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CLIENT BULLETIN

UNRESTRICTED MATTERS IN THE *BUILDING ACT*: THE PLOT THICKENS

The Minister of Natural Gas Development and Minister Responsible for Housing and Deputy Premier, whose portfolio includes the *Building Act*, has amended the *Building Act General Regulation*. Among other things, the Minister has specified examination and continuing education requirements for different classes of qualified building officials, and added to the list of “unrestricted matters”. Unrestricted matters are matters in relation to which local building requirements, which might otherwise be rendered ineffective by s. 5 of the *Building Act*, will still apply.¹ The list of unrestricted matters, set out in s. 2 of the *Regulation*, now includes the following new items:

- a) Water supply for firefighting
- b) Flood construction levels and setbacks
- c) Heritage buildings
- d) Fire sprinklers and fire sprinkler systems
- e) Accessibility of a building to persons with disabilities
- f) Adaptability of dwelling units

Items d) to f) in the above list are referred to as “time-limited unrestricted matters”, because a local building requirement relating to these matters is only unrestricted if it is enacted on or before December 15, 2017, and is not amended after that date.

In respect of these temporarily unrestricted matters the Province says it is only allowing local governments to continue enacting local building requirements for the time being, to:

ensure there is no gap in regulation while the Province develops provincial requirements or assesses a request for variation. Once that work is complete, these matters will be removed from the unrestricted list and only those requirements enacted by the Province will have legal force.²

¹ Section 5, which does not apply in relation to “unrestricted matters”, says: “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”.

² Appendix to Section B1 of the Building Act Guide: www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/construction-industry/building-codes-and-standards/guides/baguide_b1appendix_rev_feb2017.pdf

Of the newly unrestricted matters listed above, only “heritage buildings” (buildings that are protected heritage property, subject to temporary heritage protection or a heritage revitalization agreement, or identified in a community heritage register) have not been deemed a temporarily unrestricted matter. So local governments that might be inspired to enact local building requirements in relation to the growing list of unrestricted matters should consider whether the “unrestricted” designation is already slated for repeal, in which case the ordinary operation of s. 5 of the *Act* will soon prevail and the local building requirement will become ineffective anyway.

Two further points on the topic of unrestricted matters: first, the Province continues to take the position that local building requirements are only those enacted “in a bylaw”, while the definition of enact in the *Interpretation Act* “includes to issue, make, establish or prescribe”, and arguably includes requirements imposed by other means such as a council or board resolution. Second, the fact the Province has decided to designate a matter as “unrestricted” doesn’t necessarily mean the matter is one in relation to which local building requirements would have had no effect under s. 5 of the *Building Act*. For example, if the Province is correct that local building requirements “define the methods, materials, products, assemblies, or dimensions to be used or performance to be achieved when building [a building],”³ it’s not clear s. 5 catches requirements about the design of access routes that emergency vehicles can use to get to a building. If it doesn’t, there was no need to mention the matter in section 2 of the *Regulation*. Of course, if it turns out the effects of s. 5 are not as broad as what the Province intended, it can always amend the *Building Act*. So the safe bet is to assume that if the Province doesn’t want local governments to enact rules in relation to a particular subject matter, it will find a way to eliminate those rules.

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³ *Appendix to Section B1 of the Building Act Guide.*