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Land Use Regulation: At The "Data Centre" of Controversy

1. Introduction

Artificial Intelligence ("AI") has captivated the world's consciousness; proponents outline a world of technological progress, while critics anticipate job losses, and societal catastrophe. While these debates are global in scale, they are especially salient at the local level, where the discussion of AI also concerns the data centres that are used to provide the necessary computational power to advance this technology. This article discusses some considerations regarding the exercise of local governments' land use, and development powers with respect to data centres.

2. Defining AI Data Centres

In pursuing specific regulation of data centres, local governments should understand what these facilities are, and how they are distinguishable from other uses that involve computers. Data centres generally contain computer equipment, and run software designed to process data requests, as well as to receive, store and deliver data to clients over a network.[1] They are distinct from other uses involving computers because they strictly provide the compute, and storage necessary for clients to effectively utilize their data. They are composed of servers (the computers themselves), storage systems, network equipment, cooling systems, power infrastructure and security systems.[2]

Data centres come in a variety of forms, depending on the needs of users. Given their utility for consumers and businesses, they have become the backbone of British Columbia's digital infrastructure by providing a variety of storage and cloud computing services. Enterprise data centres are smaller facilities that house a single organizations digital infrastructure,[3] and are usually found within the building containing the business that the data centre serves. A colocation data centre provides servers and other equipment to multiple off-site organizations in a single facility.[4]

Finally, some data centres are commonly described as "hyperscale" facilities, which are enormous, custom-built complexes usually operated by a single company for the purpose of cloud computing, data storage and network management.[5] Hyperscale data centres often

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contain at least 5,000 servers and use between 100 and 300 megawatts of electricity,[6] though some hyperscale data centres now use over a gigawatt (1000 megawatts). For context, the W.A.C. Bennett Dam – the largest electricity producing dam in British Columbia – has a nameplate capacity to produce ~2,857 megawatts.[7] In comparison, the average data centre typically contains 2,000 to 5,000 servers and uses around 100 Megawatts per year.[8] While there is no exact minimum size for hyperscale data centres, smaller versions typically have at least 10,000 square feet of physical space, which is larger than enterprise and colocation data centres.[9]

The differences between these three types of data centres reveal characteristics that may be relevant for regulatory purposes. One such characteristic is how a data centre will be utilized. For example, an enterprise data centre describes an accessory use, whereas colocation and hyperscale data centres are a principal use. Additionally, regulators may also consider the burdens that data centres place on local infrastructure. For instance, colocation data centres use fewer servers, consume much less electricity, and are much smaller in size than a hyperscale data centre.

A regulator may also consider how the computational or data processing power in a data centre is being used. For example, the *Data Centre Facility and Hydrogen Production Facility Power Supply Regulation* (the "Regulation") enacted under the *Utilities Commission Act* defines an AI data centre as a data centre, which uses at least 10 percent of the electricity supplied to it, or will be used for computational or data-processing tasks related to artificial intelligence.[10] This contrasts with a conventional data centre, which is defined as "a data centre, other than an A.I. data centre, the primary purpose of which is storage or processing of electronic data".[11] The Regulation prescribes different limits and processes for allocating electricity capacity by the BC Utilities Commission. The regulation further restricts the allocation of capacity for a cryptocurrency project.

Local governments should consider which metrics are relevant for their regulatory authorities and purposes, and whether those metrics are observable or may be changed without further development approvals. For example, the number of servers in a building may fluctuate while the external structure stays constant. Such a change will impact the kinds of computational services that a data centre is able to provide to users. Similarly, computing power that was used for "crypto mining" may later be reallocated and modified for AI related services.[12] As such, utilizing observable and adaptable metrics are therefore necessary as the content, and utility of data centres may rapidly change, while it's overall form-factor remains static.

3. Land Use Options for Local Governments

3.1 Official Community Plans

As an appropriate starting point, local governments should consider if or how AI data centres will be incorporated into their Official Community Plans ("OCP's"). Per section 471(1) of the *Local Government Act*, an OCP is "a statement

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of objectives and policies to guide decisions on planning and land use management, within the area covered by the plan".[13] As such, OCP's are the basis from which local governments execute various long-term initiatives by guiding the overall tenor of development without descending into detail.[14] This starting point is important as the OCP forms the basis of all land use policy for a particular local government.

To this end, OCP's include statements and map designations that cover the "location, amount, and type of commercial, industrial, institutional, agricultural, recreational, and public utility land uses", as well as restrictions on the use of environmentally sensitive land.[15] As of November 2026, there is no existing provincial law or regulation dictating how local governments must classify data centres in British Columbia. As such, local governments have considerable flexibility in how they wish to define data centres as a particular use in their OCP's.

A revised OCP could categorize data centres, or types of data centres as being either commercial or industrial uses. A commercial use is defensible as data centres exist to provide computing and data processing and storage service to customers. Moreover, some data centres are constructed similarly to office parks, though with markedly lower levels of traffic than other commercial uses. Conversely, an industrial use is also logical as hyperscale data centres use intensive amounts of electricity on a scale akin to the energy intensive Kitimat aluminum smelter.[16] Such industrial scale resource use often carries with it increased sound pollution. Nonetheless, any revisions should consider the space required by colocation and hyperscale data centres and how they may potentially impact neighbouring uses. Thus, in revising an OCP, local governments may distinguish between different kinds of data centres to manage the differences in impact between the facilities accordingly.

3.2 Zoning

In addition to a proactive OCP, local governments may utilize their zoning powers to prescribe where data centres may be built and how large they may be. Under section 479 of the *Local Government Act*, local governments may use zoning to regulate the use of land, buildings, and other structures.[17] This power is exceptionally broad, with local governments being able to divide land uses into narrow categories.[18] For example, the City of Richmond possesses over 50 zones covering uses ranging from single detached residential, community commercial, site specific industrial and health care.[19] Additionally, the language of section 479 allows local governments to regulate the placement of any buildings or structures on the land.[20] Zoning can thus be utilized to dictate a data centre's location, and in some cases, the placement of some of its structures subject to provincial legislation.

One especially powerful way that local governments can manage the placement and dimensions of data centres is through the regulation of building size. Thus, zoning bylaws managing the size and dimensions of data centres may afford local governments the opportunity to manage the type of data centres permitted within

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their borders. Some AI data centres require "suitable physical space to construct [...] warehouse-sized buildings."[21] As a result, AI data centres are often located in rural areas and industrial parks. Thus, local governments may specify the maximum dimensions of data centres, and may, for example, preclude hyperscale data centre development by stipulating a maximum floorspace for all data centres, which falls below the required space to host hyperscale activities.

Finally, zoning powers include the power to prohibit any use in a zone.[22] A local government may ban a use within its borders by prohibiting it in all zones.[23] How a zoning bylaw effectively bans certain uses depends wholly on how it is written. Some local governments take a permissive approach with respect to their bylaws, as they are written to exclude all uses except those expressly permitted.[24] Thus, notwithstanding interpretative questions arising from a particular zoning bylaw, local governments presently have a general zoning power to outright prohibit data centres, including AI data centres, subject of course to lawful non-conforming protections for existing uses and structures.

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1 European Commission: *A definition of AI: Main capabilities and scientific disciplines*: https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=56341

2 CoreSite: "Data Centers 101" CoreSite-FS-Data centres101.pdf

3 Hewlett Packard Enterprise Development LP: "What is an enterprise data center?" https://www.hpe.com/ca/en/what-is/enterprise-data-center.html

4 Fortinet: "Colocation Data Center" https://www.fortinet.com/resources/cyberglossary/colocation-data-center

5 IBM: "What is a Hyperscale Data Center" https://www.ibm.com/think/topics/hyperscale-vs-colocation ("IBM")

6 *Ibid*

7 BC Hydro: "BC Hydro Quick Facts" https://www.bchydro.com/content/dam/BCHydro/customer-portal/documents/corporate/accountability-reports/financial-reports/annual-reports/2025-2026-bc-hydro-quick-facts.pdf

8 IBM, *Supra*, note 5

9 *Ibid*

10 *Data Centre Facility and Hydrogen Production Facility Power Supply Regulation, B.C. Reg. 8/2026* s. 1 ("Data Center Power Regulation")

11 *Ibid*

12 See: The Canadian Broadcasting Corporation: "B.C. bitcoin mines are transitioning into AI data centres" https://www.cbc.ca/news/canada/british-columbia/northern-bc-bitcoin-mines-ai-9.6998180

13 *Local Government Act [RSBC 2015] Chapter 1* , section 471 ("LGA")

14 Buholzer,*Local Government Law* 6-1 ("Buhlozer")

15 LGA, *Supra,* note 13, section 473

16 Rio Tinto: "BC Works" https://www.riotinto.com/en/Operations/canada/bc-works

17 LGA,*Supra* , note 13 section 479

18 Buholzer,*Supra* , note 14, 7-22

19 City of Richmond, "City of Richmond Zoning Map" https://www.richmond.ca/__shared/assets/zoningbylawmap72129.pdf

20 LGA, *Supra*, note 13, section 479(3)

21 Sean Farmer, "The Stone in the Cloud: Planning the Resource Demands of the Data Centre Industry Through Land Use Law, 2023 CanLII Docs 317 https://canlii.ca/t/7n8v7

22 LGA, *Supra*, note 13, section 479

23 See: Buholzer, *Supra*, note 14, page 7-21 referencing *Common Exchange Ltd. v. Langley (City), [2000] BCJ. No. 2473* and *British Columbia Lottery Corp. v. Vancouver (City), [1997] BCJ. No. 2858*

24 See: Regional District of Kootenay Boundary: "AI Data Centers": https://rdkb.com/Plan-Build/Planning/AI-Data-Centres

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

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