

Community Benefits and Tower Renewal

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Executive Summary

The Greater Golden Horseshoe (GGH) contains close to 2000 aging high-rise apartment towers, many of which house low-income populations. Significant physical rehabilitation coupled with social and economic revitalization is needed to transform these buildings into healthy and sustainable communities.

The intent of the Tower Renewal program is to use the proceeds of infill development on tower sites, where land is available and such development is feasible, to subsidize energy retrofits of existing towers, as well as to expand opportunities for economic diversification and social infrastructure.

This report looks at how Community Benefits Agreements (CBAs), or community benefits clauses, could be used for a proposed pilot project, and for the Tower Renewal program more generally. However, the findings and recommendations in this report also have application to private development proposals, and point the way to potential policy changes at the municipal and provincial government level.

What are community benefits?

“Community benefits” means additional physical, social and economic benefits for the local community that are leveraged by dollars already being spent on major infrastructure and land development projects.

A CBA is a legally binding and enforceable contract that sets forth specific community benefits for an infrastructure or development project, which benefits have been defined through an inclusive community engagement process.

Community benefits can be delivered by way of private CBAs (legal agreements signed between developers and community groups or coalitions); through public procurement (community benefits requirements are included in public Requests for Proposals (RFPs)); or through hybrid CBAs

(multi-party agreements with developers, governments and community signatories).

Benefits typically include jobs, apprenticeships and training targeted to low-income or historically disadvantaged communities; opportunities for local suppliers and/or social enterprises; affordable housing; and community amenities, ranging from grocery stores and daycares to park space and public art.

Where have they been used?

In the United States, private CBAs have become increasingly common in major infrastructure and development projects:

- Agreements are driven primarily by coalitions of community groups, who mount sophisticated and well-researched campaigns to ensure a wide range of community needs are met through the project. An analysis of eight CBAs shows that the incremental costs of CBAs range from .5 to 2.5 percent of overall project cost.
- Developers enter into CBAs in exchange for the support of the local community, often enshrined in a formal cooperation agreement. Such support allows the project to proceed more quickly and easily through regulatory approvals, allows community concerns to be addressed up front and forestalls litigation – all of which saves the developer money in the long run, while enhancing its brand as a responsible corporate citizen.

In Scotland, the movement toward community benefits has been driven by the national government and has been achieved through public procurement:

- Most public authorities now include clauses in their RFPs which require contractors to include a community benefits program as part of their bid. Community benefits in Scotland emphasize targeted recruitment and training, as well as social procurement. Unlike the U.S., there is very little community consultation, and other amenities are rarely included.
- Community benefits have become so well accepted in Scotland that “the question is no longer whether to have community benefits clauses, but how.”

The new *Procurement Reform (Scotland) Act 2014* will require community benefits be considered as part of the procurement for all public contracts of £4,000,000 or more (about C\$7.6 million) when it comes into force this year.

Canada has experimented with both the private and public models:

- On the public side, Toronto Community Housing Corporation (TCHC), the city-owned social housing corporation, has engaged in a number of revitalization projects over the last decade through procurement. At Regent Park, for example, TCHC partnered with a private developer, Daniels Corporation, to transform a low-income social housing development into a mixed-use community that combined affordable housing with market condominiums, commercial and retail spaces, community facilities, a cultural centre and parks. Extensive community consultation, construction jobs and training, and employment opportunities with the retail tenants were all included in the project.
- A hybrid CBA was created for the Vancouver Olympic Village site in 2007. In 2005, Building Inner City Businesses (BOB), a new nonprofit, was formed, with the mandate of “revitalization of the inner city without displacement”. BOB led a coalition of community groups and acted as the primary negotiator on a CBA that was eventually signed with the City of Vancouver and Millenium Properties Ltd., the developer, to provide jobs for inner-city residents, procurement targeted to inner-city businesses and funding to support these initiatives.

Regardless of their form, most of these initiatives have proven successful in moving low-income or traditionally disadvantaged populations into the workforce, opening up new apprenticeship opportunities and creating economic benefit for local businesses.

Should Tower Renewal include a community benefits program?

While the scope of any one Tower Renewal project is unlikely to be large enough to warrant a community benefits component on its own, the Tower Renewal program overall can and should include community benefits. Its form could depend on a number of factors, including the identity of the parties (public or private) and the capacity of the parties to undertake engagement, monitoring, implementation and reporting functions.

Specifically, this report recommends:

1. Use of a multi-party (hybrid) model that includes, as one party, an independent agency to help negotiate, implement, monitor and report on community benefits.
2. An extensive engagement process, co-created with residents of the existing tower that focuses both on energy reduction and community benefits.
3. Benefits created with and by the local community that are measurable and clearly specified. Commitments should apply to subcontractors and other parties, as applicable, and provisions should assign responsibilities and mechanisms for trouble-shooting, enforcement, monitoring and evaluation.
4. Support for the creation of a construction workforce hub in Toronto – a coordinated approach for all projects using CBAs that makes it easier for jobseekers to get the training and supports they need, and easier for employers to meet their commitments.
5. Setting a realistic target for local procurement, unbundling contracts to enable local suppliers to bid, and running technical assistance workshops as part of the early community engagement strategy.
6. Ensuring sufficient attention is paid at an early stage to resourcing all of the functions needed to ensure successful implementation of community benefits, from early engagement to post-project evaluation.

The report makes several general recommendations to move the field of community benefits forward, including areas for further research; active participation in policy proceedings at the municipal and provincial level; and creation of a diverse stakeholder group to provide a forum for discussion and share good practices.

Finally, the report recommends examining the feasibility of an organization or network that could act as a resource to governments, community groups and the private sector about community benefits. Such an organization could become a locus for the many efforts underway by a diverse range of stakeholders right now, and could offer practical advice on legal and procurement issues; provide education and communications about community benefits; undertake policy and research work; and facilitate knowledge exchange.

Introduction

The Greater Golden Horseshoe (GGH) contains close to 2000 aging high-rise apartment towers, many of which are in need of rehabilitation and revitalization.

They hold nearly one million people, and are an essential part of the supply of affordable housing in the region. Fully 77 percent of the tower neighbourhoods in the region are considered to have high or very high social needs. Significant reinvestment is needed to transform these buildings into healthy and sustainable communities.¹

The intent of the Tower Renewal program is to use the proceeds of infill development on these tower sites, where land is available and such development is feasible, to subsidize energy retrofits of existing towers, as well as to expand opportunities for economic diversification and social infrastructure.

The Tower Renewal partnership – which includes Evergreen, the Centre for Urban Growth and Renewal, DKGI Inc. and the Maytree Foundation is currently undertaking a pilot Tower Renewal Showcase (the “Pilot”) to:

- raise awareness and support for Tower Renewal projects.
- create a replicable business plan and prototype model.
- increase the health, socio-economic outcomes and ecological sustainability of the Pilot community and its residents.

As part of this project, Evergreen commissioned Dina Graser to research and make recommendations as to how a Community Benefits Agreement (CBA) and/or other associated initiatives for low-income communities could be integrated with the prototype business model for the Tower Renewal program generally, and specifically with a redevelopment agreement for a pilot site.

This report has two sections:

Part 1 (sections 1-5) defines community benefits and provides a brief overview of how they have been used by the public and private sectors in the U.S, Scotland and Canada. It highlights best practices and lessons learned, and identifies business and legal issues that commonly arise with CBAs.

Part 2 (section 6) draws on this background to identify key challenges to implementing community benefits for the Pilot, and for tower renewal projects overall. It makes recommendations to address these issues, and in some instances recommendations to encourage the use of community benefits in Ontario generally.

What are community benefits?

An overview

The term “community benefits” has been used in a number of different contexts in Canada.

It has been used by cities, in connection with payments made by developers in exchange for greater density through municipal rezoning applications;² by corporations, in particular mining and energy companies, with respect to their contributions to or agreements with local or aboriginal communities;³ and by the health care industry, in relation to initiatives that improve community health outcomes.⁴

These uses of the term are quite different from what is examined here. In this paper, the term “community benefits” means additional physical, social and economic benefits for the local community that are leveraged by dollars already being spent on major infrastructure and land development projects. I define a Community Benefits Agreement, or CBA, as a legally binding and enforceable contract that sets forth specific community benefits for an infrastructure or development project, which benefits have been defined through an inclusive community engagement process.⁵

The kinds of benefits included in a CBA vary depending on the needs of the local community and the type of project under development. However, typical benefits include jobs and training targeted to local or high-needs communities, opportunities for local suppliers and/or social enterprises, and community amenities, ranging from grocery stores and daycares to park space and public art. Where the development includes a residential housing component, the provision of affordable housing units or subsidies for affordable home ownership can also be part of the agreement. Overall, most CBAs lead to more and/or improved housing stock, greater economic growth and connectivity (through design and infrastructure) and a more empowered community.

Parties to a CBA differ, depending on the business model:

- Private CBAs are contracts signed between a developer and a community group or coalition, and tend to be driven by communities.
- Public CBAs are contracts signed between government or a government agency and a community group or coalition (where the government is acting as the developer or infrastructure builder). Alternatively, community benefits clauses can be included in an agreement between a public agency and a developer or contractor, without a community signatory.
- Hybrid CBAs are multi-party agreements, where a developer, government or government agency, and (usually) one or more community groups are parties.

The pros and cons of each model are discussed in more detail in section 5.⁶

CBAs are project-specific agreements, and the next section of the paper delves into several examples in the US, Scotland and Canada. However, there is also growing recognition that enshrining community benefits into legislation or policy documents can be a powerful way to ensure that the benefits of major development or infrastructure projects are realized in a consistent and systemic fashion. Some of the goals associated with CBAs could be achieved through instruments like rezoning applications or municipal policy standards, for example.

Achieving community benefits through existing mechanisms raises different challenges from a legal and governance perspective, which are highlighted in this document and are fruitful areas for further research.

Community benefits in the U.S., Scotland and Canada

The U.S. experience

CBA's are not new, although until recently they have been a primarily American phenomenon. The U.S. nonprofit organization Partnership for Working Families lists 19 CBAs currently in effect in the United States.⁷

The "birth" of the CBA is commonly attributed to a major agreement associated with the development of the Los Angeles Sports and Entertainment District in 2001 (called the Staples CBA, after a nearby arena).⁸ The Staples development was a \$2.5 billion, 27-acre mixed-use project in an area known as the Figueroa Corridor. Like many CBAs, the benefits to the community were provided in connection with – and as a result of – a cooperation agreement, in which the community agrees to support the project and relinquish any legal claims regarding the project.⁹ This support was significant to the developer, since major concessions were needed from the city, which could have been difficult to achieve in the face of community opposition. The community coalition that entered into the agreement with the developer, the Figueroa Corridor Coalition for Economic Justice, was comprised of 30 different community groups and spent nine months negotiating the deal.¹⁰

The Staples CBA provided a range of benefits, including publicly accessible park and open space; recreational facilities; job opportunities for local residents; affordable housing; and solutions for parking, traffic, and public safety. The developer funded a "parks and open space needs assessment", following which it provided \$1 million for one or more new parks and recreation facilities.¹¹ It is also worth noting that the CBA was incorporated into the development agreement between the developer and the city's own redevelopment agency, which allowed it to be enforced not only by the community coalition but by the city itself.¹²

By 2008, many of the commitments agreed upon in the CBA had been carried out. The park was funded, 300 units of affordable housing were created, a revolving loan fund

Community benefits differ in each agreement, as they reflect local needs and aspirations

for local business had been successfully implemented and a jobs program was developed, 70 percent of which paid living wages.¹³ Compliance was assessed through annual reports and monitoring meetings were held quarterly between the coalition and the developer, with overall assessments at the five- and ten-year mark.¹⁴ Flexibility was shown by both parties; for example, one aspect of the agreement was renegotiated when it became difficult to implement.¹⁵

Since then, CBAs have become increasingly common in the U.S., particularly in California. Examples can also be found in New York, Connecticut, Minnesota, Colorado and Pennsylvania.¹⁶

Community benefits differ in each agreement, as they reflect local needs and aspirations. Certain themes recur: for example, almost every CBA includes some sort of guarantee of jobs for local, low income, and/or targeted communities, and many include training and apprenticeships. The appointment or creation of a body to undertake recruitment, training and referral functions in order to facilitate "first choice" or preferential hiring provisions is also common.¹⁷ Where residential development is a component of the project, affordable housing units are another typical feature of a CBA. After that, however, a wide variety of benefits can be included, ranging from local or social procurement opportunities, to parks, public art, health clinics and food markets, to support for social programming, to free or subsidized internet access (see

A transparent and inclusive community engagement process is critical to the success of a CBA

Table 1, page 10). Another feature of some CBAs is the inclusion of environmental mitigation or improvements, or the preclusion of certain kinds of development – for example, big box stores.¹⁸

The benefits to the community can be extensive, and can exceed those which would normally be available under land-use or social planning regimes. There are also benefits to the developer. First, the developer gains the support of the local community, which can include letters of support for the project provided to the municipality or other government agency, allowing the project to proceed more quickly and easily through approvals. Second, community support may allow community concerns to be addressed “up front”, forestalling money spent on expensive legal challenges and sometimes leading to community covenants not to take legal action or challenge the project publicly.¹⁹ Finally, participating in a CBA allows a developer to showcase its work and enhance its brand as a responsible corporate citizen that adds value to the local community.²⁰

In the context of a multi-year project, usually costing in the hundreds of millions of dollars, the cost of CBAs is not high – especially because it will often lead to avoided costs, as described above. Based on a sample of eight CBAs examined in depth, the incremental costs of providing community benefits ranges from approximately .5 to 2.5 percent of total project costs (see Appendix A for table). Another recent study notes that typical workforce development funding in CBAs generally constitutes between .03-1 percent of project costs.²¹

A transparent and inclusive community engagement process is critical to the success of a CBA, since this gives the ultimate agreement the credibility it needs with both the community at large and the municipality. Those CBAs which have failed have sometimes done so because they lacked such transparency. For example, a famously contentious CBA is associated with the Atlantic Yards project in Brooklyn, NY (now rebranded as Pacific Park). The \$4.9 billion project to build the Barclays Centre arena (home to the New Jersey Nets) and a number of office and residential towers was purportedly modelled after the Staples CBA, but faced enormous opposition and has been mired in controversy almost since its inception.²² While eight community groups were involved in negotiating the CBA, many were accused of having been hand-picked by the developer or having conflicts of interest (one accepted a \$5 million payment from the developer), and accusations of secrecy abounded.²³

Some of the development for the Atlantic Yards has taken place and some benefits have been delivered, but most of

the benefits promised appear to have either vanished or been delayed to an unknown point,²⁴ and a long-promised independent compliance monitor has never been hired. While financial difficulties experienced by the developer and a plethora of lawsuits have hampered the development overall, it also appears that the hard work of coalition-building and inclusive community engagement, which preceded the successful negotiation of the Staples CBA and others, was either absent or insufficient in this case.

Different issues arose in the negotiation of another New York CBA for the expansion of Columbia University into West Harlem. In that case, a development corporation comprised of local community leaders was created as the community negotiating body. However, the addition of local elected representatives to the board of the corporation soon after its formation led to accusations of conflicts of interest, as it became politicized and unclear as to whose interests were being championed: for example, the city approved Columbia University's rezoning plan at the same time that it approved a contradictory rezoning proposal by the local community board.²⁵

Notwithstanding these initial difficulties, the West Harlem Community Benefits Agreement was eventually signed in 2009, with a \$150 million package of benefits that included hiring of minority-, women-, and locally-owned businesses, targeted recruitment and hiring of local residents, grants to nonprofit organizations, funding for affordable housing, and a new public school, among other things.²⁶ In a recent article reviewing the project, the authors concluded “In spite of criticism, Columbia has essentially upheld its end of the Community Benefits Agreement thus far. But, because the project will continue for more than another decade, it would be premature to say that Columbia has completed its obligations to Manhattanville.”²⁷

Table 1
Common community benefit program components in the US²⁸

CATEGORY	COMPONENT	USED IN	NOTES
HOUSING	Affordable housing (units in market-rate projects or geared to low-income households), funding or financing of affordable housing.	Atlanta, Denver, Hollywood, Los Angeles (Staples, Lorenzo), New Haven, San Francisco, Washington DC, New York (West Harlem), San Diego	
JOBS & SUPPLIERS	Recruitment and referral system for targeted communities	Los Angeles (Staples), New York (Kingsbridge, West Harlem), San Diego	Via existing agencies or new nonprofits
	Fund for pre-apprenticeship and apprenticeship or job training	Hollywood, Los Angeles (Staples), New Haven, New York (Terminal Market, West Harlem), San Diego, San Francisco, Washington DC, Wilmington DE	In Los Angeles and San Francisco, developer funds went to seed and operate a nonprofit to coordinate training, job placements and community engagement management
	Jobs and/or apprenticeships for local residents on construction project	Atlanta, Denver, Los Angeles (Staples), New Haven, New York (Terminal Market, West Harlem), Pittsburgh, Philadelphia, San Diego, San Francisco, Wilmington DE, Vancouver, Oakland	
	Jobs for local residents on ongoing basis (post-construction)	Hollywood (Highland), Pittsburgh, Oakland	
	Living wage provisions	Denver, Hollywood, Los Angeles (Staples), Pittsburgh, San Diego, NY (West Harlem)	
	Local procurement/supplier provisions	New York (Terminal Market, West Harlem), Wilmington DE	The U.S has government programs pertaining to minority-owned, women-owned and locally-owned business enterprises (M/W/LBE) so benefits are often targeted accordingly
COMMUNITY ASSETS AND PUBLIC REALM	Parks, open space and streetscapes (creation/redevelopment/planning studies)	Hollywood, Los Angeles (Staples), New York (Terminal Market), Philadelphia, Vancouver, New Haven	
	Funding or space for arts or public art	Hollywood, New York (Kingsbridge, West Harlem), San Diego	
	Space for local retailers/businesses	Washington DC, LA (Lorenzo), NY (West Harlem)	
	Support for social enterprises	NYC (Kingsbridge)	
	Space and/or support for community space, e.g. community centre, child care centres, seniors' centre, community kitchen, community gardens, schools	Hollywood, Pittsburgh, Vancouver, Los Angeles (Marlton Square), NY (West Harlem), San Diego	The West Harlem agreement included significant and wide-ranging contributions to education from Columbia University.
	Health clinic/funding for medical care	New Haven, Los Angeles (Lorenzo)	
	Support for social programming (for youth, seniors, newcomers, etc.) or local non-profit agencies	NYC (Kingsbridge, West Harlem), New Haven	
	Food market	Hollywood, Pittsburgh, San Diego	
	Residential or other parking programs	Los Angeles (Staples, Lorenzo), Wilmington DE, New Haven	
OTHER	Interest-free or affordable loans to nonprofits	Los Angeles (Staples, Lorenzo), Hollywood/Grand Ave., New York (West Harlem)	Most are in form of a fund to acquire, develop or maintain affordable housing
	Free or subsidized Internet access and/or computer hardware for low-income residents, public libraries, parks, nonprofits and/or schools	Minneapolis, NYC (Kingsbridge)	Minneapolis, unusually, was a "digital inclusion CBA"
	Donations to the city (general)	Philadelphia, New Haven	In New Haven, the developer funded two new positions at the city as well as made "voluntary" contributions
	Donations to public transit system	Philadelphia	

In some cases, private or public CBAs have been superseded by policy or legislative instruments. For example, the City of Milwaukee took down an elevated highway in 2002 which freed up 64 acres of prime downtown land – owned by multiple parties, both public and private – for redevelopment. A community coalition was formed shortly thereafter with the goal of including a CBA in the redevelopment plan for at least the city-owned portions. That option was voted down by Milwaukee City Council; however, the Milwaukee County Board ultimately worked with the coalition to include community benefit provisions in what became the Park East Redevelopment Compact (PERC) for those lands in the area owned by the County.

Effectively, the County Board's policy stated that all RFPs for development of its lands would include requirements for hiring disadvantaged business enterprises, training and apprenticeship opportunities, local jobs, affordable housing, green space and green design.²⁹ Similarly, in Atlanta, a community coalition called Georgia STAND-UP successfully convinced the city to attach community benefits language to a city ordinance for the development of the Atlanta BeltLine, a \$2 billion, 20-year transit project with corresponding transit-oriented development.³⁰

Generally speaking, private CBAs provide benefits to underserved or disadvantaged communities which may not otherwise be available through the traditional land use process. CBAs are not, however, immune to criticism. For example, the strong role played by labour in coalition building and promoting CBAs has been seen as critical to the success of CBAs in many places, but as self-serving by some. One writer also warns "while CBAs may yield clear advantages for communities seeking to make commercial redevelopment decisions more responsive to local needs, CBAs may also result in deleterious consequences, such as underprotecting interests traditionally served by land use controls, or making more costly the provision of public or quasi-public goods."³¹

Moreover, in at least one state a backlash to CBAs is occurring. The City of Detroit had been considering an ordinance to require that developers seeking tax credits or purchasing City-owned land valued \$300,000 or more enter into CBAs with the local community. However, this was effectively quashed when the State of Michigan recently passed Bill 4052,³² which declared that local governments did not have the jurisdiction to regulate employment relationships between private employers and employees.³³

Specifically, the new law restricts the ability of cities to pass any ordinance, policy or resolution that would require private parties to include targeted hiring practices in CBAs, pay wages higher than the state minimum hourly wages or regulate work stoppages, strikes or employee organizing.³⁴ This development, which some have described as tied into

the political ideology of the "right to work" movement in the United States, is in stark contrast to Canada, where the trend is pointing toward more, not less, legislative inclusion of CBAs.

The Michigan legislation appears to be an exception to what is otherwise becoming a well-recognized mechanism in the U.S. for ensuring that dollars for development and infrastructure are leveraged to benefit a wide range of social goods and community needs.

Most CBAs have been signed over the past 10-15 years, and the terms of many of these agreements extend for up to 20 years. As such, many are still being implemented. In addition, some developments for which CBAs were signed either stalled indefinitely, went bankrupt or, due to the financial crisis of 2008, were delayed and are just getting underway.³⁵ Statistics to assess the success of various community benefits agreements in the U.S. are not readily available.

Tracking compliance is an ongoing issue with CBAs, and the public reporting of whether CBAs have delivered on their benefits is limited. An issue well worth more research is the collection of statistics on American CBAs, as well as an evaluation of whether CBAs had the overall economic impact they were intended to further.³⁶ As discussed in more detail below, assessment of the outcomes of community benefits in Scotland is considerably more advanced, and offers tangible evidence of positive impacts.

Scotland

In contrast to the U.S., where most CBAs are driven by the community and take the form of private legal agreements, the Scottish model has been driven by the national government and is almost entirely public. Pilot projects by several public bodies in 2006 emphasized targeted recruitment and training, as well as social procurement, and led to a report, published by the Scottish government in 2008, that outlined a methodology for including such clauses in public contracts.³⁷

Since then community benefits clauses have become standard practice in the public sector. Early political support from the Scottish National Party, a requirement that public organizations contribute to Scottish National Outcomes,³⁸ and the hosting of the 2014 Commonwealth Games in Glasgow were key to encouraging the uptake of community benefits clauses by public authorities.

More recently, the government passed the *Procurement Reform (Scotland) Act 2014*, which applies to the awarding of public contracts. It includes a requirement that community benefits be considered as part of the procurement for all projects of £4,000,000 or more (about \$7.6 million). The Act comes into force in spring 2016, but in any event is considered to be far behind the state of actual practice. Roddy Stewart, of the CEIS (Community Enterprise in Scotland, a social enterprise support agency), notes that community benefits have become so well accepted that “the question is no longer whether to have community benefits clauses, but how.”³⁹

Of note, however, is that community benefits clauses in Scotland have focused primarily on workforce training and secondarily on local supplier and social enterprise opportunities – not on other amenities such as are found in the North American examples to date. Moreover, community benefits clauses are created from the top down, with minimal community consultation. Although there are exceptions to this,⁴⁰ the emphasis on transparent and inclusive engagement that are hallmarks of the U.S. process are largely absent in Scotland.

The government-driven nature of community benefits in Scotland has, however, led to considerably more documentation of process, methodologies and impact. A recent report by the University of Glasgow provides a comprehensive analysis of the impact and value of community benefits clauses in contracts.⁴¹ Key findings of that report, which was based on a large-scale survey of public organizations and an indepth analysis of 24 contracts,⁴² are summarized in the box on page 13. The contracts in question ranged from £700,000-£842 million (about C\$1.4 million - \$1.7 billion), though two in particular dominated.⁴³

The private contractor community is recognizing that community benefits are fast becoming standard in the public sector and are adapting their practices accordingly

The University of Glasgow report identifies a number of best practices for public organizations, notes the need for further research to be undertaken on a long-term basis to measure the impact of community benefit clauses and stresses the importance of monitoring and evaluation that can provide data based on specified activity indicators.⁴⁴

While private developers in Scotland have not adopted community benefits clauses, the private contractor community is recognizing that community benefits are fast becoming standard in the public sector and are adapting their practices accordingly, in the interests of being well positioned to bid on further public contracts. As they become more experienced, private contractors are also becoming more creative in how they respond to tenders with respect to community benefits programs.⁴⁵ At the same time, many local authorities are beginning to implement community benefits clauses into smaller projects, some valued at as little as £50,000.⁴⁶ Experience allows them to determine the benefits that can be included without risking quality and unduly slowing the process, both key concerns in any project.

A Community Benefits Champions Network, started by the Scottish government around 1998, brought together procurement officers from public organizations and agencies to exchange best practices about community benefits. For the last five years it has been chaired by CEIS, which was tasked with making it a more dynamic body. Today, over 100 individuals and 70 organizations (including all 32 local authorities, as well as health, education, libraries and cultural agencies) are members.

The Network provides a forum for the discussion of issues and good practices and allows members to convene around new developments like legislation.⁴⁷

Contractors are not members, but they do attend as guests and often present to provide their perspectives as well.⁴⁸ CEIS is also promoting using community benefits clauses in service contracts as well as in construction, with an eye to greater sustainability of employment.

The contrast between the use of community benefits agreements in the United States and Scotland is stark. The vast majority of US agreements are driven by communities and involve private partners (and sometimes local authorities) who provide benefits in exchange for community support of the project, and in some cases for agreements that communities will refrain from litigation. In Scotland, community benefits are driven by the government and the public sector, with little to no direct community involvement, and are being steadily entrenched in legislation.

One aspect of community benefits, however, is common to both: the importance of a collaborative partnership. Whether it is the developer and community in the U.S, or the procuring agency and the contractor in Scotland, practitioners agree that the opportunity to sit down around a table on a regular basis to monitor agreements, problem-solve and discuss progress with a flexible and constructive attitude is critical to the successful implementation of community benefits.

FINDINGS

UNIVERSITY OF GLASGOW STUDY

- 62 public organizations used community benefits clauses between 2009-2014
- Of those, 59 percent had a designated "champion" or procurement officer responsible for community benefits
- Based on 24 contracts reviewed, just over 1000 individuals from priority groups were recruited as a result of the contracts, 38 percent who would not otherwise have been recruited
- Over 200 apprentices from targeted groups were recruited, 73 percent as a direct result of the contracts
- 650 individuals from priority groups accessed a work placement, 72 percent as a direct result of the contracts
- Over 6700 individuals from priority groups received training
- Targets around job opportunities, apprenticeships, work placements and training for priority groups were exceeded
- Employment sustainability for the priority groups recruited through community benefits clauses is 75 percent (many contracts are still ongoing)

Canada

While CBAs per se are relatively new in Canada, the ideas behind them are not. On the private side, similar principles lie behind the creation of Impact and Benefit Agreements (IBAs) signed between resource companies and indigenous communities.⁴⁹

On the public side, Toronto Community Housing Corporation (TCHC), the city-owned social housing corporation, has engaged in a number of revitalization projects which include community benefits clauses similar to the Scottish model. Earlier work at the City of Toronto, most notably the “Let’s Build” program, had begun to explore creative financing partnerships with private developers for social housing in the mid-1990s, and to build in limited requirements for local employment or other benefits like subsidized commercial spaces into smaller developments. When TCHC was formed in 2002, it built further on this work. TCHC staff also researched examples of community benefits in the U.S and Europe at that time.⁵⁰

Regent Park, an inner-city social housing development which had already been the subject of some study by the city and the province, became TCHC’s first major example of partnering with a private developer with robust community benefits provisions.⁵¹ The result transformed a low-income housing development into a mixed-use community that combined affordable housing with market condominiums, commercial and retail spaces, community facilities, a cultural centre and parks.

The Regent Park development was preceded by three rounds of consultation over seven months involving more than 2000 residents.⁵² Toronto’s Employment and Social Services division (TESS) developed an employment plan for the project and Daniels Corporation, the developer, worked to ensure its onsite contractors and offsite suppliers posted their job opportunities locally. An economic development plan and a commitment to support local employment opportunities in the leasing of the commercial spaces were also made part of the agreement at a later point, and the retail tenants were assessed in part by their willingness to provide both training and jobs to local residents.⁵³ While still not complete, Regent Park is, to date, a clear success. The community facilities are well-used, the bulk of residents are now in new housing and the market condominiums appear to be selling as well as other condo developments in the city.

That said, there are a number of lessons learned from the implementation of community benefits on the project. The engagement process attracted some criticism: some community members were highly engaged, but others felt alienated by the process;⁵⁴ some were unhappy with the

fact that an outside firm (rather than TCHC itself) was contracted to undertake the engagement. Employment goals and apprenticeship training programs were set up prior to the developer coming on board and without the initial involvement of the labour unions, leading to a mismatch of demand and supply on the job site. There was no source of income for apprentices while they were going through their training, which made it difficult for them to support themselves. Ensuring job readiness at the “front end” needed more emphasis, while mentoring of new apprentices and workers by those working with them onsite proved to be more effective than ongoing support from outside agencies. Transportation to job opportunities off-site also became an issue in some instances.⁵⁵

However, the TESS-run job centre on the site remains busy assisting local residents with employment needs. And, importantly, because Daniels made local hiring part of their lease agreement with retail tenants (requiring that 10 percent of their full-time employees be locally-hired), longer-term jobs were created with many residents now working at the bank, grocery store and other operations that opened in the community.

Following Regent Park, TCHC made a corporate decision to include community benefits and engagement processes in all of their projects. Major RFPs now include provisions for community benefits which require that bidders provide:

- workforce development opportunities (including 10 percent direct employment to TCHC residents), to be developed with TCHC and TESS.
- scholarships, mentorships, apprenticeships and training opportunities to link the needs of the local labour market with tenant skills development.
- local economic development programs, including small business development support.
- a community engagement strategy.

Bidders are evaluated, and the top three pass to the next stages, which include making a presentation to the community regarding their project vision, community engagement strategy and economic development programs. The community rates these presentations and their rankings are included as part of the evaluation that ultimately determines those with whom TCHC will open negotiations.⁵⁶

So, as in Scotland, this constitutes a public model driven by the agency, albeit with a larger and more powerful role for the tenant community.

A more traditional CBA was created for the Vancouver

Olympic Village site in 2007. Earlier agreements had paved the way for the coordination of social and economic benefits for the inner city in particular.⁵⁷ In 2005, Building Inner City Businesses (BOB), a new nonprofit, was formed, with the mandate of “revitalization of the inner city without displacement”.⁵⁸ In 2006, the City and Millenium Properties Ltd., the developer, signed a Development Agreement in which they agreed to negotiate a subsequent “benefits agreement”.

The detailed discussions to define the specific terms of the ensuing CBA then took a year to complete. BOB acted as the primary community representative and negotiator, acting on the advice of a coalition of community organizations and representatives. The city facilitated the negotiations, and the parties ultimately agreed to a CBA that would include 100 jobs for inner-city residents; \$750,000 to support inner-city hiring and procurement; \$15 million in inner-city procurement; and the connection of suppliers to BOB for a new inner-city business registry.⁵⁹

At the end of the day, the targets were surpassed: 120 people were successfully placed in construction jobs and \$42 million in goods, services and equipment was procured from inner-city businesses⁶⁰ - jobs and contracts which otherwise may have gone to large suppliers or residents outside the inner city. In addition to handling procurement, BOB was the coordinator of the jobs and apprenticeship programs, which gave preference to inner-city residents.

The Vancouver CBA is generally considered a success. An excellent post-evaluation report detailed the implementation process of the agreement. Many of the lessons learned are consistent with the experiences of the U.S. organizations implementing CBAs, including the need for inclusive community engagement throughout the entire process, from negotiation through to the evaluation stage; regular publication of progress reports; income support for job trainees; and customized design of employment programs for the targeted populations.⁶¹

Vancouver’s emphasis on procurement also led to lessons learned in that respect, including the need to specify procurement targets to different kinds of businesses (social, micro, small and medium sized enterprises) and to consider different mechanisms to deliver benefits to businesses outside of those targeted specifically by the procurement policy.⁶²

In Toronto, community benefits will be included in the project agreement for the Eglinton Crosstown project, a 19-kilometre light rail line that runs through a number of high-needs neighbourhoods. In spring 2014, Metrolinx, the regional transportation agency, collaborated on the creation

REGENT PARK BY THE NUMBERS

- **Replaced RGI (rent geared to income)**
Rental Units: 2,083
- **New Affordable Rental Units:**
Over 210 in Regent Park and 100 in new buildings nearby by the end of Phase two
- **Market Units:** 5,400
- **Project Start Date:** 2005
- **Total Size:** 69 acres
- **Anticipated Project Length:** 15-20 years
- **Amenities:** Daniels Spectrum, the Regent Park Aquatic Centre, the new Regent Park and the Regent Park Athletic Grounds
- **New Retail Space Tenants:** Freshco by Sobeyes, Rogers, Tim Hortons, RBC and Main Drug Mart
- **Employment:** 964

Source: Toronto Community Housing Corporation

of a Community Benefits Framework with the Toronto Community Benefits Network (TCBN), a coalition founded by the Toronto & York Region Labour Council and Good Jobs Coalition.

The Framework calls on Metrolinx to maximize jobs, apprenticeships and training opportunities, as well as opportunities for local and social procurement for transit projects in Toronto, beginning with the Crosstown. The TCBN, for its part, is working to engage communities, help recruit job-seekers and communicate about the opportunities to communities along the line. Leaders and staff in the labour movement have worked to win the support of the construction trades to agree to open up their apprenticeship processes. And the Ontario Ministry of Colleges, Training and Universities has funded the United Way to undertake a Labour Market Partnership study to identify skills gaps, and will help ensure the coordination of the apprenticeship and workforce development components. Ultimately, the intentions set out in the Framework will be concretized and enshrined in a series of community benefits clauses that will be included in a formal agreement between Metrolinx, Infrastructure Ontario and Crosslinx, the consortium who ultimately won the bid to construct the line.

Lessons Learned & Best Practices

General Principles

The three key principles that recur when evaluating successful private CBAs in the U.S. and Canada are transparency, inclusivity and accountability.

Transparency is important because, in its absence, such agreements can easily become politicized or subject to suspicions of “back-room” dealing, conflicts of interests or confusion as to whose interests are being represented.⁶³ A transparent process leads to an agreement that is credible in the eyes of the wider community as well as to other important stakeholders, such as local governments. However, it may be more appropriate to talk about transparency with respect to who is at the table, the engagement process and the key issues, recognizing that in the case of private developments negotiations are often ultimately conducted in the private sphere.⁶⁴

Inclusivity requires that a fulsome engagement process be held to fully determine the needs of the impacted communities, and ensures that a broad range of community concerns can be heard and addressed prior to project approval.⁶⁵ An inclusive engagement process will generally mitigate against any particular community group representing the whole; for this reason, many CBAs are negotiated by coalitions of community groups. Because there are likely to be many interests at stake (institutional, agency, community and individual), defining a reasonable methodology to determine what constitutes an “inclusive” process may be wise.

Accountability requires that the commitments made by the developer, public officials and/or others are specific and enforceable against the party that made them.⁶⁶ The ability to monitor compliance and enforce the agreement is a major challenge in the implementation of private CBAs.

Often there is a committee, comprised of representatives of government, the developer and the community, which meets to discuss issues and monitor progress. Regular reporting by the contractor is also a typical feature of the agreements. Because the capacity of community groups to enforce agreements can be limited – as is their financial capacity to

Ensure that parties
meet regularly to work
out issues in a constructive
and flexible fashion

sue a developer should there be a breach or failure to fulfill terms of a CBA – some CBAs have included provision for an independent compliance monitor.⁶⁷ Accountability can also be demonstrated through regular public reporting.⁶⁸

To these principles should be added collaboration or trust. As any lawyer knows, a contract is what you have when the love is gone – colloquially speaking. But the best way to negotiate, monitor and implement community benefits, whether public or private, is to ensure that parties meet regularly to work out issues in a constructive and flexible fashion. Whether it is mutual agreement that a commitment made in the contract doesn’t make sense any longer because of changing conditions adjustments to a timeline, or whether a better way is found to achieve a common objective, the willingness of those at the table to make it work will often supersede the written word. Those who have worked on CBAs directly say that the most critical factor is the quality of the working relationship between the parties.⁶⁹ At the same time, ongoing monitoring needs to be rigorously maintained. A private agreement should specify not just what is monitored, but who takes part and how that monitoring takes place.

These principles also apply, albeit slightly differently, to public agreements. While the Scottish model fails to embrace the principle of inclusive community engagement, context is important. In the U.S and Canada, the public expects to be at the very least consulted on major projects, and governments that ignore this expectation

increasingly do so at their peril. Moreover, accountability becomes even more important when taxpayer dollars are at stake. Accordingly, in public agreements, a procedure for monitoring community benefits clauses by the procuring agency with the contractor and other parties, where appropriate, should be clearly understood and spelled out, and public reporting is critical.

Best Practices

This review of community benefits in the U.S, Canada and Scotland provides a number of specific lessons learned and best practices that can be adopted in the context of the Tower Renewal Project and further Canadian CBAs, and can be generally grouped as follows.

Workforce/training

- Employment programs need to be carefully designed to benefit the full spectrum of targeted populations.
- Employment goals and apprenticeship training programs need the involvement of both labour unions and contractors from the outset to ensure they are realistic and appropriate to the contract.
- Include post-construction job opportunities where possible (service, operational etc.) as those may be more plentiful and more sustainable.
- Workforce training needs to ensure job readiness at the “front end” and provide appropriate wraparound supports for those who need it during the training and employment period (income support, transportation, child care, etc.).
- On-site mentoring of new apprentices and workers on construction sites should be done by other senior workers (not direct supervisors) vs outside agencies.

Procurement

- Specify procurement targets to different kinds of businesses (social, micro, small and medium sized enterprises).
- Where participation of small- and medium-sized enterprises (SMEs) or social enterprises is desired, address barriers they typically face in competitive tendering process (e.g. unbundling, standardization of information, accessibility of tender documents).
- Where the contractor or supplier base lacks the capacity to deliver, provide procurement seminars and/or training assistance prior to the tendering stage.
- Consider different mechanisms to deliver benefits to

businesses outside of procurement targets (e.g. lease subsidies, revolving loan funds, business development funds).

Creation/management/implementation

- Incorporate inclusive community engagement beginning at an early stage and continuing throughout the process, from design and negotiation of the benefits through implementation and evaluation.
- Tie deliverables on the part of the contractor to project triggers in the development process, not calendar dates.
- Ensure deliverables are specific and measurable, and can be included without risking quality or unduly lengthening the project timetable.
- Assign a designated “champion” within the procuring organization to work with the team on creation and implementation of community benefits and ensure they have corporate support and adequate resources.
- Publish regular progress reports.
- Create a robust monitoring process with clear specifications of how outputs are to be measured, how data will be supplied by the contractor and the means of verifying the data.
- Create a regular meeting process and ensure the right parties are at the table, with the ability to resolve questions and move forward on issues.
- Consider how conflicts will be resolved and clauses will be enforced (joint committees, dispute resolution, binding arbitration, etc.).

Business, Legal and Policy Issues

As noted above, there are different ways to structure community benefits agreements: private CBAs, public CBAs and hybrid versions of those structures.

Private CBAs are generally stand-alone, legally enforceable contracts. Many public so-called CBAs are not actually separate legal agreements; rather, like the Scottish model or that used in Regent Park, they include community benefits clauses within a development or infrastructure agreement. Table 2 provides a summary of different models in use with some observations about the pros and cons of each.

A number of legal and policy issues have arisen elsewhere with respect to CBAs, and it is worth briefly flagging them here. The first four deal mainly with contractual issues relevant to private CBAs, although there is some overlap in the case of hybrid CBAs.

Consideration

An enforceable contract requires three elements: offer; acceptance; and consideration, which is something of value that is exchanged. Questions have been raised as to whether a community's agreement to support a project is sufficient to be considered consideration. The prevailing view appears to be that such consideration is valid, because it has been bargained for and is of value to the other party.⁷⁰

Successors, assigns and agents

What happens when a developer sells or assigns its interest to a different developer who has no relationship with the community party, or hires a management company to oversee the leasing or operations of the project? How are a contractor's commitments under a CBA carried through to subcontractors?

CBAs must clearly delineate how responsibilities "flow through" to other parties and ensure the contract makes those obligations enforceable.⁷¹

Standing

Many CBAs involve coalitions of community groups, and

CBAs must ensure obligations are enforceable

those coalitions are often unincorporated, which means they have no legal personality: they cannot take legal action or be sued themselves. For this reason, many U.S. CBAs are signed by a variety of individual incorporated nonprofit organizations even where those organizations may have negotiated as part of a coalition.⁷²

Enforceability

As in all private contracts, remedies for breach of contract vary from liquidated damages to injunctive relief to specific performance and other remedies available at law or equity. Practically speaking, however, few community groups have the resources to enforce agreements in a court of law, and monitoring a long-term agreement over time can be challenging for a coalition.⁷³ Moreover, it has been noted that because communities are the first "side" to perform in a private CBA (i.e. they provide their support to help the developer obtain permissions or permits) their influence can wane, particularly with successor landowners or contractors who were not part of the original agreement.⁷⁴

In public or hybrid CBAs, political pressure, public involvement and skillful use of the media may be more effective than legal remedies. As noted above, settlement or cooperation agreements, which bind community groups to support the project or refrain from litigation, can also be used to ensure that a public agency does not change its deal with a developer.⁷⁵

Conflicts with existing planning law or legal principles

In the U.S., at least one writer has claimed that private CBAs challenge a constitutional principle in land use law that governments cannot exact conditions from developers beyond those designed to counter the negative impact that a project might have on its surroundings. Where a city has an established approval process, the requirements of a CBA may also come into conflict with existing regulations. In

Table 2
Community Benefits Agreements - Models

CATEGORY	DESCRIPTION	PROS	CONS	NOTES/EXAMPLES
PRIVATE CBAs	Contract between community group(s) and private developers	<ul style="list-style-type: none"> • Can provide strongest results for community groups as they have direct hand in negotiating and approving benefits and language as well as direct ability to enforce • Generally includes strong reporting and meeting requirements • Often includes a settlement or cooperation agreement that guarantees community support for project and that community will refrain from litigation (or cease legal action) 	<ul style="list-style-type: none"> • Lack of incorporated/legal entity to sign on community side or multiple community signatories • Sustainability of coalition over long-term can be an issue • Community resources may not be sufficient to monitor and enforce agreement if developer doesn't deliver • Successor enforcement can be difficult (subsequent landowners, tenants, contractors, etc.) 	Ballpark Village, San Diego; Atlantic Yards, NY; Staples Arena, LA
PUBLIC CBAs	Community benefit clauses included in contract between government or public agency and a developer or contractor	<ul style="list-style-type: none"> • Can involve substantial public participation and address a range of issues if the agency undertakes full engagement • Detailed and enforceable • Sophisticated parties on both sides in negotiations • Often carries political support 	<ul style="list-style-type: none"> • In the U.S, subject to range of restrictions on government actions • Can be done with little or no community engagement and thus may lack full transparency or be politicized • Can fail to be enforced fully due to change in focus of agency, staff turnover or workload, subsequent amendments, lack of in-house expertise, political changes, etc. 	Cherokee-Gates Rubber redevelopment project in Denver; Yale Cancer Centre in New Haven; Oak-to-Ninth project in Oakland
PUBLIC CBA WITH CO-OPERATION (OR SETTLEMENT) AGREEMENT	Contract between government or public agency and a developer plus separate agreement between government or public agency and community	<ul style="list-style-type: none"> • Agency-community agreement can include commitments by agency not to amend/change key parts of its agreement with developer • Provides assurances to community re commitments and grants community legally enforceable rights vis-à-vis agency • Can ensure more public support and forestall litigation by including release of claims • Useful when developer won't negotiate with community groups 	<ul style="list-style-type: none"> • More complicated because two different agreements • Government/agency may not be willing to provide enforceability by community party and/or may wish to retain flexibility for subsequent amendments • Developer may be unwilling to be effectively bound by an agreement to which it was not a party 	LAX and Grand Avenue (LA)
HYBRID OR MULTI-PARTY (THREE-WAY) AGREEMENT	CBA signed by developer, government/agency, and community group(s)	<ul style="list-style-type: none"> • Cleaner as all three are parties to the agreement with distinct roles, rights and responsibilities • Embeds CBA provisions into development agreement • Enforceable by community as well as agency and developer 	<ul style="list-style-type: none"> • Rare that any one community group represents the whole so multiple community signatories still possible • If agency is unwilling to monitor and enforce, leaves community to enforce – but community may not have resources to do so effectively (requirement for an independent compliance officer is found in some more recent agreements to address this issue). 	Vancouver (Olympic Village – False Creek) <ul style="list-style-type: none"> • Development agreement signed between city and developer included an agreement to negotiate a separate CBA between developer and nonprofit agency (BOB) – subsequently agreed city should also be a party • BOB worked with a coalition of inner-city agencies, organizations and individuals; city played key facilitative role

Should municipalities enact policies to require community benefits in specific neighbourhoods that need revitalization?

addition, the official plan of the municipality may not always align with the interests of the local community, for example where benefits desired by the community are not the ones prioritized by the planning department, or where such benefits could incur costs for the municipality down the road (for example, building a new community centre that would eventually need city money to operate). Construction of such facilities could also raise complaints from other, higher-need communities which may complain that the neighbourhood with a CBA is “jumping the queue” with respect to city priorities.⁷⁶

Procurement

Unbundling contracts in order to provide opportunities for smaller or local suppliers, or for social enterprises, can raise issues for public entities. In Scotland, considerable work has been done to work around procurement regulations that restrict the ability of public organizations to build in employability provisions, as well as to ensure they do not run afoul of E.U. articles, treaties and directives.⁷⁷ *The Social Value Act*, enacted in the U.K. in 2013 to encourage social and local procurement,⁷⁸ has not proved to have a major impact as it is generally considered to be “aspirational” rather than mandatory; however, the *Scottish Procurement Reform Act* of 2014, as discussed earlier, will put more rigorous requirements into place.⁷⁹

Issues to be determined in the context of Ontario and Tower Renewal

In Canada, very little work has been done to investigate legal issues connected with CBAs. In the context of Tower Renewal, it will be helpful in particular to look at the intersection between the Ontario planning regime and community benefits clauses, with a focus on how CBAs could be enshrined in the planning regime (if indeed they should). For example, should s. 37 of the Planning Act be broadened to allow community benefits beyond contributions for capital projects? Should municipalities enact policies to require community benefits in specific neighbourhoods that need revitalization? What “weight”, if any, should a private CBA carry when a developer is seeking planning permissions or approvals? Where is the line between community amenities that might be provided through a rezoning application/site plan process and those that would be provided through community benefits? Should community benefits be addressed in bylaws or zoning appeals? If required, how would the City ensure community benefits are enforced? Are CBAs the best way to achieve the overriding goal of improving neighbourhoods, or are there other tools that could be more suitable on some projects?

These are just some of the critical legal, policy and regulatory issues that require further research, discussion and resolution.

In Ontario, the provincial government has taken one noteworthy step with the enactment of the recent *Infrastructure for Jobs and Prosperity Act 2015*⁸⁰ (the Act), which includes a requirement that consideration be given to community benefits in principle:

3. The Government, and every broader public sector entity, shall consider the following principles when making decisions respecting infrastructure:

...

(13) Infrastructure planning and investment should promote community benefits, being the supplementary social and economic benefits arising from an infrastructure project that are intended to improve the well-being of a community affected by the project, such as local job creation and training opportunities (including for apprentices, within the meaning of section 9), improvement of public space within the community, and any specific benefits identified by the community.

The Act, which applies to public sector entities, has not yet come into force, and regulations are yet to be promulgated. Because the principles in s. 3 are not enabling provisions and are therefore not subject to regulations, ss.(13) may not have a great deal of legal impact, but it does send an important signal to the sector.⁸¹ Practically speaking, if public bid documents contain requirements for community benefits plans, contractors will likely respond regardless of whether the Act makes them mandatory or not. And given that it is the first time legislation in Canada has included any reference to community benefits, the Act marks one step in the journey toward their more widespread adoption.

Application to Tower Renewal

What are the key issues surrounding community benefits in the context of Tower Renewal?

In order to determine how community benefits can be integrated with the Pilot and subsequent Tower Renewal projects, the following issues must be determined:

Structure

What is the right business model for Tower Renewal projects?
Who monitors, enforces and evaluates community benefits?
Can a model be emulated and refined over multiple projects?

Engagement

Should there be an engagement process for tower projects, and if so, what should it look like?

Content

What kinds of community benefits and other provisions should be included in an agreement?

Scale

How does the relatively small scale of tower projects affect the ability to include benefits such as jobs, apprenticeships and local supplier opportunities?

Costs

What resources are required to negotiate, implement and manage community benefits provisions?

Integration with the System

What if any changes are required at a policy or legislative level to facilitate the provision of community benefits?

These issues, and recommendations to address them, are discussed below.

Structure: What is the right business model for Tower Renewal?

Recommendation

A hybrid model that includes the creation of an independent agency. The agency could be either a party to the entire redevelopment agreement that includes community benefits clauses, or a party to a stand-alone CBA.

Creating a “stand-alone” CBA for the Pilot, and for subsequent projects, is possible but difficult because there are unlikely to be community or tenant groups with sufficient knowledge and legal capacity to act as a party to such an agreement. Further, since the goal of the Tower Renewal program is ultimately to encourage many smaller redevelopment projects across the GGH with different landlords and developers, a new CBA would have to be created for each of those projects with new parties who, in each case, may be unfamiliar with CBAs.

In the case of TCHC, there is already a process akin to the Scottish model that has been established by placing community benefits clauses in RFPs for designated projects. In addition, TCHC now has the staff and expertise to successfully implement such projects, based not only on Regent Park but on subsequent revitalization projects.⁸²

This is not the case, however, with most private landlords and developers (save those who have participated in TCHC projects) and there have been no purely private CBAs in Canada to date. While one would think that the landlord could represent their own tenants in rental buildings for the purpose of determining benefits, and would ensure the implementation of those benefits along with the requisite compliance monitoring and enforcement, the incentives to do so may not always be present; and residents may not always have the capacity to negotiate on their own behalf with a developer, or the expertise to monitor implementation. Low-income communities in particular will lack the ability to “vote with their feet” should a private landlord decide to amend a CBA or fail to enforce it.

In addition, if a community engagement process is held, it raises the question of who undertakes the engagement, who pays for that process, and who negotiates on behalf of other impacted local community members, where applicable, as well as the tenants.

One solution would be a hybrid structure where a new third-party agency (or an existing agency with a broadened mandate) could play a role in a development agreement for the Pilot for the Tower Renewal program, and potentially for other small revitalization projects. The agency could be a third party either to (a) a development agreement that includes community benefits clauses, or (b) a standalone CBA.

The first option is simpler, and normalizing the inclusion of such clauses in development agreements could encourage their adoption on a wider level. The agency could broker the agreement between the landlord and developer, including the community benefits clauses; play a role in negotiating the community benefits clauses on behalf of the tenants; and be responsible for monitoring progress and enforcing provisions in the event of noncompliance. This agency could, if required, also coordinate the tenant engagement in advance of, and throughout, the project construction. It would undertake evaluation of the projects after completion and, by acting in this capacity for subsequent tower projects, build expertise in the area.

Such a structure would address the issues posed by the other models, including questions about the capacity of the community to negotiate and monitor private agreements and concerns about the incentives of parties to enforce agreements. Further, it would ensure consistency and replicability for Tower Renewal projects over time, as the agency could continue to refine and improve the business model after each project.

Engagement: Does the Pilot require an engagement process and if so, what should it look like?

Recommendation

An extensive engagement process should be co-created with residents of the existing tower and focus both on energy reduction and community benefits.

As noted earlier, the role of engagement has been very different in the U.S and the U.K. In the U.S, the fate of many CBAs relies heavily on whether a transparent, inclusive and

Creating a new third-party agency to broker community benefits would ensure consistency and replicability for Tower Renewal projects

comprehensive engagement process led to the signing of an agreement, in part because of the importance of public assent to obtaining social and in some cases legal license to operate. In Scotland, engagement is the exception rather than the norm, and benefits to date have been largely restricted to employment and procurement. In Canada, both the Vancouver Olympic Village and Regent Park projects employed significant community engagement, which was considered in both cases to be key to the success of those projects. Indeed, post-project reports for both noted that even more engagement would have been desirable, not just at the beginning but throughout the implementation of the project.

Because the Pilot (and the Tower Renewal program generally) does not just contemplate an energy retrofit of existing towers, but the social and economic revitalization of very specific tower communities, an extensive engagement process with the tenants who live there will be essential to the credibility and sustainability of any revitalization efforts.

Community benefits is but one piece of an engagement process that will surround the revitalization of any apartment neighbourhood. If new development is proposed, there will be early engagement with not just the tenants but also neighbouring residents and community stakeholders from the beginning of the planning process. Engagement around community benefits specifically will come into play as the site design begins to take shape.

The demographics of residents of tower communities will vary considerably. In some of the tower communities under consideration for Tower Renewal, a large proportion of the residents may be low-income, belong to racialized communities or speak English as a second language. Accordingly, a “one size fits all” engagement process is unlikely to be successful. A resident engagement process should be co-created with the residents themselves; those who live there will know best how they want to participate

in the process of identifying needs and aspirations, as well as how they want to learn about the energy and conservation measures that are part of the project.

In the case of the Pilot, there will be two key aspects to the engagement process. Given that a major goal of the project is the achievement of energy reduction targets, a process should begin to create a culture of conservation among residents, particularly since most are expected to be tenants without direct control over the operating systems of the building. As such, part of the process will be the co-creation, with residents, of an energy conservation and action strategy.

The second aspect of engagement will focus on the needs and aspirations of the community with a goal to identifying key benefits that can be included in the development agreement. As demonstrated in Table 1 on page 10, a wide range of benefits is possible, depending on the site, the context, and the particular desires of the tower community. To ensure the benefits are grounded in the reality of what is achievable, the developer should also be at the table during these discussions.

Engagement should not stop once the “wish list” has been crafted and agreed upon with the residents, developer and landlord. As experience in the U.S and Vancouver has shown, engagement should continue throughout the implementation process of the agreement, with regular dialogue and reporting of results.

One of the benefits of a comprehensive engagement process should be community capacity-building, the results of which can last long after the project is completed.⁸³

Ideally, the Pilot will lead to a number of similar Tower Renewal projects across the city. It will therefore be important to document and evaluate the engagement process each time, with a view to continuous improvement and, over time, to develop a consistent approach.

Engagement should continue throughout the implementation process of the agreement

Content: what kinds of community benefits and other provisions should be included in an agreement?

Recommendations

- Benefits can be wide-ranging but should be clearly specified
- Provisions should flow commitments through to subcontractors and other parties, as applicable
- Provisions should assign responsibilities and mechanisms for trouble-shooting, enforcement, monitoring and evaluation

Three categories of benefits are most likely to be included in a development agreement for Tower Renewal projects:

- a) community assets, i.e. physical space or amenities for community use (such as space for child care facilities, social enterprises, community gardens, etc.).
- b) jobs, training, small business support and supplier (procurement) opportunities for residents of the towers or nearby local businesses.
- c) affordable housing and/or a “leg up” to affordable home ownership (for example contributions by the developer to assist qualifying residents with the purchase of market-rate units, vendor take-back mortgages or other mechanisms designed to help those who are currently renting in the adjacent towers move into home ownership, should they desire). Depending on the nature of the project, provisions respecting post-construction opportunities (operations, retail, etc.) should also be contemplated.

Residents may come up with a number of creative ideas not contemplated here, but these appear to be the most likely categories, based on previous experience.

Whatever benefits are agreed upon should be clearly specified within the project agreement. For example, recruitment and training targets should be carefully detailed, whether in terms of a percentage of total project labour time, number of employees or apprentices, work weeks or person-years. Benefits should be tied to key steps in the development process rather than a particular timeline.

The agreement should also include provisions that:

- Bind subcontractors, successors and assigns where applicable, by ensuring commitments are 'passed through'.
- Clearly assign responsibilities for compliance monitoring and reporting on community benefits, including who will finance this process, what data will be monitored, the frequency of reporting, and how the report will be made public.
- Set out a mechanism for ongoing dialogue between the parties to address and resolve issues that may arise throughout project implementation.
- Establish dispute resolution and enforcement procedures.
- Define what constitutes a breach by any of the parties and set out remedies.

It is acknowledged that some benefits – for example, physical amenities – may be able to be incorporated into a site plan agreement with the city as opposed to being provided through community benefits provisions. Further research on this point is ongoing with the Tower Renewal team and the City of Toronto.

Scale: How does the relatively small scale of tower projects affect the ability to include benefits such as jobs, apprenticeships and local supplier opportunities?

Jobs

Recommendation

Create a construction workforce hub for community benefits in Toronto – a coordinated approach that makes it easier for jobseekers to get the training and supports they need and easier for employers to meet their commitments.

The single most common feature of every CBA, regardless of the model, is the provision of job and training opportunities for targeted populations. CBAs can help traditionally disadvantaged people get back into the workforce, which

grows the economy and helps alleviate poverty. At a time when we have an aging workforce, recruitment of young people in particular into the construction trades is seen by the labour sector as critical.

However, most projects that incorporate CBAs have budgets that start in the hundreds of millions of dollars and extend for a period of several years. The Vancouver Olympic Village, for example, was a billion-dollar project that lasted two years; the Eglinton Crosstown will cost over \$4B and will take at least another five years to build. In contrast, an infill development on a single tower site could take as little as six months to construct and the budget will be in the millions – not hundreds of millions. As a result, the number of jobs that can be created on any one tower site is limited, and the timeline within which construction will take place is relatively short.

Any one tower renewal site will be relatively small in scope, but the potential volume of tower renewal agreements must also be considered. If the Pilot is successful, similar development agreements can be created across the GTA at a number of different sites. The solution, therefore, is not to create a separate workforce strategy for each small tower agreement, but to create a broader strategy that addresses all potential tower projects.

Given that significant efforts are already underway with Metrolinx, the Toronto Community Benefits Network and the Ministry of Training, Colleges and University to create a workforce pipeline, it makes sense to build on their efforts and broaden them to create a workforce hub for community benefits that any employer could access, including those involved in Tower Renewal projects.

This would require “disentangling” opportunities provided by a given CBA from that particular tower site; however, someone who needs a job is likely looking for more than a two-month construction job. Rather, they’re looking for a sustainable career. As part of an engagement process at a tower site, potential employees or apprentices can be recruited and sent to the hub. When they have been assessed, adequately trained and are ready to work, they can be placed on a project with an employer who needs to fulfill commitments about hiring in the context of any CBA.

Such a hub could start with a focus on construction jobs, and if successful, could later broaden out to include different sectors. It would, in effect, be a coordinating organization. It would partner with a variety of community organizations and agencies which would identify, engage and recruit job-seekers from targeted communities, including tower communities; coordinate pre-apprenticeship and apprenticeship training and placements

with training organizations and unions; ensure the provision of wraparound supports for those who need them while on their first job, such as at-risk youth; and provide a one-stop shop for employers.

Experience in other jurisdictions has shown that having one agency coordinate the recruitment, training and preparation of applicants is key to an employer's ability to meet its workforce commitments in a CBA. Many agreements contain preferential hiring provisions, which require developers to offer opportunities to members of groups designated in a CBA. A hub would allow an employer to fulfill those commitments more easily.

Given that there are more than 80 government and not-for-profit organizations involved in workforce training and development in over 100 locations through the city today, a coordinated approach that makes it easy for both job-seeker and employers will be essential to the success of CBAs, will foster tower renewal projects and will encourage greater use of CBAs and targeted hiring provisions across the region.^{B4}

Local procurement

Recommendation

Set a realistic target for local procurement, unbundle contracts to enable local suppliers to bid and run technical assistance workshops as part of the early community engagement strategy.

CBAs frequently contain clauses designed to ensure that local suppliers are able to participate in business opportunities offered by the project.

In the U.S., benefits are often targeted to minority-owned, women-owned and locally-owned business enterprises (MWBE), reflecting government programs designed to foster growth in these sectors.

In Scotland, there has been emphasis on providing opportunities for small businesses as well as social enterprises through the use of public procurement. In Vancouver, procurement was targeted to inner-city businesses.

Opening up opportunities for local businesses or social enterprises in the context of the Pilot and future Tower Renewal projects may require the developer and contractors to procure differently. Setting a target for a particular percentage of procurement from local businesses is one strategy, but it would be wise to precede this with research about the suppliers who are in the area and are able to provide goods and services that are

A construction workforce hub for community benefits will be essential to the success of CBAs.

needed for the project (there is no point in tendering a print contract if there are no printers in the community). Contracts may need to be broken down into smaller parts (unbundling) to enable subcontracting to smaller businesses.

A proactive approach may also be required to help small businesses who wish to sell goods or services to the project. In some instances in both the U.S. and Scotland, technical assistance, workshops and training programs to build the capacity of the local business community are offered as part of a community benefits package, to help small businesses and social enterprises learn how to bid effectively on contracts. Similar workshops could be held as part of a full community engagement process in tower communities, potentially in partnership with agencies specializing in business development and social entrepreneurship.

As with workforce development, the relatively short timeline of a tower renewal project may make extensive local procurement unrealistic. However, a pilot project could include a modest target that is proportional to the project's scope, and build in local supplier supports such as a technical assistance workshop. Where competitive bidding is used, consideration should be given as to how best to evaluate bids from local suppliers, and to ensure that such evaluation is fair and transparent.

Costs: what do community benefits cost, and what resources are required to negotiate, implement, and manage community benefits provisions?

Recommendation

Ensure sufficient attention is paid at an early stage to resourcing all of the functions needed to ensure successful implementation of a CBA, from early engagement to post-project evaluation.

The costs of community benefits in the U.S., as referenced in Appendix A, range from .5 to 2.5 percent of total project costs, on average. This includes, among other things, funding by developers for amenities, the provision of affordable housing and training/job supports. One study has found that workforce development funding alone generally constitutes between .03-1 percent of project costs.⁸⁵ Costs for Tower Renewal projects will vary widely depending on the benefits for each project but these percentages may serve as a guide.

Resources are also required beyond the benefits themselves. If TCHC is one of the parties to a Tower Renewal project, then the costs are likely to be lower because the organization has staff and expertise already in engagement, tendering and implementing community benefits. A Tower Renewal CBA between private parties, on the other hand, would require some or all of the following, which may not be readily available through the landlord or developer:

- Engagement and communications expertise to facilitate an engagement process with residents, stakeholders and potentially the local community.
- Legal and project management expertise to ensure that community benefits clauses are clearly structured and can be practically implemented by contractors in a cost-effective and timely fashion.
- Procurement expertise to ensure competitive bids can be properly tendered and evaluated, where appropriate.
- Contract management and monitoring by one or more people who are experienced in the construction industry to ensure benefits are delivered.

If a third-party organization acts as a party to a CBA, it can oversee the community benefits aspects of a development agreement. If it is a nonprofit, it may be able to access up-front funding to assist with the costs of early engagement. It can build legal and procurement expertise over a series of projects which can assist with negotiations, tendering and evaluation of competitive bids.

Finally, this organization would have both the capacity and interest to do a full evaluation after the project, which it could make publically available; it is not clear that a private party would have interest in doing so.

Integration with the system: what if any changes are required at a policy or legislative level to facilitate the provision of community benefits?

Recommendations

- Undertake further research to further understand the interaction between community benefits and current and potential planning policy mechanisms
- Participate in consultations for new regulations being enacted under the Infrastructure for Jobs and Prosperity Act and amendments to Toronto's Official Plan
- After the pilot project, do a full evaluation and Community Impact Report which can be widely shared

Various policy and legislative instruments have been used in the U.S. and U.K. to further community benefits. They range from municipal ordinances (by-laws) in the U.S., to the inclusion of community benefits clauses in public RFPs for specific projects in the U.S. and Scotland, to legislation in the U.K. and, more recently, here in Ontario.

With respect to the Tower Renewal program, further exploration is needed to assess which mechanisms, at a policy level, will be most effective in furthering the work of revitalization in general and incenting community benefits in particular. Questions now being discussed include:

- How does section 37 of the *Planning Act* interact with community benefits?
- Should the city create a policy or standards document, similar to the Green Standards policy, which requires developers to include community benefits in some circumstances?
- On a more general level, should the inclusion of community benefits for a project merit concessions or an expedited process for development from the city's planning department?
- What policy role, if any, could the city's economic development department play to help encourage local procurement?

The City of Toronto is currently undertaking a review of the Official Plan, and among the changes recommended are those affecting apartment neighbourhoods. It may be useful to consider how the proposed amendments to the Official Plan, which include a stronger emphasis on improvements to existing buildings and associated amenities, could dovetail with the kind of community benefits being discussed here.

In addition, the Province of Ontario will be consulting with stakeholders shortly with respect to new regulations under the recently enacted *Infrastructure for Jobs and Prosperity Act*.

As noted earlier in this report, those regulations will focus on apprenticeships rather than community benefits. Nonetheless, it would be useful for those involved in Tower Renewal to participate in those consultations.

Policymakers may want to measure the impact of community benefits before adopting any new system-wide programs. For that reason, it will be important to do a full evaluation of the Pilot which can be widely shared. A Community Impact Report that evaluates the success of the project vis-à-vis its targets and measures the overall economic impact of the project would be a valuable piece of research that could, if results are positive, help build the case for further tower projects.

Other recommendations

- Create a stakeholder group for community benefits that includes leading contractors, developers, government and community organizations to provide a forum for the discussion of issues with respect to community benefits and share good practices
- Support further research on legal and policy issues flagged in this paper
- Support research to examine the feasibility of an organization or network that could offer practical advice on legal and procurement issues to industry and community groups; provide education and communications about community benefits; undertake policy and research work; and facilitate knowledge exchange

Conclusion

Community benefits are becoming a well-recognized mechanism to grow local economies, extend employment opportunities to those who face difficulties entering or staying in the workforce, and help enable social and neighbourhood regeneration.

By strategically leveraging the dollars being spent on major development and infrastructure projects, these aims can be accomplished with relatively small incremental costs. In Canada, community benefits are a relatively new phenomenon, and more research and education is needed to facilitate their widespread adoption. The Pilot offers a way to test out community benefits in a unique context that integrates the physical, social and economic revitalization of a tower neighbourhood.

Endnotes

1. *Tower Neighbourhood Renewal in the Greater Golden Horseshoe*: Report Prepared by E.R.A. Architects, planningAlliance, and the Cities Centre at the University of Toronto for the Ontario Growth Secretariat, Ministry of Infrastructure. November 2010. Accessible at <http://www.cugr.ca/tnrggh>. Over the past several years, the Centre for Urban Growth and Renewal (CUG+R), a partnership of E.R.A. Architects and planningAlliance, has undertaken a number of Tower Renewal studies and initiatives with respect to planning and zoning, health and community impact. Their studies can be found at <http://www.towerrenewal.com>
2. See, for example, s. 37 of the Ontario Planning Act, R.S.O. 1990, c. P-13 and http://www1.toronto.ca/city_of_toronto/city_planning/sipa/files/pdf/s37_consolidation_080117.pdf, at 4; in Vancouver, <http://vancouver.ca/home-property-development/how-development-funds-communities.aspx>
3. See, e.g. TransCanada <http://www.transcanada.com/6378.html> or Chevron <http://www.chevron.ca/our-businesses/kitimat-lng/community-benefits>. If there is a Canadian role model for community benefits, it is likely to lie in the Impact and Benefit Agreements (IBAs) commonly negotiated between mining companies and aboriginal communities, although IBAs stem from a different legal context, specifically the Supreme Court of Canada's holding there is a "duty to consult" with aboriginal communities.
4. See, e.g. <https://noharm-uscanada.org/articles/blog/us-canada/momentum-pushing-community-benefits-improve-nutrition-within-health-sector>
5. This is similar to the definition provided in Gross, J. (Fall 2007/Winter 2008) Community Benefits Agreements: Definitions, Values, and Legal Enforceability. *Journal of Affordable Housing*, Vol. 17:1-2, 35-58 at 37: "a legally binding contract (or set of related contracts) setting forth a range of community benefits regarding a development project, and resulting from substantial community involvement."
6. This paper does not discuss Project Labour Agreements (PLAs), essentially an agreement to only use union labour on a job site, although they often accompany CBAs in the U.S.
7. Available online at <http://www.forworkingfamilies.org/page/policy-tools-community-benefits-agreements-and-policies-effect>. This includes two "multi-parcel" standards brought into effect by city or regional bylaws or policies.
8. The Staples CBA was not, technically, the first American CBA. In 1999, the Los Angeles Alliance for a New Economy (LAANE) negotiated what is called the Hollywood and Highland CBA, with commitments respecting local hiring among other things. Source: <http://www.forworkingfamilies.org/page/policy-tools-community-benefits-agreements-and-policies-effect>
9. This can also take the form of a settlement agreement, which can arise when legal action has already been brought and is "settled" through the negotiation of a CBA.
10. Salkin, P.E. and Lavine, A. (2008) Understanding Community Benefits Agreements. *The Practical Real Estate Lawyer*, The American Law Institute Continuing Legal Education Group at 22 (available online).
11. Text of the Community Benefits Program for the Staples Centre, ss. 3(C) and (D), available online at <http://www.forworkingfamilies.org/sites/pwf/files/documents/StaplesCBA.pdf>
12. Salkin, P.E. and Lavine, A. (2008) Understanding Community Benefits Agreements: Equitable Development, Social Justice and Other Considerations for Developers, Municipalities and Community Organizations. *Journal of Environmental Law*, 26:291 at 303.
13. "Living wages" were wages set above the state or federal minimum, and are required by ordinance to be paid to those employed by the City of Los Angeles, by its contractors and by certain organizations that received city funding: see http://bca.lacity.org/site/pdf/two/lw_ordinance.pdf
14. Salkin and Lavine, *supra* note 12.
15. *Ibid.* at 304.
16. A comprehensive list and summaries of current CBAs can be found on the website of Partnership for Working Families at <http://www.forworkingfamilies.org/page/policy-tools-community-benefits-agreements-and-policies-effect> or <http://communitybenefits.blogspot.ca/2008/01/success-of-hollywood-and-highland-cba.html>
17. For an excellent description of first source hiring programs and mechanisms, see Nugent, J. (2015) *Study of Lessons Learned and Best Practices of Community Benefits Agreements – Report #2: Comparative Analysis of CBAs*. United Way of Greater Toronto, at 14.
18. See, e.g. the Cherokee-Gates Project in Denver, which excluded big-box grocery stores.
19. Camacho, A.E. (2013) Community Benefits Agreements: A Symptom, not the Antidote, of Bilateral Land Use Regulation. *Brooklyn Law Review*, Vol. 78(2) 355-383 at 366.
20. Galley, A. (2015) *Community Benefits Agreements*. Mowat Centre and Atkinson Foundation: Toronto at 15.
21. Nugent, *supra* note 17 at 12.
22. See, e.g. Oder, N., *Atlantic Yards, Pacific Park, and the Culture of Cheating*, retrieved July 9, 2015, from <http://atlanticyardsreport.blogspot.ca/p/atlantic-yards-and-culture-of-cheating.html>
23. Salkin and Lavine, *supra* note 12.
24. For an overview of the issues, see Rosenblum, D. (2013). *Selling Low, Building High: How Brooklyn Dropped the Ball on the Biggest Negotiation of Its Life*, retrieved from <http://nextcity.org/features/view/selling-low-building-high>
25. Sheikh, N. (2009). Community Benefits Agreements: Can Private Contracts Replace Public Responsibility? *Cornell Journal of Law and Public Policy*, 18:223 at 232.
26. Text of CBA available online at <http://gca.columbia.edu/files/gca/content/pdf/CBAAgreement.pdf>
27. Fisher, A., Zients, S. and Donnelly, G. (2015, March 15) Ties that Bind: Checking on the Manhattanville Community Benefits Agreement, Six Years Later. *ColumbiaSpectator.com*, retrieved from <http://features.columbiaspectator.com/eye/2015/03/25/ties-that-bind/>
28. Chart does not include environmental/green building elements, which are dealt with elsewhere in the context of the Tower Renewal project. This chart is not comprehensive in that certain agreements include other benefits not shown here; however, these are the most common across a variety of agreements.
29. Text of the PERC is available at http://www.forworkingfamilies.org/sites/pwf/files/documents/PERC_0.pdf
30. <http://www.forworkingfamilies.org/print/1121#multiparcel> The Milwaukee and Atlanta models are closer to the kinds of public CBAs found in Scotland, as discussed below.
31. Seigel, S. (2013) Community Benefits Agreements in a Union City: How the Structure of CBAs May Result in Inefficient, Unfair Land Use Decisions. *Yale Law School Legal Scholarship Repository, Student Legal History Papers*, Paper 28.
32. R. Felton (2014, Dec. 14). House bill would ban Detroit from enacting Community Benefits Agreement ordinance. *Detroit Metro-Times*, retrieved from <http://www.metrotimes.com/Blogs/archives/2014/12/04/house-bill-would-ban-detroit-from-enacting-community-benefits-agreement-ordinance?mode=print>
33. US, HB 4052, *Local Government Labor Regulatory Limitation Act*, 2015, Reg Sess, Mich, 2015, S. 2# (enacted), retrieved from <http://www.legislature.mi.gov/documents/2015-2016/billenrolled/House/pdf/2015-HNB-4052.pdf>
34. *Ibid.* s. 10 Interestingly, the law does not prohibit a local government from regulating the terms and conditions of a "voluntary agreement" between a private party and the government with respect to services being provided directly to the government by that party: section 15. The implication of Bill

- 4052 therefore seems to be that “one-off” deals or agreements are permitted, they just cannot be legislated on a broad policy level. Put another way, developers can strike voluntary agreements with communities – in other words, private CBAs – for particular projects, and the government can require private parties to include terms and conditions respecting community benefits where those parties are providing services directly to governments (for example, a construction company contracted by a government to build a piece of infrastructure); but the government cannot require the provision of community benefits that affect employment through policy or legislative means as a general matter throughout its jurisdiction.
35. L.A.’s Marilton Square development has been stalled for over a decade (see <http://intersectionsouthla.org/story/south-las-district-square-big-plans-and-a-long-waiting-game/>) San Diego’s Ballpark Village CBA was signed in 2005 and 136 units of affordable housing were delivered shortly thereafter. However, the financial crash delayed the development of some of the parcels of land which meant that other benefits are only being delivered now: for example, they are only now selecting the organization which will provide job training and services both for construction jobs and the service and operational post-construction jobs detailed in the agreement. Source: Interview with Peter Brownell, Center for Policy Initiatives, August 11, 2015.
 36. The reports speak of “clauses” versus community benefits agreements, likely because almost all of the organizations who use them are public organizations that do not do “side” agreements with the community but incorporate these clauses into their RFP with contractors.
 37. Conversation with Roddy Stewart, Business Advisor, CEIS, August 31, 2015
 38. The Outcomes emphasize employment, innovation, training and addressing inequality; all public organizations are asked to address how they can contribute to them. *Ibid.* at 17
 39. MacFarlane, R. and Cook, M. Anthony Collins Solicitors (2008). *Community Benefits in Public Procurement: A Report Demonstrating the Methodology for Including Targeted Recruitment and Training Clauses in Public Sector Contracts*, The Scottish Government, Edinburgh.
 40. At least one organization, Clyde Gateway Urban Regeneration Company, has consulted with communities to develop a “wish list” of benefits which then informs the development of the community benefits clauses in their contracts: *Ibid.* at 20. See also http://www.clydegateway.com/pages/people_community_engagement.php
 41. Sutherland, V., McTier, A., Glass, A. & McGregor, A. (2015 June) *Analysis of the Impact and Value of Community Benefit Clauses in Procurement: Final Report*. Training & Employment Research Unit, University of Glasgow.
 42. *Ibid.* at i.
 43. *Ibid.* at 10.
 44. The authors also stress that this data should be widely shared, acted upon, and used by the government as the basis for a national picture of the impact of community benefits over time. *Ibid.* at iv.
 45. Conversation with Roddy Stewart, *supra* note 37.
 46. *Ibid.*
 47. *Ibid.* See also www.readyforbusiness.org
 48. *Ibid.*
 49. Like CBAs, an IBA is a legally binding agreement that is developed through a consultation and negotiation process with the affected indigenous band(s). They outline any negative impacts that may result from the exploitation of the resource (usually mining), mitigation efforts, and how the indigenous community will benefit with respect to employment, economic development, or other aspects. See <http://www.miningfacts.org/Communities/What-are-Impact-and-Benefit-Agreements-%28IBAs%29/>. An important distinction, however, arises from the Crown’s “duty to consult” with Aboriginals who may be affected by projects occurring on or near their traditional land. While the duty does not legally apply to private companies, resource companies have found that such a practice is in their best interest: *Ibid.*
 50. Interview with Mark Guslits, former Chief Development Officer, TCHC, on October 30, 2015.
 51. *Ibid.* TCHC had tried a pilot project with Donmount Court, a smaller development in the Dundas and Broadview neighbourhood, but Regent Park used a different model which was more successful in incorporating community benefits
 52. Meagher, S. and Boston, T. (2003) *Community Engagement and the Regent Park Redevelopment*, retrieved from http://www.publicinterest.ca/images/reports/TR_Regent_Park_Community_Engagement.pdf
 53. Interview with Mark Guslits, *supra* note 50.
 54. Bettam, S. (2015, June 8) *Regent Park residents sparked redevelopment, left with mixed feelings: urban studies undergrad research*, U of T News. Retrieved from <http://news.utoronto.ca/regent-park-residents-sparked-redevelopment-left-mixed-feelings-urban-studies-undergrad-research>
 55. Interview with Karen Wilson, City of Toronto, July 2, 2015.
 56. Based on November 2012 RFP #01/12 for Lawrence Heights.
 57. Specifically, the Vancouver Agreement of 2000, an initiative to coordinate efforts and resources of all three levels of government to support sustainable social, economic and community development of the Vancouver inner-city, and inclusivity commitments to maximize opportunities and mitigate impacts from the Games in the inner city in 2003. *Ibid.* at 2.
 58. *Ibid.*
 59. *Ibid.*
 60. Peachey, K. (2009) *Building on Success: An Evaluation of the Community Benefits Agreement for the Vancouver Olympic Village Site*. Building Opportunities with Business Inner City Society.
 61. *Ibid.* at 26.
 62. *Ibid.*
 63. See, e.g. Columbia agreement referenced in Sheik, *supra* note 26
 64. One criticism of private CBAs is that they produce “opaque decision-making process[es]”, although this is often true of any bilateral negotiation. See, e.g. Camacho, *supra* note 19 at 369.
 65. Gross, *supra* note 5
 66. *Ibid.*
 67. See, e.g. LAX (an example of a third-party monitor’s report is included at <http://www.lawa.org/uploadedFiles/OurLAX/pdf/CBA/CBAStatusReport2010.pdf>)
 68. See, for example, Columbia University’s publically available progress report for the West Harlem CBA, retrieved from http://manhattanville.columbia.edu/sites/default/files/content/2013.09.25_growing_together_update.pdf
 69. Based on conversations with Peter Brownell, Research Director, and Center on Policy Initiatives, San Diego, August 11, 2015; Mike Piscatelli, Deputy Economic Development Administrator, City of New Haven August 4, 2015; and Roddy Stewart, CEIS, August 31, 2015.
 70. Gross, J. (2009) *Community Benefits Agreements in Building Healthy Communities: A Guide to Community Economic Development for Advocates, Lawyers, and Policymakers*. Forum on Affordable Housing & Community Development of the American Bar Association.
 71. *Ibid.*
 72. Sheikh, *supra* note 25 at 226. See also, for example, the Ballpark Village CBA in San Francisco. ACCORD was the coalition that negotiated the agreement and it was signed by 14 different ACCORD members.
 73. Salkin and Levine, *supra* note 12.
 74. J. Gross, *supra* note 5.
 75. *Ibid.* at 49.

76. Sheikh, *supra* note 25.
77. See, for example Macfarlane, R. and Cook, M. (2002) *Achieving community benefits through contracts: Law, policy and practice*. The Policy Press for the Joseph Rowntree Foundation, Bristol, retrieved from <http://www.jrf.org.uk/system/files/jr129-community-benefits-contracts.pdf>
78. *Public Services (Social Value) Act 2012*, (U.K.) C. 3
79. Where public agencies enter into CBAs, procurement may be another area requiring research, given the need to comply with trade treaties like the Agreement on Internal Trade, NAFTA, and potentially the Comprehensive Economic and Trade Agreement (CETA) with the European Union. In addition to these treaties, the public sector in Canada has strict procurement regulations that generally focus on the lowest bid, rather than social value. New and creative approaches to procurement need to be developed to meet the goals of community benefits clauses.
80. S.O. 2015, c. 15
81. Section 9 of the Act, which requires that contractors provide an apprenticeship plan, will be the subject of regulations so at least one aspect will be mandatory: *Ibid.*, s. 9(4)(iii)
82. For example, Lawrence Heights and Alexandra Park.
83. See Camacho, *supra* note 19 at 367.
84. Further and deeper research on this concept has been done by the Social Research Demonstration Corporation for the United Way of Greater Toronto, as part of a Labour Market Partnership study funded by the Ministry of Training, Colleges and Universities (not yet published).
85. Nugent, *supra* note 17 at 12.

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Salkin, P.E. and Lavine, A. (2008) *Understanding Community Benefits Agreements: Equitable Development, Social Justice and Other Considerations for Developers, Municipalities and Community Organizations*. *Journal of Environmental Law*, 26:291

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Statutes and Legislation

US, HB 4052, *Local Government Labor Regulatory Limitation Act*, 2015, Reg Sess, Mich, 2015

Public Services (Social Value) Act 2012 (U.K.), c 3

Procurement Reform (Scotland) Act 2014, ASP 2014

Infrastructure and Jobs for Prosperity Act, S.O. 2015, c. 15

Texts of Community Benefits Agreements Reviewed:

Staples (LA)
Marlton Square (LA)
Kingsbridge Armory (NY)
LAX (LA)
Lorenzo Project (LA)
Hill District (Pittsburgh)
Yale-New Haven Hospital (New Haven)
Bayview/Hunters Point (San Francisco)
Ballpark Village (San Diego)
Oakland Army Base (Oakland)
Columbia (West Harlem/Manhattanville) (New York)
Vancouver Olympic Village (Vancouver)

Appendix A

Community benefits – contributions and costs

NAME	TOTAL PROJECT COST	COMMUNITY BENEFITS COST	PERCENTAGE OF TOTAL	NOTES
HOLLYWOOD & VINE	\$326M	\$600K ((\$100K for job training, \$500K donation to arts programs at high school)	1.84 percent	Does not include cost of living wage commitments or affordable housing set-aside (70 of 350 units).
GRAND AVENUE	\$2B	\$51M ((\$50M for new public park, \$1M for job training programs)	2.5 percent	Does not include \$1.5M in no-interest loans to nonprofits working to increase affordable housing downtown, living wage commitments, 20 percent affordable housing set-aside (106 of 532 units), streetscape improvements and public art (no financial details available).
STAPLES CENTRE	\$2.5B	\$1.3M ((\$75,000 for needs assessment for parks and rec facilities, \$1M for new parks and rec facilities, \$125K (\$25K/year for 5 years) on parking program, \$100K seed funding for First Source Referral agency)	.052 percent	Does not include \$650K for interest-free loans to one or more NFP housing developers (repayment due in full within 3 years of loan), living wage commitments, 20 percent affordable housing set-aside (100-160 units of ultimate 500-800), which units shall remain affordable for 30 years.
VANCOUVER OLYMPIC VILLAGE	\$1B	\$750K ((\$750K for training, coaching, and to support procurement goals)	.075 percent	Does not include target of \$15M in inner-city procurement (ultimately \$42M), 45,000 sq. ft. new community centre, 3 child care centres plus family childcare facilities in residential buildings, public space, public plaza, public art, community garden and contribution to expanded library (no financial information provided as to cost of these additional elements).
BALLPARK VILLAGE	\$250M	\$3.15M (including \$1.5M for job training, \$1.5M for construction of new affordable housing, \$100K for economic impact study, \$50K for arts and culture in the neighbourhood)	1.26 percent	Does not include provision of 200 sq. ft. storefront space for First Source job referral operations rent-free, provision of land for affordable housing project (free), good faith efforts for a grocery store, living wage provisions.
KINGSBRIDGE ARMORY	\$350M (originally \$275M)	\$8M (including building a new community space and small business incubator, \$10K annual energy scholarship training fund, \$250K for a grant program for local businesses for capital improvements)	2.28 percent	Does not include 1 percent of gross annual ice rink rental up to \$25M, 2 percent thereafter.
LORENZO PROJECT	\$300M (confirm)	\$4.09M ((\$2.1M for health centre, \$1.45M for new or rehab of affordable housing, \$60K for job coordinator, \$40K for compliance monitor, \$300K for training, referral and implementation of job program, \$300K for revolving loan fund for small business, \$200K for TOD strategies/smart growth)	1.36 percent	Does not include establishment of 7500 sq. ft. centre on ground floor of the project rent-free with parking for 20 years, 5 percent (about 1050) residential units to individuals or families at very low income level, wage and job commitments, 10 percent of project's retail space for local small businesses at discount off-market rates for 10 years.
YALE-NEW HAVEN	\$430M	\$3,48M (including \$1.2M to city for housing and economic development in area; \$100K/yr. for 5+ years to establish "career ladder" program; \$100K yr for 5+ years to nursing career ladder program; \$140K/yr for min 5 years for 2 new city positions; up to \$75K for medical area planning study; \$100K/yr for min 5 years to a Youth Initiative established by the Mayor)	.79 percent	This is underestimated as there is a complex formula that assigns a "voluntary" payment for 5 years based on # of FTEs and average # of hospital beds; also does not include establishment of training program and traffic improvements (neither is costed out in the agreement).