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THE *BUILDING ACT*: WHAT YOU NEED TO KNOW

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I. INTRODUCTION

Legislation about building standards would ordinarily warrant, at most, a 'break-out' session at a local government law seminar; in ordinary circumstances, only a few local government staff members would be interested in, or prodded by their supervisors to attend, such a session. British Columbia's new *Building Act* is different, insofar as it has potential consequences for staff members working in just about any department or division through which a local government delivers its services or administers local regulations. Thus the "you" in the title of this paper could be just about anyone in local government administration.

As to the "what", a few minor aspects of the *Building Act* amount to a re-enactment of existing legislation dealing with building standards to consolidate it into a single statute and create a more logical structure. For example, the authority of a minister of the provincial government to enact a provincial building code and other building regulations has sensibly been relocated from local government enabling legislation to the new *Building Act*. These aspects of the Act would be in the "nice to know" category for local government officials, rather than "need to know", and won't be mentioned further.

The "need to know" aspects are twofold: local building official qualifications, and local building requirements.

We sometimes advise in our client seminars that we cannot field questions as to the "why" of new legislation. In the case of the *Building Act*, there is no need to do so since the provincial government has articulated its objectives quite clearly: competency, consistency and, less convincingly, innovation. The provisions dealing with local building officials have been enacted to establish a basic level of competency across the province for officials who administer building standards. The provisions dealing with local building requirements have been enacted to increase the consistency of building standards across the province, a matter that the provincial government started to address with the enactment of the *Community Charter* in 2004. The path to consistency that the Province has chosen is to exercise exclusive jurisdiction with regard to technical building requirements, which necessitates taking jurisdiction back from local governments.

As to innovation, it may be a matter of opinion whether innovation in building standards is more likely to occur when local governments have authority to initiate or accommodate it, or when a provincial government agency has to approve each innovation that a designer or builder might wish to propose, as the *Building Act* requires. Time will tell. For now, it suffices to say that the *Building Act* contains provisions under which a local government or a designer or builder will be able to apply to the Province for a local variation to the BC Building Code, and pay a fee to the Province to enable it to engage consultants to examine and evaluate the proposal and make recommendations as to whether the local variation ought to be allowed.

This is a more elaborate version of the ministerial approval routine with which local governments have been living since the Buildings and Other Structures Bylaws Regulation under s.9 of the *Community Charter* was enacted. The "local variation" approval process is outside the scope of this paper.

The paper references publications that are available on the provincial government's *Building Act* website https://www2.gov.bc.ca/gov/content/industry/construction-industry/building-codes-standards/building-act, which local governments should check periodically for information on the administration of the new regime, including changes in "unrestricted matters" discussed later in the paper. Government interpretations of its own legislation are not legally binding, and seem in some cases to focus on the government's intentions with the legislation as much as its actual effect, so these publications should be treated with caution.

Nothing in the *Building Act* affects the City of Vancouver.

II. BUILDING OFFICIALS

In the *Building Act* provisions dealing with building officials, the Province is again embracing the concept of partnering with arms-length organizations – in this case the Building Officials Association of BC and the Plumbing Officials Association of BC – to administer and enforce professional competency and practice standards. The Province is relying on these organizations to provide training, control membership and impose and police continuing professional development requirements. References in this paper to BOABC should be interpreted as references to POABC in relation to plumbing matters.

Section 10 of the *Building Act* addresses the question of who may make determinations, on behalf of a local government, as to whether a building design or the construction of the building complies with the Building Code. The answer is, as of February 28, 2021, either a "qualified building official" who is making a determination that is within their scope of practice, or an exempt building professional. Exempt building professionals are, essentially, the same individuals who can provide professional certifications required by the Building Code, that is, engineers and architects; these won't be mentioned any further.

A "qualified building official" is a person who has met qualification requirements specified in the Act, whose name is in the BOABC register as a member in good standing, and who has met continuing professional development requirements prescribed by the government. Qualification requirements have been specified by regulation in relation to 3 levels of complexity in relation to building matters, and 2 levels in relation to plumbing. Building officials may make determinations as to Code compliance, only in relation to matters that are within their scope of practice as recorded by BOABC, which will depend on the level of training they

have received and the exams they have passed. (Until February 28, 2021, only membership in BOABC is required to qualify an official to make these determinations.) The Act applies these competency standards in two ways:

- It is a contravention of the Act for any person performing building official duties to perform a function for which they are not qualified, punishable by an administrative penalty of up to $10,000 and suspension or removal from the BOABC register.

- It is a contravention of the Act for a local government to allow a person who is not a qualified building official to perform such a function, also punishable by an administrative penalty of up to $10,000.

For many local governments, complying with s. 10 will involve staff training and recruitment unless the local government decides not to attempt to meet the Province's standards and withdraws from administering and enforcing the Building Code, which is still an option. Some local governments might be exploring the option of joining with other local governments to provide building regulation services collectively, achieving economies of scale in recruitment and retention of qualified building officials. Local governments will need to review their Building Code administrative practices to ensure that supervisors of building officials are not given authority to overrule judgment calls that have to do with Code compliance where the supervisor is not themselves a "qualified building official", or an architect or engineer. The silver lining in the *Building Act* may be the implicit statutory prohibition on municipal councils and CAOs interfering with technical decisions on Code compliance that have been made at the building official level; such second-guessing of local government staff will be unlawful, rather than just a bad idea.

Building bylaw amendments will not typically be required to comply with s. 10, though it might be prudent in routine reviews and revisions to building bylaws to amend definitions of "building officials" to cross-reference definitions of "qualified building officials" in the *Building Act* as of February 28, 2021. If nothing else, this would remind local elected officials and staff of the existence of statutory qualification requirements for these staff members, which are rare if not unique in local government matters in BC.

III. LOCAL BUILDING REQUIREMENTS

For local governments, a key provision in the *Building Act* is s. 5, which is as follows:

> 5 (1) In this section, "local building requirement" means a **requirement in respect of building activities** that is **enacted** by a local authority other than a treaty first nation or the Nisga'a Lisims Government.

(2) This section applies despite any of the following:

(a) the Community Charter;

(b) the Fire Services Act;

(c) the Islands Trust Act;

(d) the Local Government Act;

(e) the University Act;

(f) any other Act prescribed by regulation of the Lieutenant Governor in Council.

(3) Subject to subsection (4), a local building requirement **has no effect** to the extent that it **relates to a matter that is**

(a) subject to a requirement, in respect of building activities, of a building regulation, or

(b) prescribed by regulation as a **restricted matter**.

(4) Subsection (3) does not apply in relation to a matter that is prescribed by regulation as an **unrestricted matter**.

To complete the picture, the *Building Act* defines "building activities" as the construction of new buildings, or the alteration, repair or demolition of existing buildings, and defines a "local authority" as including a municipality or regional district. The *Interpretation Act* defines "enact" to include "issue, make, establish or prescribe".

Section 5 is in force and takes effect on December 15, 2017. This paper will address each of the terms and phrases that are emphasized above, not in the order in which they appear.

A. Restricted Matters

Section 3(b) effectively gives the minister responsible for the Building Code the authority to invalidate any local requirement in respect of *Building Act*ivities even if it doesn't relate to a matter that is subject to a provincial building regulation, by enacting a regulation prescribing it as a restricted matter. This is another example of the potential erosion of local government jurisdiction, whereby the division of powers between the provincial and local governments is determined not by the Legislature but by a single member of the provincial Cabinet. While it

can be viewed as merely a contingency plan to be implemented in case the drafters of the Act missed something, by empowering the minister to invalidate local building requirements even in the absence of an inconsistent provincial standard the Province has taken a very broad approach to consistency. There is, to date, no regulation designating "restricted matters".

B. Requirement in Respect of Building Activities

Under the *Building Act*, a "building activity" means the construction of new buildings or the alteration, repair or demolition of existing buildings. Grammatically speaking, the words construction, repair and demolition are gerunds – nouns formed from verbs. All of these words refer to building as an activity rather than the building as an object. So local building requirements are requirements having to do with how a building is constructed or altered. Requirements that simply apply to a building as an object are not necessarily "building requirements" in this sense. In its "Changes for Local Governments Under Section 5 of the *Building Act*" document (February 2017 version), the Province says that the building requirements that the Act is targeting "define the methods, materials, products, assemblies, or dimensions to be used or performance to be achieved when building".

In the same document, the Province says that local government requirements and specifications for electric vehicle charging stations in buildings are not caught by s. 5 because they concern a topic or subject that is not addressed in the Building Code, but that a local government requirement for a green roof is caught because green roofs "are related to the broader matter of roofing construction, which is regulated by the Code". It doesn't seem that much of a stretch to suggest that local government requirements for electric vehicle charging stations in underground parking garages are similarly "related to the broader matter of parking garage construction, which is also regulated by the Code"; the "related to" formulation in s. 5 seems somewhat elastic. At least initially, it seems that the Province's interpretation of the *Building Act* will be heavily informed by its awareness of the types of local building requirements (like green roofs) that have provoked industry complaints about inconsistency. Other local building requirements that the Province has deemed to be "out of scope" and therefore unaffected by the *Building Act* include requirements for screening of mechanical equipment, backflow preventer testing, and cross-connection control requirements that apply outside the boundaries of the parcel on which the affected building is located. Examples of local building requirements that are caught by s. 5 and mentioned in the "Changes for Local Government" document, in addition to green roof requirements, are backflow prevention testing within the property line, requirements for full cut-off lighting fixtures (presumably when the fixtures are mounted on buildings), recycling facility requirements and specifications, and water efficiency measures.

Section 5 clearly does not catch local requirements related purely to the administration of the Building Code or the local building bylaw, such as requirements for professional design and certification of Part 9 buildings and requirements for building inspections. Nor does it catch local building requirements that are made under the authority of an Act not mentioned in s. 5, or made in respect of buildings and structures (such as temporary buildings and retaining walls) whose construction is not subject to the Building Code.

C. Enacted

The first point that can be made about the use of the word "enacted" is that it excludes building requirements that apply only because the builder has voluntarily agreed to comply with them. Included in this category would be building requirements contained in covenants granted to a local government under s. 219 of the *Land Title Act*, or in a density bonus bylaw enacted under the zoning power or in a phased development agreement. The Province's consistency agenda does not extend so far as to prevent builders from agreeing, for their own reasons, to comply with local building requirements with which the law does not compel them to comply.

The *Interpretation Act* defines "enact" to include "to issue, make, establish or prescribe", meaning that s. 5 of the *Building Act* catches local building requirements whether they are in a local government bylaw or are brought into existence by some other "enactment" procedure. Because various Part 14 and Part 15 permits are "issued" by local governments, for example, they are probably "enacted". The Province's "Changes for Local Governments" publication contains under the heading "What Section 5 Does Not Affect" the following statements, which we suggest be treated with caution given the *Interpretation Act* definition just mentioned:

> The section 5 changes only affect technical building requirements enacted in bylaws. They do not limit or restrict the use of other tools such as policies or incentive programs, so long as the requirements are not enacted by bylaw.

The designation of various types of development permits as "unrestricted" (discussed below) is not consistent with this statement, since development permit conditions are not "enacted in bylaws". The reference to policies and incentive programs in this example is confusing because these measures escape s. 5 because they are not requirements, and whether they are "enacted" is moot. An "incentive program" might, perhaps, include a rate structure for a drainage utility that provides a break on drainage charges for the owners of buildings with green roofs. (Any green roof constructed to take advantage of such rates would, of course, have to comply with all Building Code requirements for load bearing, water ingress and so forth.) The rate structure would clearly be enacted by bylaw, but the rate structure does not require anyone to build a green roof. A "policy" might include a local government's choice to construct its own buildings to a higher standard than is required by the Building Code, or to provide financial assistance to non-profit organizations for building projects only if the buildings comply with a higher standard. However, the policy is implemented, the building standard it references is not a "requirement".

D. Relates to a Matter that is Subject to a Requirement of a Building Regulation

"A matter that is subject to a requirement of a building regulation" is, on the surface, a relatively straightforward formulation insofar as the Building Code can be reviewed to determine whether a particular building requirement is included. However the characterization of the "matter" that is being considered seems to be capable of causing some uncertainty. To take green roofs as an example, if the "matter" is the material composition of building roofs, one can reasonably conclude that the matter is covered in the Code. However if the "matter" is the management of runoff from impermeable surfaces on a parcel that is connected to municipal drainage works, it is not subject to a requirement in the Code. Further the local building requirement is of no effect if it merely "relates to" a matter that is subject to a requirement of a building regulation. This broadening of the scope of s. 5 seems to make that sort of parsing of the "matter" irrelevant, but raises the prospect that matters that are connected to Code requirements by virtue only of being in or on a building that is subject to the Code, will be alleged to be of no effect due to s. 5. It is, in the first instance, local building officials who will have to deal with any assertions by builders that they no longer have to comply with local building requirements, and these decisions will in some cases not be easy, given the wording of s. 5.

E. Has No Effect

This language represents a significant departure from the "concurrent jurisdiction" regime in respect of building regulation under s. 9 of the *Community Charter* and the Buildings and Other Structures Bylaws Regulation. That regime prohibited the enactment of local building standards that exceeded the standards in the BC Building Code, but did not affect the validity of standards enacted prior to 2004. Section 5 will make such standards unenforceable effective December 15, 2017, thereby achieving the Province's consistency objective. (The enforceability of local fire sprinkler requirements, mentioned frequently by the Province as an example of undesirable inconsistency, is addressed below under "unrestricted matters").

This leaves local governments with a choice as to how to deal with any such standards that they have previously enacted. Builders who are aware of s. 5 will be entitled to ignore these standards, and to demand that permits be issued for buildings that aren't compliant. Two approaches seem to be available.

The first is to repeal any such standards, a step that the *Building Act* does not require. Standards located in a building bylaw that was within the scope of s. 8(3)(l) of the *Community Charter* and therefore subject to s. 9 can be amended without the approval of the minister responsible for the BC Building Code, because the concurrent jurisdiction regime is being repealed as s. 5 of the *Building Act* comes into effect. Repealing these requirements will, however, compromise the local government's position if the Province changes its mind about the scope of the *Building Act*, or adds the matter in question to the list of "unrestricted matters" to which s. 5 does not apply.

Leaving the standards in place will, on the other hand, potentially cause confusion at the local level as to what building standards local building officials can apply, and what standards local builders have to meet. A building bylaw provision that prohibits the issuance of a permit for a building that does not comply with the building bylaw would not, in law, be interpreted as preventing an official from issuing a permit where the non-compliance involves a standard that, under s. 5 of the *Building Act*, has no effect, so local standards need not be repealed for this reason.

Perhaps the optimal course of action would be to leave these standards in place for a limited period of time after December 15, to allow time for the Province to address any unintended consequences of s. 5 by amending the legislation or adding to the "unrestricted matters" list, and thereby restoring the effect of particular local building requirements. A year or so might be sufficient. In the meantime, the standards should be flagged for non-enforcement.

F. Unrestricted Matters

During the period that followed the enactment of the *Building Act*, provincial staff compiled a list of matters that, either temporarily or on a more long-term basis, would be designated by regulation as "unrestricted" such that local building requirements related to them would continue to have effect after December 15, 2017. The remainder of this paper attempts a plain language description of each of the 12 matters currently designated as "unrestricted" under the Building Act General Regulation BC Reg. 131/2016, in the order in which they are listed in the Regulation. The Regulation has been amended several times during this period, in some cases to buy the Province more time to decide whether to replace certain types of local building requirements with additional Building Code provisions. The relevant parts of the Regulation are reproduced in the Appendix to this paper. Local governments should monitor the status of the Regulation over the next few years, as further fine-tuning seems likely.

It should be kept in mind that if a matter is "unrestricted" for the purposes of s. 5, the local government's options don't include imposing local building requirements that undercut provincial building standards. The basic rule in s. 10 of the *Community Charter* still applies: local government standards may only vary from provincial standards by imposing a higher standard.

1. Parking Stalls for Persons with Disabilities

Section 3.8.3.4 of the BCBC requires parking stalls for persons with disabilities in respect of accessible sleeping units and viewing positions in theatres, studios and opera houses, and specifies standards for such spaces. It also requires such parking stalls in other occupancies for which more than 50 parking stalls are provided, at the rate of 1 for every 100 spaces or part thereof. Meanwhile, s. 525(1)(a) of the *Local Government Act* confers local government authority to require the provision of off-street parking spaces, "including spaces for use by disabled persons". Requirements for such spaces enacted under s. 525(1)(a) are "unrestricted", and therefore retain their legal effect after December 15, 2017.

2. Firefighting Access Routes

Section 3.2.5.4 of the BCBC requires access routes for fire department vehicles to buildings more than 3 storeys in height or more than 600 m^2 in building area, and the Code goes on to specify some design criteria for such access routes. Some local governments have bylaws that also address firefighting access route design so as to accommodate the operational characteristics of local fire department vehicles and reflect local climatic conditions. The following access route matters, which are specifically addressed in s. 3.2.5.6 of the Code, will also remain within local regulatory authority: width, centreline radius, overhead clearance, change of gradient, design loads, roadway surfacing, and maximum cul-de-sac length before turnaround facilities are provided. Thus, a local bylaw could establish a minimum access route width, for example, in excess of the 6 m specified in the BCBC, but not a lesser width.

3. Firefighting Water Supply

Section 3.2.5.7(2) of the BCBC describes buildings that are sprinklered or have a standpipe system complying with specified standards, for the purpose of excepting them from a requirement that every building be provided with an adequate water supply for firefighting. For buildings that are not so equipped, the Regulation makes "water supply for firefighting" an unrestricted matter, meaning that local government standards for fire hydrant systems enacted under s. 506(1)(c) of the *Local Government Act* will continue to apply despite s. 5. Typically, these bylaws specify a minimum water flow in litres per minute, a minimum duration of such flow, and a minimum residual pressure in the water main during fire flow, that take into account the types of development that the hydrant system is serving.

4. Floodplain Setbacks

Section 525(3)(a) and (b) of the *Local Government Act* respectively authorize local governments to specify by bylaw, in relation to designated floodplains, the level of the floodplain and the minimum setback from a watercourse, body of water or dike of any landfill or structural support required to achieve the flood level. Though the BCBC does not specifically address those matters, the Regulation designates as "unrestricted" setback regulations enacted under s. 525(3). This is consistent with the Province's previous policy, dating back to the withdrawal of provincial involvement in approving floodplain bylaws and exemptions, of making local governments solely responsible for floodplain land use management. However the government's "Changes for Local Government" document indicates that this designation is temporary pending amendments to the BCBC to address flood hazards. Most local governments will probably welcome provincially-imposed flood hazard management regulations if they are developed with sufficient recognition of local conditions.

In the short term, though, the relationship between this particular section of the Regulation and s. 525(3) is difficult to understand, to the extent that the Regulation designated as "unrestricted" only the authority to specify minimum setbacks, while the specified FCL seems equally (if not more clearly) to qualify as a "local building requirement". Further, if setback rules

enacted under s. 525(3) are "local building requirements", one has to question whether s. 5 also catches building setback rules enacted under the zoning power in s. 479(1)(c)(iii) of the *Local Government Act*. We have asked the Province to clarify this section of the Regulation, so far without any reply.

5. Heritage Matters

This designation applies to any matter as it relates to the heritage value or heritage character of a "heritage building" which the Regulation defines as a building that is protected heritage property, that is subject to temporary protection under s. 606 of the *Local Government Act*, that is subject to a heritage revitalization agreement, or that is identified in a heritage register established under s. 598(1) of the Act. "Protected heritage property" is defined by reference to that term in the Schedule to the *Local Government Act*, and means (in this context) a property that is subject to a municipal heritage designation bylaw or included in a schedule of protected heritage property for a designated heritage conservation area. The wording of the designation appears to invite debate as to whether any building requirement that the local government might be imposing does or does not "relate to" the heritage value or heritage character of the building. In any legal dispute, a court is likely to defer to the judgment of local officials on this point as long as it has been reasonably exercised.

6. Development Permit Requirements

The inclusion of several different types of development permit requirements in the Regulation suggests that the Province does not really consider that the *Building Act* affects only local building requirements contained in bylaws, since development permits are issued by means of a Council resolution or delegated staff decision. Section 491 of the *Local Government Act* authorizes a range of development permit conditions potentially affecting how buildings are constructed, for various types of development permit areas. There are three separate matters designated as "unrestricted", corresponding to three categories of development permits:

- The form, exterior design and finish of buildings constructed in areas designated for the protection of development from wildfire hazard under s. 488(1)(b). Development permit conditions for these areas frequently specify the use of non-flammable exterior cladding and roofing. The authority for local governments to specify, in relation to other kinds of hazard lands (landslide, subsidence, tsunami and so forth), areas that must remain free of development "except in accordance with any conditions contained in the permit" could also result in permit conditions addressing how buildings are constructed. These types of DPs haven't been designated as "unrestricted". In these cases, local governments should have the applicant grant a covenant containing the required building conditions, since covenants are not caught by s. 5.

- The form, exterior design and finish of buildings constructed in areas designated for the establishment of objectives for the form and character of development or the revitalization of a commercial area, to the extent that the requirements in question relate to the character of the development. This designation should ensure the continued enforceability of development permit conditions requiring the use of particular building design or finishing elements that are integral to the character of the area in which the building is being constructed, such as a requirement for a gable-type roof structure or a requirement to avoid the use of particular types of materials such as clay tile and metal roofing.

- The form and exterior design of buildings and any matter as it relates to machinery, equipment and systems external to the building, in areas designated for the establishment of objectives to promote energy or water conservation or the reduction of greenhouse gas emissions, to the extent that the requirements relate to those particular objectives. The reference to items external to the building seems unnecessary, to the extent that provincial building regulations deal only with the buildings themselves. The form and exterior design of buildings in these areas could be subject to DP conditions addressing such matters as the shape and orientation of roofs to optimize solar exposure, so this aspect of the “unrestricted" assignation is needed.

7. District Energy Systems

The Regulation designates as “unrestricted” any matter that relates to a district energy system. Most local governments that operate district energy systems have bylaws that require the use of the system and set standards for the physical connection of building mechanical systems to the community system; these are caught by s. 5 but will continue to have effect.

8. Sound Transmission

This designation deals with the transmission of sound into a building from sources outside the building, a matter that the BCBC does not address (though it does address sound transmission within buildings). Local bylaws and permit conditions may continue to require that buildings be constructed in such a manner as to minimize noise nuisances from nearby sources such as railways and highways.

9. Emergency Communications

This designation addresses local requirements for in-building radio repeaters that support radio communication for emergency responders, that the BCBC does not require. These requirements will continue to have effect.

10. Fire Sprinkler Systems

Local fire sprinkler system requirements have been the "poster child" in the development industry's campaign for consistency in building standards across the province. For the time being, however, the Province has decided to shield such requirements from the effect of s. 5 of the *Building Act*, provided that the requirements were in force prior to December 15, 2017 and remain un-amended. Information in the provincial government's "Changes for Local Governments" document indicates that the Province intends to develop a provincial building regulation on fire sprinkler systems to which local governments may "opt in", whereupon this designation will presumably be amended to resemble the "step code" designation described below. In the meantime, the Province decided not to interfere with the administration and enforcement of existing local bylaw requirements. If local governments are in future amending their building bylaws to include an opt-in to optional BCBC fire sprinkler requirements, they should be removing any local requirements of the same type from the bylaw.

11. Building Accessibility and Adaptability

Similarly, the Regulation "grandfathers" building accessibility and adaptability requirements enacted prior to December 15, 2017, pending the development of enhanced building accessibility requirements for the province as a whole. Note that s. 5 only catches the technical standards for building accessibility and adaptability. Local bylaws that require a specified percentage of dwelling units in a building or development to be accessible to persons with disabilities, or adaptable for occupancy by persons with disabilities, are not caught because they don't deal with the technical standards to which the buildings are constructed.

12. Energy Step Code

The Building Code was amended this year to add incremental energy efficiency standards into which local governments will be allowed to opt, by virtue of the designation of local building requirements referring to these standards as "unrestricted". These matters are not subject to s. 5 of the *Building Act* as long as, when opting in, the local government does not purport to modify the Code standards or embellish them in any way.

APPENDIX

Building Act

BUILDING ACT GENERAL REGULATION

2 The following matters are prescribed for the purposes of section 5 (4) of the Act:

(a) parking stalls for persons with disabilities;

(b) the following matters as they relate to the design of access routes for fire department vehicles:

(i) the width of an access route;

(ii) the centreline radius of an access route;

(iii) the overhead clearance of an access route;

(iv) the change of the gradient of an access route;

(v) the loads that an access route is designed to bear and the material with which an access route is surfaced;

(vi) the length above which a dead-end portion of an access route requires turnaround facilities;

(b.1) in the case of a building not described in Sentence 3.2.5.7.(2) of Division B of the building code, water supply for firefighting;

(b.2) in the case of a building in a flood plain designated under section 524 (2) [requirements in relation to flood plain areas] of the Local Government Act, setback from a watercourse, body of water or dike of any landfill or structural support required to elevate a floor system or pad above the flood level specified for the flood plain;

(b.3) in the case of a heritage building, any matter as it relates to the heritage value or heritage character of the building;

(c) in the case of a building in a development permit area designated under section 488 (1) (b) of the Local Government Act, the following matters as they relate to wildfire hazard:

(i) form;

(ii) exterior design;

(iii) finish;

(d) in the case of a building in a development permit area designated under section 488 (1) (d), (e), (f) or (g) of the Local Government Act, the following matters as they relate to the character of the development:

(i) form;

(ii) exterior design;

(iii) finish;

(e) in the case of a building in a development permit area designated under section 488 (1) (h), (i) or (j) of the Local Government Act, the following matters as they relate to energy or water conservation or the reduction of greenhouse gas emissions:

(i) form;

(ii) exterior design;

(iii) any matter as it relates to machinery, equipment and systems external to the building;

(f) any matter as it relates to a district energy system;

(g) any matter as it relates to limiting the transmission into a building of sound that originates outside the building;

(h) radio repeater systems for emergency communications.

2.1 (1) In this section, "adaptable dwelling unit" has the same meaning as in Article 1.4.1.2. of Division A of the building code.

(2) The following matters are prescribed for the purposes of section 5 (4) [restrictions on local authority jurisdiction] of the Act in the areas described in subsection (3) of this section:

(a) fire sprinklers and fire sprinkler systems;

(b) any matter as it relates to the accessibility of a building to persons with disabilities;

(c) adaptable dwelling units.

(3) A matter prescribed under subsection (2) is unrestricted in a geographic area if a local building requirement that relates to the matter

(a) applies to the geographic area,

(b) was enacted on or before December 15, 2017, and

(c) has not been amended after that date as it relates to the matter.

2.2 (1) In this section, "local authority legislation", in respect of a local authority, means an enactment that authorizes the local authority to make bylaws or other enactments with respect to buildings and other structures.

(2) Subject to subsection (3) of this section, the following matters are unrestricted for the purposes of section 5 (4) [restrictions on local authority jurisdiction] of the Act:

(a) the conservation of energy;

(b) the reduction of greenhouse gas emissions.

(3) A local authority may enact, to the extent permitted by its local authority legislation, a local building requirement with respect to a matter referred to in subsection (2) subject to both of the following conditions:

(a) the local building requirement may not require buildings within the jurisdiction of the local authority to be constructed except in conformance with a Step described in Article 9.36.6.3. or 10.2.3.3. of Division B of the building code;

(b) the local building requirement may not modify a requirement of, or impose requirements in addition to those set out in, Subsection 9.36.6. or 10.2.3. of Division B of the building code.

NOTES