

## Construction Matters: New *Building Act* Provisions & Introduction of the *BC Energy Step Code*

Recent legislative changes have been made by the Province that impact building regulation at the local and provincial levels. These changes signal a call to action upon the building sector to aid in provincial efforts to reduce greenhouse gas emissions. A greater understanding and awareness of the impact that building performance has on energy consumption, coupled with greater possibilities for innovative building technology, have provided an opportune time for the introduction of such legislative changes.

The *Building Act*<sup>(1)</sup> introduced two significant changes that came into effect on December 15, 2017: (1) a restriction on local government authority to regulate in respect of technical building requirements;<sup>(2)</sup> and (2) the Province-wide application of the Energy Step Code<sup>(3)</sup>.

This article briefly discusses each of these changes and their impact on builders, developers and local governments.

### **Restriction on Local Building Regulatory Authority**

As of December 15, 2017, local government bylaws regulating building requirements are no longer of any force, to the extent they relate to a matter that is the subject of a building regulation requirement under the *British Columbia Building Code* ("BCBC") or that is prescribed as a "restricted matter" by Provincial regulation. This means that any technical building requirements within local government bylaws are of no legal force as of December 15, 2017 and thereafter, all such requirements come exclusively within the jurisdiction of the Province under the BCBC.

A local government may, however, still regulate in respect of non-technical building requirements or matters that are prescribed by regulation as "unrestricted matters".<sup>(4)</sup>

The *unrestricted matters* prescribed by regulations under the *Building Act* include the following:

- For buildings within a Development Permit Area:
  - the form, exterior design and finish, as these relate to wildfire hazard;
  - the form, exterior design and finish as these relate to the character of the development;
  - the form, exterior design and any matter as it relates to machinery, equipment and systems external to the building, as these relate to energy or water conservation or the reduction of greenhouse gas emissions;
- Any matter as it relates to a district energy system;
- Any matter as it relates to limiting the transmission into a building of sound that originates outside the building;
- For buildings within a designed flood plain area, the setback of the flood construction level from a watercourse;
- For a heritage building, any matter relating to the heritage value or heritage character of the building;
- For the conservation of energy; and
- For the reduction of greenhouse gas emissions.

A local government is authorized to enact local building requirements (to the extent that they are otherwise authorized to do so) in respect of the last two matters (energy conservation and greenhouse gas emissions reductions) provided that:

- The requirements do not require buildings to be con-

structed except in conformance with the BCBC; and

- The requirements do not modify, or add to, the requirements of the Energy Step Code provisions of the BCBC.

By eliminating the patchwork of building regulations, the Province has attempted to establish a streamlined regulatory framework that can support innovation in building technology across the province,<sup>(3)</sup> and across the construction industry.

### **BC Energy Step Code**

In conjunction with streamlining the building regulatory framework, the Province has introduced the BC Energy Step Code<sup>(5)</sup> (the “**Energy Step Code**”) into the BCBC. The Energy Step Code establishes incremental performance targets to transition the Province’s technical requirements for buildings today to net-zero energy ready buildings by 2032.

The base requirements in the BCBC for building performance already include provisions for energy efficiency. The Energy Step Code establishes progressive performance goals (“steps”) for enhanced compliance with energy-efficiency targets beyond these base requirements. The steps range from Step 1 to Step 5.

The BCBC requirements to achieve Step 1 of the Energy Step Code are the same as the base requirements for building performance; however, they require builders to conduct whole-building energy modelling to demonstrate energy use and to conduct airtightness testing.

The BCBC requirements to achieve the higher levels of the Energy Step Code, such as Step 4 and Step 5, will require more substantial changes to the building design, framing techniques, use of building materials and selection of building systems (heating, ventilation, hot water, windows, etc.). These higher levels are intended to be used for net-zero energy ready new construction.

A local government may choose to either require or incentivize builders to meet a higher step beyond the base requirements of the BCBC.

The Energy Step Code does not prescribe how a building must be constructed to achieve a set standard but rather, it identifies the energy-efficiency targets for building performance (such as air leakage) that must be met to achieve a particular step. The manner in which compliance with a specified step is achieved is left to the expertise of designers and builders.

### **Implications of Change**

Owners, builders and developers involved in new building projects will invariably be impacted by the changes made to the BCBC and the restrictions placed on local governments with respect to building regulation. The specific impact will depend on a number of factors associated with a new building project, such as:

- Location and local policy - variations between, and within, municipal jurisdictions may exist as to requirements for higher Energy Step Code compliance beyond the base requirements of the BCBC and/or different incentives offered for a builder’s voluntary uptake of a higher step;
- Use and size of building - depending on whether a building falls under Part 9 (residential and small-area buildings) or Part 3 (large-area and complex buildings) of the BCBC, and whether it is being used for residential or commercial purposes may impact the Energy Step Code level required or incented to be achieved;
- Type of building method - the requirements for otherwise similar size or similar use buildings may vary depending on whether wood frame, construction or other type of building method is used;
- Project approval stage and community extractions - the approval stage (building, DP approval, rezoning) that is applicable to a new building may involve different requirements from the approval authority as well as the incentive options that may be available to builders for building to higher Energy Step Code levels.

The requirements imposed and incentives offered within a particular jurisdiction to enhance its energy conservation policy will no doubt vary between local governments. For example, one municipality may require nothing more than the base requirements of the BCBC while another may require that all new commercial developments meet the Step 1 requirements and incentivize rezoning applicants to build to Step 2 in exchange for increased density.

A local government may employ one or more techniques to achieve energy conservation objectives, such as:

- Amending its current building regulation bylaw to require a higher step of the Energy Step Code beyond the base requirements of the BCBC;
- Amending its current zoning bylaw for the purposes of establishing conditions relating to the conservation of energy that incentivize owners to build to higher Energy Step Code levels in exchange for higher density;
- Making financial tools, such as a property tax exemptions, available to properties under a revitalization tax exemption program, for the purposes of achieving green, economic and/or environmental objectives;
- Negotiating a phased development agreement requiring buildings to reach certain steps of the Energy Step Code.

In addition to the foregoing, a developer, builder or owner may choose to build more energy-efficient buildings according to higher Energy Step Code levels, in the absence of or in addition to local requirements, simply as part of its own business strategy.

For local governments, the legislative changes may require a review of existing policy and practices to both address the restrictions imposed upon them and to consider opportunities for enhancing energy conservation measures. This means that local governments may want to:

- Review building regulations to ensure they are compliant with new provincial legislation;

- Consider bylaws and/or use legislative tools, such as density bonussing schemes, DCC bylaws providing for waiver or reduction of charges for eligible developments, or revitalization tax exemptions, to enhance energy conservation efforts through building regulation;
- Offer training and education opportunities for building inspection, planning and engineering personnel to ensure they understand the impacts of the new legislation and the legislative tools available to local governments to implement policy objectives for energy conservation;
- Assess and revise the content of permits, forms, applications and template agreements to ensure they do not contain obsolete references to technical requirements, building bylaws or BCBC provisions;
- Review and revise (or introduce) procurement documents and purchasing policies that ensure that the organization's purchasing practices are consistent with their policy objectives for energy conservation;
- Demonstrate their commitment to energy conservation by adopting higher Energy Step Code standards for new construction of municipal buildings and community facilities.

Lastly, under the new regime the Province can consider ideas for the innovative use of building materials or methods that vary from the requirements in the BCBC, such as novel green building solutions. There are two ways in which changes to the BCBC may be achieved:

- A change to a building requirement in the BCBC may be requested. This option is appropriate for proposed changes that will likely have broad application to multiple jurisdictions throughout the Province. This option has always been available to individuals and local governments and remains the case even with the introduction of the *Building Act*; and
- A building requirement variation under section 7 of the *Building Act* may be requested. In this scenario, a local

government may make an application to the Province requesting a variation to enforce regulations that differ from the requirements of the BCBC and, if approved following the Province's review, the variations would be enacted through provincial regulations and made applicable to the local government jurisdiction that made the application. This allows local governments wanting greater flexibility to prescribe (if approved) their own technical building requirements.

All levels of governments are making efforts to meet targets for greenhouse gas reduction as part of the overarching goal of reducing warming temperatures.<sup>(6)</sup>

The Energy Step Code provides a tool for local governments and the construction and the development community at large, to advance policies and practices that promote energy efficient construction of new buildings. The *Building Act* has sought to create a more uniform field to support the implementation of such policies and practices.

(1) Section 5 of the Building Act (SBC 2015, Ch. 2) came into force December 15, 2017, and imposed the restrictions on the authority of local governments to regulate with respect to building requirements.

(2) Technical requirements are those for the construction, alteration, repair and demolition of buildings, including methods, materials, products, assemblies, dimensions or performance requirements.

(3) The BCBC and the Energy Step Code do not apply to construction in the City of Vancouver (unless it is adopted by the CoV into its building bylaw) or to construction on First Nations or Federal lands.

(4) See s. 2 and 2.2 of the Building Act General Regulation (BC Reg. 131/2016).

(5) The *Energy Step Code* was enacted in April 2017 and came into force on December 15, 2017.

(6) Signatories to the 2015 Paris accord, which includes Canada, agreed to set national targets to cut greenhouse gas emissions in an effort to keep global average temperature increases below 2°C. The majority of local governments in BC are signatories to the BC Climate Action Charter, evidencing their commitment to support GHG emission reduction initiatives at the local level.

**December, 2017**

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Our lawyers combine legal experience in local government, commercial real estate development, and construction law to provide focussed legal services to municipalities, owners, builders and developers on a range of projects, from concept to completion, and beyond.

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