement that contractors must have commercial liability insurance.
- Establish a legislative framework to ensure homes in FN comply with the NBC and other housing and safety/health standards.

Conclusions

The participants and information from the self-administered questionnaire raised several critical issues and challenges regarding the inspection process and why homes are not being built to NBC standards. The group noted that many of these concerns were already raised in reports that focused on building-code compliance and inspections in FN communities (Auditor General Report, Deloitte report, 2013). The group did express frustration over the fact that time and time again these same issues are raised, but there appears to be little political will in both FN communities and the federal government to resolve them. The participants believed that, generally speaking, the entire on-reserve housing process is broken. They further believed the present issues will continue for years and will only be addressed once effective FN management regimes are in place that will successfully address key governance characteristics, such as transparency, accountability, and sustainability (e.g., members must make a financial contribution for living in a band-owned home) and that housing processes must be the same as those off reserve. Federal government departments responsible for First Nations must also ensure consistency in policies. The group further felt that only one organization should be responsible for housing, rather than both AANDC and CMHC.

There was also an agreement that current policies and procedures for allocating resources for the construction of homes are based on a disincentive model. That is, there are no incentives in place for Chief and Council or the funding agencies to ensure homes are built to national building code standards, or meet any of the “best practices” demonstrated off reserve (e.g., use of building permits, plan reviews). Figure 1 gives a schematic overview of the relationship between incentives and performance.

Figure 1 Schematic Overview on First Nations Communities Based on Incentives and Performance



The figure shows the majority of communities can be categorized as having negative (disincentives) incentives and low performance. There are, however, some communities identified as having positive incentives and high performance. These communities are not necessarily relying on government policies, but have strong governance and leadership.

The discussions among the participants identified two types of disincentives in First Nations communities. First, government programs provide funds notwithstanding; there are no incentives for communities to build to national building code standards. Furthermore, over the years, actions by AANDC and CMHC, independent of each other, have resulted in an accumulation of policies and programs that have created more disincentives within government. The second disincentive is inherent in the Chief and Council not accepting the authority having jurisdiction. Chief and Council lack of action to exercise the authority having jurisdiction, such as passing by-laws to construct homes to codes, or raising revenues by requiring the payment of rent that will increase revenues to pay for construction or repairs, has become a disincentive within the communities. A sample of these disincentives identified by the group can be found in Table 1.

Table 1 Selected Disincentives for First Nations Communities

| Selected Disincentives |
|---|
| • Funds provided with no audit or verification |
| • No compliance with building code |
| • Construction materials unacceptable |
| • No building/permission process |
| • No due diligence |
| • Use of qualified inspectors |
| • Chief and Council not taking responsibility especially given they are the authority having jurisdiction |

| |
|---|
| • Many decisions based on politics/vote getting |
| • No collection of living costs or rent |
| • No by laws, technical standards |
| • No risk controls in place |
| • Inspection fees below market value |
| • AANDC lack of control on monies under capital market funding arrangements |
| • No performance measures |

Table 2 Selected Incentives for First Nations Communities

| Selected Incentives |
|---|
| • Funds distributed similar to provide private sector requirements |
| • Use of certified inspectors |
| • Building permit/permission system in place |
| • Exercising authority having jurisdiction (e.g., implementation of by laws) |
| • Funds provided based on inspection reports |
| • Risk control policies in place (e.g., legal contract between contractor and Council, tendering process in place, proper insurances) |
| • Trained staff on board or use of consultants to manage construction projects |
| • Implemented tenant and rental policies or maintenance fees |
| • Score high on risk based inspection system |
| • Implemented technical specifications |
| • Effective housing management |
| • Continuance of staff that receive training |
| • Good governance and administration of the community |
| • Need for performance measures and accountability |
| • Financial rewards and acknowledgement provided |

The allocation of resources for FN housing, however, must be based on an incentive model. It needs to incorporate the parameters of quality construction measures, risk-management practices, good governance, performance measures and accountability. Table 2 identifies some of these core incentives. The incentive model shifts the responsibility to the individual Chief and Council. The incentive model must also incorporate changes in government policies and procedures.

While additional monies for housing may resolve the issues of housing shortages, it will not resolve the problem of shoddy home construction and related practices. To tinker around the policy and program edges will not fix many of the issues identified by the group. There are

some communities where the system is not broken or learned to work with the system. These communities are doing well in terms the construction of homes.

There are also several missed opportunities for FN to take control over this situation. These include training their own members to work in construction, and having those working construction receive training courses to ensure they understand the importance of building to the national building code. Another opportunity is to provide training to housing managers, contractors, inspectors and those working in the area of building maintenance. This is an excellent opportunity for the government and FN to work in partnership to create aboriginal employment and sustainability

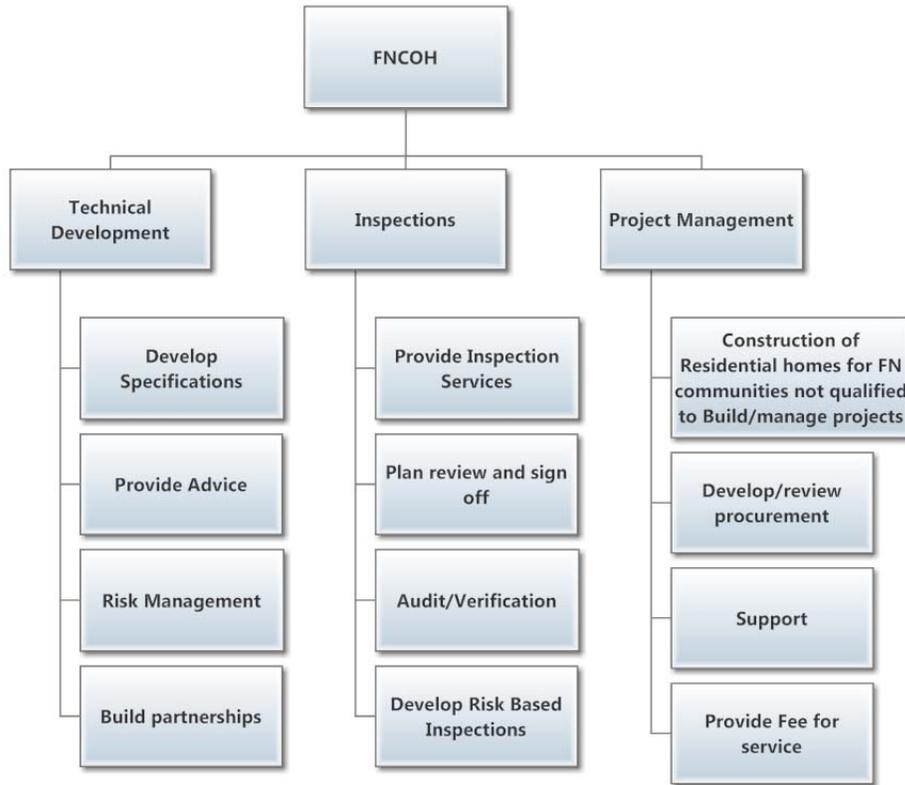
Furthermore, the group attempted to resolve the issues by developing a process that thinks outside the box. The group also had an opportunity to review the Deloitte audit (2013) and examine their recommendations. In response, the group identified the need for a revised compliance framework to ensure homes are built to NBC standards and that the Chief and Council's authority being jurisdiction is exercised. This proposed approach has the potential to remove the politics from housing, and address risks, the importance of incentives, performance measures and accountability.

The following are the proposed suggestions for change.

1. Establish a FN Council on Housing (FNCOH). The council will provide advice on construction practices, risk control and risk assessment regarding construction practices (e.g., development of RFP as part of a procurement policy to tender contractors), conduct 3rd party inspections, provide audit and verification, manage and store inspection and other documents and develop a national technical specification package. The FNCOH can further establish a centralized system of technical building control. The council can minimize the number of rules and make them more transparent, and reinforce the legal rights of all parties to expedite the procedures.

The FNCOH can also play a pivotal role to work on behalf of Chief and Council to manage their construction projects. This can be accomplished by either providing a direct service to the Council or managing a list of preapproved companies. Figure 2 gives an overview of how the FNCOH may function. To pursue this concept, there will be a need to develop a business case.

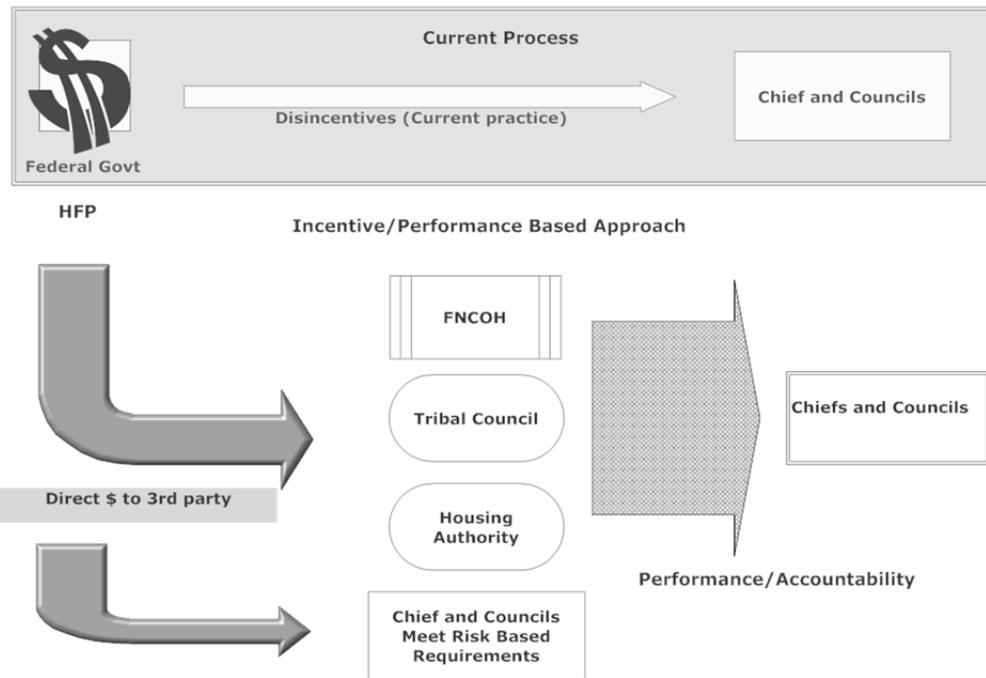
Figure 2 Overview of FNCOH



2. AANDC needs to remove housing from the capital funding arrangement and establish a housing funding program (HFP). Under the current arrangements, many of the funds are not used for their intended purposes. Furthermore, there are no incentives for Chief and Council to ensure homes are built to national building code, or to hire certified inspectors. The HFP can be given directly to Chief and Council where the Council has the capacity and resources to manage the construction process. These factors can include developing a risk-based inspection tool where communities will be rated based on an estimated risk of not completing or managing the construction of homes. Alternatively, AANDC can direct the funds to FNCOH, a tribal council or a housing authority that will, on behalf of the Chief and Council, be responsible for the construction of homes. Under these arrangements, a legal document/contract needs to be established that will include clear roles and responsibilities between the two organizations. The framework must also include incentives, performance measures and accountability. This legal document can be developed by the federal government.

Figure 3 provides an overview on this proposed process. Funds directed to FNCOH may also be based on three- to five-year funding agreements, which will allow communities to provide for better planning.

Figure 3 Proposed Directions for Funding Housing Construction Projects in FN Communities



3. Develop a national technical specification document (TSD) for the construction and renovation of residential homes. The objective of the TSD is to provide the Chief and Council with information on the NBC and other construction standards (e.g., types of materials). The TSD may also provide a copy of a legal contract between the Council and a contractor, blank inspection reports and other related documents (e.g., forms for injuries). The TSD can be approved by the Council, but updated by the FNCOH. The TSD can also be provided to the contractor to help in assessing the cost of a project.

For an example of TSD, see Appendix C. The TSD could be viewed as “best practices” for FN communities.

4. All inspection reports are to be completed by a certified inspector. This work could be done by anyone holding a certification from FNNBOA, the national home inspector sector, or a municipal building official (under a municipal-type agreement). Inspections can also be conducted by qualified professionals such as engineers, or certified engineer technologists, provided they have passed the required national/provincial exams. Funding agencies should be considered when the inspection reports are signed by different inspectors, including the final one. It is important for the reports to be signed by the same inspector. Continued training should be provided by the federal government.

5. Fund for housing (and other commercial buildings) must incorporate a building permit/permission approval process for the construction of all homes, including those by the Council. There currently exists a building-permit process in municipalities across Canada that can be easily adopted for FN. FNNBOA, for example, has written substantially in this area and has provided such a framework⁷. Funding from the federal government should be conditional on the implementation of a building-permit process or something similar that meets the criteria under the building code.
6. Develop a risk-based inspection tool. The tool will rate communities based on an estimated risk that they may pose of not completing or managing the construction of homes. If the community has a low risk (e.g., governance such as by-laws, zoning laws, community plans, qualified personnel on staff) then the Chief and Council should continue to carry out the role. The tool can be designed to be completed by the Chief and Council and the information placed into an Excel spread sheet. Verification of the information can be provided by a 3rd party (e.g., FNNBOA).
7. Develop a guide on risk management and construction practices. This guide may be developed as a separate document or become part of a series that will also include TSD.
8. Develop a process to transfer information and knowledge to the Chief and Council on their roles and responsibilities under the authority having jurisdiction. This step will include focusing on the administrative responsibilities of elected officials and how to respond to inquiries from the communities.
9. Develop a process to transfer information and knowledge to contractors working in FN.
10. Develop a process to transfer information and knowledge to inspectors to move them beyond being just qualified to becoming certified.

⁷ See FNNBOA (2008) *The Building –Permit Process: Building Permits for First Nations*.

Appendix A – List of Participants

The following gives background on the participants

| Name | Profession | Community |
|-----------------------------------|--|-------------------------------|
| Bud Jobin | President FNNBOA/Independent building officer/trainer, Owner of 4 Voices Technical Services, | Legal, Alberta |
| Keith Maracle | Vice president FNNBOA/ independent building officer/trainer | Tyendinaga |
| Ken Large | Builder RTMs (Ready to Move Homes) | Saddle Lake Housing Authority |
| Vince George | Councillor | Kettle Point First Nations |
| Darlene Marshall | Housing Director | Eskasoni First Nations |
| April Adam –Phillips | Chief of Akwesasne | Mohawk Council of Akwesasne |
| Joe Lazore | Portfolio Chief/commercial and residential contractor | Mohawk Council of Akwesasne |
| Richard Kent | Commissioner Emergency and Protective Services for Prince Albert Grand Council, Director (Past President) of Aboriginal Firefighters Association of Canada (AFAC). | Prince Albert Grand Council |
| Bryan Decontie | Consultant, DNH Consultants Aboriginal Housing | Montreal |
| Malcolm Smith | Thunderbird Commercial Insurance | Halifax |
| Norm Brennand | Senior Manager, Aboriginal Engagement and Strategic Partnering, Golder Associates | Calgary |
| Bruce Conway | Independent Contractor | Gatineau Quebec |
| Dal Brodhead – Facilitator | CEO New Economy Group, | Ottawa |
| John Kiedrowski – project manager | Project Manager, Compliance Strategy Group | Ottawa |

Appendix B –Background Paper



BACKGROUND PAPER: THE APPLICATION OF THE NATIONAL BUILDING CODE AND INSPECTIONS IN FIRST NATIONS COMMUNITIES.

January 22, 2013

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1. Background

FNNBOA is a non-profit organization registered under the *Incorporation Act* of Canada in September, 2003. The First Nations National Building Officer's Association (FNNBOA) represents First Nations Building Officers (FNBO)⁸ who provide residential, commercial and institutional construction and renovation technical services. These services include: plan reviews, inspections, repair recommendations, technical advocacy and advice for buildings in First Nation/Aboriginal communities. FNNBOA is also a non-political organization with the mission to work with First Nations and Aboriginal communities to improve housing conditions.

One critical issue that FNNBOA has been advocating is the role that building codes can play in the construction of any building in First Nations. Several reports have focused on this specific issue. The Report of the Royal Commission on Aboriginal Peoples (2003)⁹ pointed out that while the federal government requires that homes funded by the federal government must meet the national building code, no policies or procedures have been provided on how this can be accomplished. In 2003, the Office of the Auditor General raised concerns that homes in First Nations communities were not being built to code.¹⁰

The Standing Committee on Public Accounts Twentieth Report (2003) considered the report of the Auditor General of Canada. The Standing Committee recommended developing systems, procedures and practices to strengthen the inspection and certification systems on reserves, and to ensure that federally subsidized units built on reserves effectively comply with the National Building Code. Most recently, an independent report by Deloitte noted that Attawapiskat First Nation had several deficiencies regarding homes not being built to code, and the building-inspection process.¹¹ Deloitte made several recommendations, including the implementation of practices to certify completion of housing units by a suitably qualified professional, according to National Building Code standards or accepted equivalent standards.

Consequently, over the past decade, various reports on housing in First Nations have centred around a few core challenges, such as building in accordance with national or provincial building codes, inspections and construction practices. The purposes of this background paper are to provide insight into these topics and to raise questions for discussion.

⁸ First Nations Building Officer is a registered trademark of the First Nations National Building Officers Association.

⁹ Report of the Royal Commission on Aboriginal People (2003) *Chapter 4: Housing*. Page 30/36

¹⁰ Report of The Auditor General of Canada (2003) *Chapter 6: Federal Government Support to First Nations – Housing on Reserve*.

¹¹ Deloitte (2013) *Audit of the AANDC and Attawapiskat First Nations Management Control Framework*.

2. Authority Having Jurisdiction – Self-Governance on Housing

Authority having jurisdiction (AHJ) refers to a governing body responsible for the enforcement of any part of the building code, or the official or agency designated by that body to exercise such a function. In building homes, the AHJ is typically the municipality, which has by-laws that govern how drawings for buildings must be reviewed and accepted by both a building department and the fire department's plan reviewers, following application for a building permit.

During the construction of a building, the AHJ is the municipal building inspector who enforces the local building code. Once construction is complete and a final inspection has been passed, the inspector may issue an occupancy permit. Any changes made to a building, including its use, expansion, and structural integrity, must also be approved by the AHJ.

In 1983, as part of the federal government devolution of responsibility to First Nations, Chief in Councils (CC) became the authority with respect to homes built in their jurisdiction. Under this delegation of responsibilities in First Nations' communities, the CC became the AHJ with respect to building homes. The CC acts as the AHJ by passing band by-laws to control certain activities within the community, including the construction and renovation of any building within the jurisdiction. The by-laws should include the adoption of either the national and provincial building code as a minimum standard. The authority further allows for the administration of by-laws such as the requirement for building permits, a building-permit system, inspection processes, the issuance of occupancy permits and other similar duties.

Only a minority of communities have exercised their AHJ and passed the appropriate by-laws. Some of these communities include: Tsawwassen First Nation, Kamloops Indian Band, and West Bank First Nation. A few others are proposing the implementation of such by-laws. However, in the majority of communities, the CC have not properly exercised their AHJ by passing by-laws to ensure homes are constructed according to a building code.

Without by-laws, there is no process to approve plans or the site where the home is to be built. Homes may not be inspected to make sure they are constructed to a building code. Inspections are not based on code compliance, but rather on housing policy. Inspectors may not be qualified or have the power to stop construction if the home is not being built to code, or to force the contractor to fix the problem. Without by-laws, the home may be unsafely occupied without a final inspection, or the issuance of an occupancy permit or letter to state that it is safe to move in.

Questions

1. What activities are required to inform CC about their AHJ?
2. What role can the federal government play?
3. What role can the provincial government play?

4. To what extent should funding for housing (government or financial institutions) be linked to those communities that have implemented an AHJ framework?
5. What role can FNNBOA play?



3. Overview of Building and Fire Codes in Canada

The National Model Construction Codes comprise the 2010 National Building Code of Canada, National Fire Code of Canada and National Plumbing Code of Canada. They also include the 2011 National Energy Code of Canada for Buildings and the Model National Energy Code of Canada for Houses (last published in 1997) as well as the National Farm Building Code (last published in 1995). As a model code, it has no legal status until it is adopted by a jurisdiction that regulates construction. Some jurisdictions create their own code based on the National Building Code; others have adopted the National Building Code, often with supplementary laws or regulations to the code's requirements. Appendix A provides a primer on building and fire codes.

The objective of the building code is to set a minimum standard for the design and construction of all new buildings for additions, alternations and change of use of existing buildings. The fire code provides minimum fire-safety requirements for buildings, structures and areas where hazardous materials are used, and addresses fire protection and fire prevention in the ongoing operation of building and facilities. Recent changes to the national fire code include the installation of smoke alarms in new homes (wired into the electrical system) and battery-operated smoke alarms to be installed in existing homes.

Municipalities in Canada are given responsibility (i.e. authority of having jurisdiction) for the enforcement of building and fire codes. They appoint a chief building official and inspectors to issue permits and perform inspections (e.g. residential and commercial building inspections). Municipalities may charge fees to defray the cost of code enforcement, plan and document

submissions, classes of permits, inspection notification stages and various other associated requirements.

In addition to building inspectors, there are also inspectors charged with the responsibility of inspecting other activities, such as the installation of electricity (e.g. Hydro One in Ontario)¹², sewage systems and wood/energy heating sources (e.g. inspectors certified by Wood Energy Technology Transfer Inc.).

In unorganized territories of a province where there is no municipal organization (i.e. no local government), building permits are not issued. However, citizens wanting to build a home in these areas are subject to provincial zoning orders or zoning by-laws, and are issued letters of conformity, or zoning conformity permits. The onus is on the individual building owner in an unorganized area to contact the provincial government responsible for building codes to ensure they comply. For the enforcement of fire codes, another ministry department will be responsible for some regulations (e.g. issuance of burning permits).

4. Building Codes in First Nations Communities

As stated earlier, few communities have exercised their AHJ by implementing by-laws and adopting building codes¹³. While the focus has been on those homes funded by the federal government, in some cases other homes get built by community members, or the CC uses other financial resources to build homes. These resources come from other areas, such as band-operated casinos, or treaty land entitlement, where funds are be used to construct or repair homes. Few of these homes are built to code.

In addition, home renovations may not meet building (or fire) code standards. Where the CC has paid out the mortgage for a home, they take full ownership. In these cases, homes may be renovated (e.g. load-bearing walls removed to make a room larger) without plans being reviewed or inspected. Finally, some homes may have heat sources (e.g. a woodstove) not installed according to building codes, or inspected by a certified inspector (WETT). Off reserve, many municipalities and insurance companies require WETT-certified inspectors to inspect any wood heat source.

¹² Utility providers such as electricity and gas provide inspections before the provision of services. The inspection itself ends at the meter, no inspections are made of the electrical wiring or installation of heating/plumbing installations. Private Sewage Disposal Systems are inspected by Health Canada no inspections are made of the plumbing installations

¹³ Recently, AANDC published the Protocol for AANDC-Funded Infrastructure. Its purpose is to provide a listing of legislation, regulations, policies, standards, codes, protocols, guidelines, and procedures that AANDC requires First Nations to adhere to in the development and management of infrastructure and housing portfolios. The information provided in the protocol is not new. The protocol was written to provide a clearer understanding of the CC's obligations under comprehensive funding agreements. The protocol applies only to AANDC-funded infrastructure projects.



In an earlier project conducted by FNNNOBA, the following issues were identified as reasons why CCs are not building to code. Responses were categorized into three groups:

1. Capacity
2. Construction challenges
3. CMHC and AANDC requirements.

Capacity

- Some CCs are aware they are the authority having jurisdiction when it comes to building homes.
- Chief and Council, and in particular, the Councillor responsible for housing, are not aware of the requirements for how homes should be built.
- Project managers or those responsible for building homes are unaware of building-code requirements.
- Project managers are not properly trained or certified to manage the construction of homes or similar projects. They may be unaware of when contractors are using substandard construction products or products unsuitable for homes in a specific region (e.g. durability of the product). Project managers are also unaware of the cost overruns for construction and may be unaware of how to keep the projects within the estimated costs.
- The Chief and Council, including the project manager, have difficulties understanding the construction process, including issues such as overruns, increases in material costs, AANDC current material estimating and project complexities.
- Contractors or journeypeople working on homes are not trained as builders. Consequently, homes are not built to code; in other cases, substantial monies are spent on overbuilding a house (e.g. thicker foundation walls resulting in more costs for concrete).
- Family members who are not trained to build homes. Some First Nations communities provide loans to community members to build homes. In these cases, family members build their homes. Consequently, homes are not built in accordance with the code. In other cases, the money is spent and the home is not completely built. The homeowner is responsible for paying a loan/mortgage for a house that is not built.
- Contractors and builders are not held accountable. There are no home-warranty programs in First Nations communities.

- There is a need to coordinate the training and skills development for those working in the area of home construction within their communities. There is often a disconnect between those who receive training and the CC; no homes get built, or homes are built but no training is available.
- In many communities, individual home occupants are permitted to perform work on their own housing unit regardless of their experience. In these cases, Chief and Council pay the occupant to perform this work, but many are not qualified to perform the work in accordance with any codes or standards. Much of the work is substandard and unsafe.
- High attrition rate for those working for Chief and Council on building homes. The high turnover rate is resulting in unqualified individuals.
- Many communities do not have the capacity or expertise to build homes. There is a need for a third party to provide advice to these communities, especially where a provincial technical-service organization does not exist.

Construction Challenges

- Because of the budgetary process for building homes, and the demand to complete the construction (before March 31), this does not allow the communities to hire qualified contractors and sub-trades.
- No construction standards for the community (e.g. no by-laws, resolutions).
- Like all building trades, only qualified tradespeople should work on construction. Too many First Nations use people living in the community who, while they can build, are not keep abreast of industry changes, and may not comply with building code and other standards.
- There is a need to develop a checklist of recommended building materials conducive to the region, climate etc., that should be shared with communities before homes are built. A home inspector should check and approve the list beforehand.
- First Nations need to provide better building security to ensure construction supplies are not stolen. Quite often materials are taken, resulting in homes being built with less material than required.
- Contractors need to provide performance bonds that will only be released 30 days after acceptance by the housing inspector. If a bond is not possible, a letter of credit should be used.
- The need for First Nations to hire “certified” inspectors rather than “qualified” inspectors.

CMHC and AANDC Requirements

- CMHC and AANDC place the onus on Chief and Council to ensure homes are built to code. While this is correct, because the Chief and Council are the authority having jurisdiction, CMHC and AANDC could become more demanding, for instance, by processing payments to the Council based on compliance with the building code and not on the progress of the construction project. CMHC and AANDC may want to follow the same requirements that financial institutions must follow in releasing funds to a homeowner based on the progress of the construction project.
- In some regions, AANDC releases funds without an inspector verifying the work has been completed.

- AANDC needs to develop a housing program and not have it as part of minor capital. If a program was developed, then robust criteria to ensure houses are built to standard could become policy.
- The AANDC program should enhance programs where First Nations are charging rent. Where communities pay rent, this will allow access to other funding.
- Progress payments should only be made once verified and approved by a certified inspector.
- Home construction is an excellent start for tradespeople training, but First Nations need to ensure their skills development funding goes towards supporting these endeavours.

Questions

1. What activities are required to convince CCs of their responsibilities to adopt by-laws for building-code standards?
2. To what extent should funding for the construction (new and renovation) be conditional on CC having a building-code framework in place?
3. What role can FNNBOA play in terms of advisory or capacity development?
4. Is there a need for a national organization, like FNNBOA, to provide a non-political leadership role in the compliance framework and technical advice to CC?



5. Building Inspections in First Nations

Currently, the comprehensive agreement between the federal government and First Nations states, “. . . relative to housing capital projects, ensure that all housing construction projects are inspected by qualified inspectors for compliance with code requirements at, as a minimum, the following stages: site, foundation, framing and completion; and relative to federally funded capital projects, excluding housing, follow the tendering policy of the department, where the Council does not have a tendering policy in place that meets DIAND standards.”

Unfortunately, few communities adhere to these four site inspections. For example, the Ontario Building Code requires several stages for inspection (see appendix A). There are several reasons for this lack of inspections, including the availability and cost of inspections, especially in

remote communities, where the inspector will need to travel four times to the community, or where no inspectors are called to conduct an inspection.

In addition, building inspections are not completed in accordance with national building code standards, but rather to housing policies. In 2003, the Auditor General of Canada raised this point about code compliance. Recently, Deloitte's audit of Attawapiskat noted that CMHC home inspections are not an assessment of building compliance or quality of construction (page 11). Deloitte further noted that:

“Upon substantial completion of the housing unit, CMHC requires declaration from an authorized representative of the First Nations, the jurisdiction with authority, confirming that the unit constructed meets or exceeds the requirements of the *National Building Code of Canada* or an accepted equivalent set of standards. CMHC does not require evidence in the form of a documented certification to demonstrate that the declaration was supported by an independent and suitably qualified professional to certify that the First Nation has completed the construction according to an accepted building code – a practice that is common in the construction industry. Without evidence of certification from an independent and suitably qualified professional, there is limited assurance provided to CMHC that housing units constructed are being built to National Building Code of Canada standards or an accepted equivalent set of standards, and as a result, there is increased potential that the completed units will require enhanced maintenance or report.” (page 11)

A similar declaration is required by AANDC.

With respect to renovations conducted in First Nations, very few inspections are completed to ensure that work meets building or fire code requirements.

Questions

1. What type of inspection reports are required by CMHC and AANDC? Are they the same? Are there any inconsistencies?
2. What are some of the challenges inspectors face conducting inspections in the community?
3. Are there “pressures” for inspectors to sign off on information that does not meet code requirements?
4. Can FNNBOA become an independent organization responsible for conducting these inspections?
5. Are there enough inspectors or building officers to conduct inspections?



6. Qualification of Inspectors

6.1 Qualified Versus Certified Inspectors

Currently, AANDC and CMHC have in their legal agreements that homes built by CC must be inspected by a qualified inspector, without providing a definition of qualified inspector. The federal government also does not provide any definition or requirements for a qualified inspector. This is determined by the CC.

However, FNNBOA has taken the lead to improve knowledge and competencies among First Nations inspectors and establish a “certified” inspector. First, the group developed a national occupancy standard for a First Nations inspector. This standard was based on the skill and knowledge of both a private home inspector and a municipal building official. The group established a code of ethics for the inspectors. FNNBOA also established a certification council that would review applications from First Nations inspectors to determine whether they meet the required competencies, skills and knowledge. The Council is independent from the organization. Currently, approximately 30 inspectors have been certified. The challenge has been to get buy-in from the CC and inspectors. The CC have not accepted the use of a certified inspector because the federal agreements only require a “qualified” inspector. Many inspectors have not made an application to become certified, as there is no requirement for them to do so. Notwithstanding professional development aspects and personal growth, few inspectors are interested in this process because it will not lead to further compensation.

Recently, Deloitte has made reference to a qualified professional. It is assumed that a qualified professional has met the qualifications of a professional body in line with their charter. A qualified professional has also received a university degree or equivalent, or has been recognized by a trade organization.

6.2 NISI Inspectors

CMHC established a program called the Native Inspection Services Initiative (NISI). This initiative provides for the contracting out of CMHC inspections relating to on-reserve programs. To become a NISI inspector, individuals provide documents showing that they meet one of the

requirements for minimum technical qualifications (MTQs). These MTQs are based on education and experience in the construction trade. NISI inspectors are only hired to perform inspections on CMHC-funded homes. While this program resulted in the building of capacity among First Nations working as inspectors, there are several challenges with the structure of the program.

1. Inconsistent recruitment process
2. Inconsistent training opportunities
3. Qualifications are not based on national occupational standards.
4. Inspections are not based on code compliance, but in accordance with the housing programs as established by CMHC.

Questions

1. To what extent should national standards be established for First Nations inspectors?
2. Should qualified inspectors be replaced with a certified or qualified professional?
3. What role does the NISI program have, given the recent concerns raised by Deloitte?
4. What roles can FNNBOA or the National Certification Council play?

7. Insurance Requirements for Inspectors

Currently, inspectors working for CC may receive coverage for errors and omissions insurance as part of their full-time employment. Individuals working as NISI inspectors are covered for errors and omissions as part of that contract. A few independent inspectors and contractors may have errors and omission insurance.

However, CMHC may reconsider providing errors and omission insurance for inspections completed under the NISI program. Furthermore, independent inspectors may be required to purchase errors and omission insurance. For many inspectors, there is uncertainty about whether they will be able to purchase errors and omission insurance and how much it will cost.

Questions

1. What will be the impact on inspectors if they are required to purchase errors and omission insurance?
2. To what extent will inspectors have errors and omissions insurance coverage from the CC?
3. Can FN inspectors purchase errors and omissions insurance?

8. Risk Management, Code Compliance and Construction Practices

No construction project is risk free. Risk can be managed, minimized, shared, transferred or accepted. It cannot be ignored. Construction projects are exposed to more risk and uncertainty than perhaps any other industry sector. It involves numerous stakeholders, long production duration, and significant interaction between internal (e.g. changes in CC) and external environment (weather conditions, financial and economical issues). These risks lead to costs and

time overruns in construction projects. Therefore, the potential risks that can influence the results should be considered.

The identification of risk factors is important in order to understand any possible issue or event that may cause loss and harm to the construction project. In First Nations communities, there are many potential risks affecting construction. Homes or other buildings not constructed to the national/provincial building and fire codes are major risks.

To reduce these risks, good construction practices are necessary, such as passing of by-laws to adopt building and fire codes. These also reduce fire loss (deaths, injuries, damage to buildings) and have a positive impact on insurance premiums. Other risk mitigation activities include:

- The adoption of land use and zone laws
- Implementation of transparent procurement policies for the construction of homes
- The use of certified inspectors
- Conducting inspections in accordance with building codes
- Use of complete designs that have been stamped by a qualified engineer or architect.
- Use of qualified/certified project managers/management
- Ensuring that contractors are properly trained and have various certifications. Contractors should provide proof of professional skills.
- If subcontractors are used ensure they hold the required certifications. The subcontractors should provide proof of professional skills.
- If contractors are from outside the community, ensure they hold all the required certifications and insurance. Also check with several references. Be prepared to visit buildings they have completed. Talk with the home or building owners.
- Inspections should be conducted at the stages stated in the provincial building code.
- Through by-laws, give the inspector the right to issue stop-work orders.
- Conduct competent and adequate site supervision.
- Adhere to technical codification of design and construction practices.
- Use quality-management systems.
- Provide education and training.

Risk management is becoming an important component in the construction of buildings in First Nations. These notes address some of the major risks that housing departments need to take into consideration to ensure that risks are reduced and positive opportunities are explored. Risk management in First Nations is also an opportunity to address considerable cost overruns, and reduce any potential conflicts with contractors.

Questions

1. Are risk-management practices incorporated into the construction process?
2. To what extent should good practices and risk management be incorporated into the construction process?

3. What role can FNNBOA play in the development of a risk-management approach to construction practices?

9. Attachments

Deloitte (2013) *Audit of the AANDC and Attawapiskat First Nations Management Control Framework*.

FNNBOA (2011) *An Exploratory Study on the Life Cycle of First Nations Homes*

Appendix A – Primer on Building Code and Fire Code

The National Building Code of Canada addresses the design and construction of new buildings and the substantial renovation of existing buildings.

Under the code, the objective is fire and structural protection of buildings. This includes:

OP Fire and Structural Protection of Buildings

Limit the probability that, as a result of the design, construction or demolition of the building, the building or adjacent buildings will be exposed to an unacceptable risk of damage due to fire or structural insufficiency, or the building or part thereof will be exposed to an unacceptable risk of loss of use, also due to structural insufficiency.

OP1 Fire Protection of the Building

Limit the probability that, as a result of its design or construction, the building will be exposed to an unacceptable risk of damage due to fire.

OP2 Structural Sufficiency of the Building

Limit the probability that, as a result of its design or construction, the building or part thereof will be exposed to an unacceptable risk of damage or loss of use due to structural failure or lack of structural serviceability.

OP3 Protection of Adjacent Buildings from Fire

Limit the probability that, as a result of the design or construction of the building, adjacent buildings will be exposed to an unacceptable risk of damage due to fire.

OP4 Protection of Adjacent Buildings from Structural Damage

Limit the probability that, as a result of the design, construction or demolition of the building, adjacent buildings will be exposed to an unacceptable risk of structural damage.

National Fire Code of Canada (NFC) provides minimum fire-safety requirements for buildings, structures and areas where hazardous materials are used, and addresses fire protection and fire prevention in the ongoing operation of buildings and facilities.

The NFC objective as it relates to fire protection of building and facilities include the following:

OP Fire Protection of Buildings and Facilities

- e. substantial completion of insulation, vapour barriers and air barriers,
- f. substantial completion of all required fire separations and closures and all fire protection systems including standpipe, sprinkler, fire alarm and emergency lighting systems,
- g. substantial completion of fire access routes,
- h. readiness for inspection and testing of,
 - i. building sewers and building drains,
 - ii. water service pipes,
 - iii. fire service mains,
 - iv. drainage systems and venting systems,
 - v. the water distribution system, and
 - vi. plumbing fixtures and plumbing appliances,
- i. readiness for inspection of suction and gravity outlets, covers and suction piping serving outlets of an outdoor pool described in Clause 1.3.1.1.(1)(j) of Division A, a public pool or a public spa,
- j. substantial completion of the circulation / recirculation system of an outdoor pool described in Clause 1.3.1.1.(1)(j) of Division A, a public pool or public spa and substantial completion of the pool before it is first filled with water,
- k. readiness to construct the sewage system,
- l. substantial completion of the installation of the sewage system before the commencement of backfilling,
- m. substantial completion of installation of plumbing not located in a structure, before the commencement of backfilling, and
- n. completion of construction and installation of components required to permit the issue of an occupancy permit under Sentence 1.3.3.1.(2) or to permit occupancy under Sentence 1.3.3.2.(1), if the building or part of the building to be occupied is not fully completed.

4 Management action plan

| Recommendations | Management response / actions | Responsible manager (title) | Planned implementation date |
|--|---|--|-----------------------------|
| <p>1. The Ministerial Loan Guarantee process should be reviewed, in consultation with CMHC, giving consideration to the following:</p> <ul style="list-style-type: none"> • Developing stricter enforcement practices with respect to eligibility requirements and taking remedial action with regard to non-compliance; • Implementing practices to certify completion of housing units by a suitably qualified professional according to National Building Code of Canada standards or an accepted equivalent set of standards; • Conducting a risk-based periodic review of First Nation inspection records; and, • Developing formal practices (e.g. Memorandum of Understanding between AANDC and CMHC) to require that the results of CMHC Physical Condition Reviews and client visit reports be shared with AANDC as a mandatory requirement of the eligibility process. | <p>We concur with this recommendation.</p> <p>Lenders providing loans backed by Ministerial Loan Guarantees (MLGs), including CMHC, must assure due diligence with loan management, including prudent lending practices, arrears, default and reporting to AANDC. AANDC will work with lenders to identify opportunities for improving due diligence processes.</p> <p>AANDC is exploring mechanisms for improving National Building Code compliance.</p> | <p>Senior Assistant Deputy Minister, Regional Operations</p> | <p>Q3, 2013-14</p> |
| <p>2. The Capital Facilities and Maintenance (CFM) Program terms and conditions should be reviewed, giving consideration to the following:</p> <ul style="list-style-type: none"> • Including eligibility requirements which require demonstrated financial management capability with respect to the First Nation's housing program (e.g. Replacement Reserve Account, collection practices, reliable housing reports); • Adding the requirement that a separate Housing Authority be established as a CFM eligibility requirement; • Discontinuing the practice of allowing minor core capital to be used for the purposes of debt repayment, and, • Clarifying housing report definitions and developing housing performance indicators which can be used to assess maintenance needs and establish a baseline on which to measure ongoing performance. | <p>We concur with this recommendation.</p> <p>AANDC will review the CFM Program as it relates to housing, and consider the issues identified by this audit when next renewing the Terms and Conditions for the program.</p> | <p>Senior Assistant Deputy Minister, Regional Operations</p> | <p>Q3, 2013-14</p> |

Appendix C –Overview of Technical Specifications

Overview of Technical Specifications

Few First Nations communities have established technical specifications. One community, Prince Albert, has Grand Council Engineering and Technical Services that have established a binder with all Housing Specifications. The purpose of these standards is to convey information regarding the intent of the design, and depictions of work to be accomplished. The specifications provide the written requirements for materials, equipment, system, standards and workmanship for the work, and performance of the related services.

The information in this binder includes samples of contracts for hiring a contractor to do framing, insulating, and drywalling for homes. The binder also provides specifications for building, mechanical and electrical. Finally, it contains samples of information on building and plumbing plans.

These specifications adhere to the national building code and other housing standards.

These play an important role in the community, and include:

1. Providing consistency for all communities. Consequently, costs for the projects can be controlled.
2. Reducing fragmentation (e.g., low productivity, cost and time overruns, disputes and litigations).
3. Providing for standards of construction information for the communities.
4. Incorporating national building code standards and other building standards, and higher standards than required by building code.
5. Allowing contractors to understand community requirements.
6. Providing leadership and expertise in developing a community-wide standard. This includes keeping track of the performance of contractors, and determining whether they qualify to do work in any of the communities.
7. Providing an overview of products that may be used. This helps to increase the life expectancy of a house before renovations are required.
8. Providing updates to ensure standards and specifications (by the manufacturers) are meeting the national building code.

Given the complexities of construction projects and the need to ensure specifications are up to date, the engineering and technical services branches are

well placed to deliver and manage construction projects. These services can be further extended to provide other activities, such as inspections and supervision to ensure quality assurance. If these activities are not performed, communities could get caught up in time-consuming and costly disputes.

Six Nations have also established some form of technical qualifications through their housing loan program. Individual members who receive a loan for housing require the inspection to be conducted in accordance with the provincial building code; the construction must meet the required housing regulations.

OFNTSC has established a model housing policy/housing administration program, and guidelines that mention the need to ensure homes are built to provincial building codes and community standards. However, many communities do not have such standards.