

**REGIONAL DISTRICT OF NANAIMO**

**COMMITTEE OF THE WHOLE  
TUESDAY, FEBRUARY 9, 2010**

**CIRCULATED REPORT  
FOR AGENDA**

**PAGES**

***DEVELOPMENT SERVICES***

**BUILDING & BYLAW**

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Expansion of Building Inspection Service in the RDN.



RDN REPORT		
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BOARD		

## MEMORANDUM

**TO:** Carol Mason  
Chief Administrative Officer

**DATE:** February 5, 2010

**FROM:** Paul Thorkelsson  
General Manager, Development Services

**FILE:** 3800 01

**SUBJECT:** Expansion of the Building Inspection Service in the Regional District of Nanaimo

### PURPOSE

To propose an amendment to the RDN's existing *Building Inspection Extended Service Establishment Bylaw No. 787, 1989* that addresses cost recovery and considers the expansion of building inspection within the Electoral Areas.

### BACKGROUND

The Regional District of Nanaimo has provided building inspection as a statutory service since 1972 and since 1989 as an extended service. In 1989, as a result of changes to the *Municipal Act*, Regional Districts were required to convert building inspection from a "statutory service" to an "extended service" which was accomplished in the RDN by adopting the *Regional District of Nanaimo Building Inspection Extended Service Establishment Bylaw No. 787, 1989*. This bylaw specifically defines the service area and cost recovery mechanisms for provision of building inspection in service Electoral Areas. The current building inspection service area includes all properties within Electoral Areas 'B' (Gabriola), 'E' and 'G'; and some portions of Electoral Areas 'A', 'C', 'F' and 'H'. The introduction of building inspection in 'F' and 'H' has occurred in recent years through the inclusion of individual and specific properties within the service.

For a number of years the RDN Board has maintained a priority goal to introduce building inspection throughout the region. This goal has been reconfirmed in the most recent update to the Board Strategic Plan "2010-2012 Board Strategic Plan – Integrated Solutions for a Sustainable Future" approved in October, 2009. A number of initiatives, at the direction of the Board, have been undertaken to expanding the service broadly either regionally or by particular Electoral Area. None of those initiatives have been met with success.

At the September 22, 2009 meeting the RDN Board passed a resolution directing staff to review alternatives to building inspection in non-building inspection areas. Staff have understood this request to include a review of alternate processes that could act as 'stand-ins' for building inspection as well as discussion regarding best practices and options for regulating construction region wide. A discussion paper entitled "Understanding Building Inspection at the Regional District of Nanaimo" has been attached as an appendix (Appendix 1) to this report providing the Board with a comprehensive and detailed discussion on these topics. The following report focuses on the process, required bylaw amendments and funding framework necessary to expand the building inspection service.

### ***Proposed Service Area Changes***

The Board has approved incremental additions to the building inspection service area in recent years. However, there remain substantial areas of the Regional District that are outside of building inspection service resulting in development that occurs without adequate regulation of construction, associated bylaw non-compliance and enforcement issues, significant potential for non compliant and substandard construction, lack of progress on related policy goals/targets and a number of other challenges that stress RDN resources.

As the attached discussion paper outlines, the alternatives to building inspection are not realistic replacements for the statutory process of regulating building through permitting and inspection. Furthermore, the legislative framework for local government policy, planning and development relies upon the building inspection process as a critical component to the implementation of the RDN's broader goals and targets for sustainability.

To work towards the objectives of the Board Strategic Plan, Regional Growth Strategy and Official Community Plans, it is recommended that all lands located within the following designations be included within building regulation:

- Village Centres (VC);
- Urban Containment (UCB) and the Rural Separation Boundaries (RSB);
- Commercial, Conservation, Industrial, Public, Recreation, Resource Management, Forestry Resource, Industrial Mixed Use, Salvage and Wrecking, Institutional/Community and Water Use lands located outside of VC, UCB and RSB;
- Residential zoning designations for multifamily uses (excludes existing single family and duplex) located outside of VC, UCB and RSB;
- Comprehensive Development designations that are not specific to Single Family on lands located outside of VC, UCB and RSB.

In addition to the inclusion of the noted lands staff also recommends that the Board consider a policy to require that all newly subdivided lands, regardless of their use and zoning designation be included within the building inspection service as a condition of subdivision.

The intent of the proposal is to include, at the present time, all lands of the RDN within the building inspection service area with the exception of those existing lots that are intended (zoned) for single family and duplex uses. There are a number of governing reasons for the rationale behind this approach which will be explained in detail below.

### **Inclusion of VC, UCB and RSB areas**

The policy and planning work of the RDN and the Board provides an emphasis of development within specified areas and a strong focus on the development of Village Centres as complete communities. This is most recently represented by the village planning work that has been undertaken for the Bowser Village in Electoral Area 'H' and the forthcoming work on the Cedar Village area in Electoral Area 'A'. These localized plans provide the framework and set the priorities and expectations that the community has for future development. The discussion in this report has highlighted the important role permitting and inspection has in the overall development approval process and the role it can have in ensuring that OCP and Village Plan community goals are implemented over time. As a result it is staff's belief that the success of the RGS, OCPs and Village Plans is dependent upon the establishment of building inspection

service in the Village Centres, Urban Containment and Rural Separation bounded areas and the ability of the community to rely upon the established planning and development processes to develop their community as they have envisioned it. Without permitting and inspection, and the statutory tools and powers that come with them, progress on implementing community visions and priorities will continue to be held back.

### **Inclusion of Lands Outside VC, UCB and RSB**

The zoning designations outside of the VC, UCB and RSB proposed for inclusion represent a type and scale of project that carries with it generally higher levels of safety and health risk for occupants and/or present some higher potential risk to the local community as a result of their operation. These types of buildings have higher numbers of occupants, attendance at them by members of the general public who may not be intimately familiar with the building and can contain uses, in terms of the industrial categories in particular, that can have significant impact on residents both at the facility and potentially at some distance (potential to impact ground water for example). As such, these building types have increased requirements in the Building Code and other governing regulation. Given the RDN's significant role in the protection of public interest and wellbeing, it is important that structures within these zones be included under building regulation.

Similarly, multifamily residential projects also present a significantly increased risk potential and also have increased requirements under the Building Code. Again protection of the public good is paramount with these facilities and can only be assured through permitting and inspection.

### **Exclusion of Single Family and Duplex Lands**

The rationale for excluding Single Family and Duplex zoning at this point in time is two-fold. Because the bulk of development in the Electoral Areas consists of single and two family residential dwellings, the inclusion of additional lands under these uses would have immediate and significant additional resource implications that the Building Inspection Department is unprepared for at this time. From addressing data available we know that there are at least 100 homes developed outside the building inspection serviced areas on an annual basis. Inclusions of all residential zoned lands as a result would instantaneously double the permit volume for SFDs and require similarly instantaneous staff increases to accommodate and adequately service this volume of activity.

### **Impact within the Proposed Expansion Area**

It is expected that inclusion of the lands as proposed will not have a significant immediate impact on either permitting and inspection revenues nor the resourcing of the Building Inspection Department (staffing or otherwise) as the number of buildings constructed in these zones annually is believed to be relatively small. Undertaking the expansion of the service area in this way will allow staff adequate time to monitor the impacts and propose any changes in resourcing in a more incremental way. In addition, forthcoming changes to the Building Code specifically relating to houses are expected over the next two years between 2010 and 2012. These changes are expected to directly influence SFD and duplex construction as the increasing emphasis on energy efficient construction is supported by requirements in the code. With this understanding it is staff's opinion that inclusion of SFD and duplex construction would be appropriate in conjunction with those code changes and should be targeted for 2012. This will also give the construction industry in the region ample time to adjust to the new regulatory process.

### ***Building Inspection Service Funding Model***

The current economic climate has placed the existing building inspection service in a difficult financial position. Declining revenues as a result of falling activity levels and reduced tax requisition support over

the last number of years have reached an unsustainable level. As a result, there is increasing pressure on both the tax requisition and the fee structure to support this service in its current form.

In addition, a significant gap exists between the provision of administrative building inspection services, which are available and accessed by all electoral area residents, and the tax support that is provided for this service. Currently, only those areas that include building inspection regulations within their electoral areas pay for the administrative costs of building inspection through taxation; while all electoral area residents receive both general and specific benefits of this service.

To address this funding shortfall, staff are proposing changes to the building permit fee structure (included under separate report) and to the cost sharing model used for the building inspection general administration costs. Both the service area expansion and the cost sharing formula for building inspection are considered concurrently through proposed amendments to the Building Inspection Establishing Bylaw as set out in the alternatives below.

## ALTERNATIVES

1. Amend the *Building Inspection Extended Service Establishment Bylaw No. 787, 1989* to establish that administrative costs related to development policy and information services be recovered through the Electoral Area Administration Service and that inspection service costs be recovered through building permit fees and charges;
2. Amend the *Building Inspection Extended Service Establishment Bylaw No. 787, 1989* to expand the building inspection service area to include the areas identified in this report (excluding SFD and duplex lands), to establish that administrative costs related to development policy and information services be recovered through the Electoral Area Administration Service and that inspection service costs be recovered through building permit fees and charges;
3. Amend the *Building Inspection Extended Service Establishment Bylaw No. 787, 1989* to expand the building inspection service area to include designated areas as directed by the Board, to establish that administrative costs related to development policy and information services be recovered through the Electoral Area Administration Service and that inspection service costs be recovered through building permit fees and charges;
4. Do not amend the *Building Inspection Extended Service Establishment Bylaw No. 787, 1989* and provide alternate direction to staff.

## FINANCIAL IMPLICATIONS

**Alternative No. 1** - Under alternative one, the cost recovery section of Bylaw 787 would be amended to reflect that administrative costs associated with development policy and information services shall be separated from inspection and permit services and shall be charged to the Electoral Area Administration Service. The cost recovery section would also be amended to reflect that the inspection and permit costs would be primarily recovered through fees and charges to reflect a true 'user pay' model. As a result, there would be no tax requisition associated with the inspection and permitting activities of this service.

General administrative costs which include enforcement of illegal construction, information on building construction requirements through publications and website materials, over-the-counter information services, access to archived permit information, green building standards development, and other policy and administrative services shall be provided through the Electoral Area Administration Service which all electoral areas participate in. This service also includes funding for local government elections, electoral

area director remuneration/expenses, electoral area newsletters, annual conferences, engineering staff support for feasibility studies, and electoral area director computer equipment. If all property owners in the electoral areas participated in funding the administrative costs of the building inspection service, the tax rate would be reduced in the building inspection areas from \$2.20 per \$100,000 to \$1.60 per \$100,000. The non-building inspection areas would see an increase in their requisition by an equivalent amount; however, staff will be recommending other program adjustments to the 2010 electoral area budgets that will offset this increase.

**Alternative No. 2** - Under the second alternative, the same cost recovery amendments would be made to Bylaw 787 and the Electoral Area Administration Service to recognize the user pay model for inspection and permitting, and the general benefits provided by the building inspection function. However, under this alternative, the inspection and permitting function will be expanded to the following designations:

- Village Centres (VC);
- Urban Containment (UCB) and the Rural Separation Boundaries (RSB);
- Commercial, Conservation, Industrial, Public, Recreation, Resource Management, Forestry Resource, Industrial Mixed Use, Salvage and Wrecking, Institutional/Community and Water Use lands located outside of VC, UCB and RSB;
- Residential zoning designations for multifamily uses (excludes existing single family and duplex) located outside of VC, UCB and RSB;
- Comprehensive Development designations that are not specific to Single Family on lands located outside of VC, UCB and RSB;
- All newly subdivided lands, regardless of their use and zoning designation, be included within the building inspection service as a condition of subdivision.

There are no immediate tax implications to this expansion, as the fees and charges would be applied to recover the cost of inspection and permitting of these properties. Staff do not anticipate a significant volume of building activity within these designations but there will be a requirement to develop a communication strategy to advise of the changes. Staff recommend amending the bylaw to include an implementation date of September 1<sup>st</sup>, 2010 as the effective date for applying the regulatory bylaw to the expanded areas to provide sufficient time to adequately communicate the changes in regulations.

**Alternative No. 3** - The Board may wish to direct a variation on the alternatives set out above. For example, Bylaw 787 could be amended immediately to recognize the cost recovery model as described, while delaying the implementation of inspection and permitting until 2011 or by implementing the service to include only a portion of the designations set out in alternative two.

## SUSTAINABILITY IMPLICATIONS

The RDN Board has recently approved the “2010-2012 Strategic Plan – Integrated Solutions for a sustainable future”. This well regarded document identifies the strategic priorities that the Board has established to provide focus during the current term of office; “The Strategic Priorities refer to cross-cutting issues of importance that touch on all aspects of RDN work” and include:

- Climate and Energy
- Watershed health
- Economic Resilience
- Monitoring and Adaptation

As a result of the legislative framework that is in place in British Columbia it is unlikely that significant progress on implementation can result without the regulation of construction through building inspection. The renewed Strategic Plan has, as a key feature, a strong emphasis on implementation:

*...this Plan strives to push the understanding of sustainability from conceptual to concrete, leading a transition toward applied sustainability, where actions speak louder than words.*

The expansion of building inspection on a broader basis, leading towards implementation throughout the region, is fully aligned and supportive of this overall direction. The Strategic Plan outlines a number of key projects and success stories that have been undertaken in the RDN. One of the fundamental projects underway is the Drinking Water/Watershed Protection Program (DWWP). Although it is still early in its implementation, this program is likely to have far reaching impacts on the region as it identifies priorities and actions required to protect our water and watershed resources. The regulation of construction and development will play an important role in the success of this project.

Sustainability is at the core of policy, planning and priorities at the RDN, and the regulation of development is at the core of achieving those priorities. The central role of permitting and inspection helps ensure that policy direction, expressed through The Strategic Plan, Regional Growth Strategy, OCPs, Village Plans and associated projects, is implemented and completed at construction. In addition, permitting and inspection plays a similar central role in aiding the RDN in reaching targets that have been established through legislative changes (Bill 27), agreements (Climate Action Charter) and initiatives (the forthcoming Community Energy and Emissions Plan).

## CONCLUSION

The RDN Board has given direction to the concept that building permitting and inspection services should primarily operate in the RDN as a fee-for-service function. Expansion of the service area more broadly in unserved areas, and eventually throughout the region makes this goal more easily achievable and sustainable over the long term. Effectively, expansion of the building inspection service will result in the following broad benefits:

- improved overall quality of the building stock in the RDN (the fundamental public good);
- greater progress on reducing energy consumption and GHG emissions from buildings in the region (the important sustainability related public good);
- greater progress on supporting community development vision (the localized public good);
- increased potential for achieving the Board's goals and targets

The interests of the community are best served when we are assured that the buildings in which we live, work, play, and visit meet the basic requirements of health and safety. Under the governing statutory framework and jurisdiction there is no other methodology or process that so directly and adequately serves these interests more effectively than the regulation of construction through Building Codes. This report has attempted to show how these benefits accrue to the broad community beyond common good of health and safety.


Several cost sharing alternatives have been presented that recognize the general benefits to electoral area residents through the provision of inspection related administrative services. These benefits include the protection of the public through the enforcement of illegal and/or unsafe construction, general information on building construction requirements through publications and website materials, over-the-counter information services, access to archived permit information, green building standards development, and a variety of other administrative and information services. Combined with this revised approach to cost

recovery, the alternatives set out in this report also provide direction on how the Board may advance the goals of the Strategic Plan through the expansion of inspection and permitting to non-building inspection areas.

While several alternatives have been presented for Board consideration, staff recommend the implementation of alternative two that proposes to amend the *Building Inspection Extended Service Establishment Bylaw No. 787, 1989* to expand the building inspection service area to include the areas identified in this report (excluding SFD and duplex lands), to establish that general administrative building inspection costs be recovered through the Electoral Area Administration Service and that inspection service costs be recovered through building permit fees and charges.


## RECOMMENDATIONS

1. That the administrative costs related to development policy and information services be charged to the Electoral Area Administration Service;
2. That the Board direct staff to prepare the required amendments to the *Building Inspection Extended Service Establishment Bylaw No. 787, 1989* to expand the building inspection service area to include the areas identified in this report (excluding SFD and duplex lands) and that inspection service costs be recovered primarily through building permit fees and charges;
3. That the Board direct staff to prepare the required amendments to the *Building Regulation and Fees Bylaw 1250* to include the areas identified in this report (excluding SFD and duplex lands) within the regulation;
4. That the Board direct staff to prepare a policy with respect to the requirement for inclusion within the building inspection service of all new lots created through subdivision as a condition of approval.



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General Manager Concurrence



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CAO Concurrence



## Appendix 1

### **UNDERSTANDING BUILDING INSPECTION AT THE REGIONAL DISTRICT OF NANAIMO**

The Regional District of Nanaimo (RDN) Board has expressed interest in investigating and evaluating alternative processes for regulating construction within the Regional District. As is the case with many issues, prior to considering alternative approaches it is often of benefit to gain a fuller understanding of existing conditions. In this context staff have understood this request to include a review of alternate processes that could act as ‘stand-ins’ for building inspection as well as a discussion regarding best practices and options for regulating construction region wide. The following information is directed at these topics and is intended to provide some overview for the Board regarding the history of Building Codes in Canada and the Province of British Columbia, overview the jurisdictional milieu in which building inspection operates, clarify the potential of alternatives to building inspection and discuss the importance of building inspection with respect to making progress on the goals and priorities of the Regional District.

#### **Regulation of Construction in Canada**

Canada is recognized internationally as having one of the best standards for construction in the world with a high degree of uniformity in building construction and fire safety across the country. Historically under the British North America Act (and subsequently the Constitution Act) responsibility for building regulation in Canada rested with the provinces and territories. This responsibility was generally delegated to municipalities which resulted in a multiplicity of regulation that varied significantly across the country. In 1937 the National Research Council was tasked with the development of a model building regulation that could be adopted by all municipalities in Canada. The result was Canada’s first National Building Code (NBC) published in 1941. At the present time the responsibility, regulation and policy development activity regarding safety in the design and construction of buildings in Canada is divided amongst the three levels of Government.

At the Federal level, the National Research Council’s (NRC) Canadian Commission on Building and Fire Codes (CCBFC) develops a National Building Code based upon a wide range of research and information including the input received from the countrywide membership of the Commission’s Standing Committees. The CCBFC and its standing committees are responsible for developing and updating six national model construction codes:

- The National Building Code of Canada (NBC)
- The National Fire Code of Canada (NFC)
- The National Plumbing Code of Canada (NPC)
- The National Farm Building Code (NFBC)
- The National Energy Code of Canada for Buildings (NECB) and
- The National Energy Code of Canada for Houses (NECH).

These model codes are developed in partnership with the provinces and territories such that after amendments to suit regional needs the model codes are adopted and published as provincial Building Codes in the respective provinces.

In British Columbia, building and construction safety is the responsibility of the Building and Safety Policy Branch of the Office of Housing and Construction Standards. This office currently falls under the responsibility of the Ministry of Housing and Social Development. The Building and Safety Policy Branch both develops the overall regulatory code (B.C. Building Code document based on the National Building Code) as well as the broader legislative and policy framework for regulating construction

activity in the Province. The Building and Safety Policy Branch does not enforce compliance with the BC Building Code. Local governments are authorized to enforce the BC Building Code (BCBC) through the *Local Government Act* (LGA) and the *Community Charter* (CC). Some aspects of building construction remain under separate jurisdiction of the B.C. Safety Authority and local Health Authorities.

The regulation of construction is an increasingly complex activity that involves to varying degrees all three levels of government in Canada. Notwithstanding this involvement at the three levels it is important to note that the enforcement of building regulation is solely the authority and jurisdiction of local governments in British Columbia. Local governments accept this authority through the adoption of regulatory bylaw. It is recognized within the system as established, that the best way to regulate construction is through bylaws at the local level which has the most direct access, connection and contact with the community.

### **What does Building Inspection Actually Do?**

#### ***Protection of health and Safety***

The fundamental focus of Building Codes and permitting and inspection of construction is protection of public health and safety. Building Codes establish minimum standards for construction, health and safety that have been developed, iteratively, through years of real world experience both in this country and around the world. The historic focus of the Building Code has been on health and safety and the community benefits broadly from a housing and building stock that has been designed under the requirements of the applicable codes then constructed and inspected to confirm compliance. Building Codes are not a recipe or text book for construction; they form the baseline expectations for construction. Owners and builders are free to go over and beyond these basic expectations, the codes are in place to create a level of performance in the industry below which no one is permitted to go. The enforcement of this baseline in British Columbia is solely the responsibility of local government.

Because building inspection is carried out at the various stages of construction a clear picture of the process of construction is created through permitting and inspection and the related documentation. All of the records are carefully maintained and kept on file for future reference. As a result, beyond the more immediate role of ensuring safe and code compliant design and construction, these records provide verification of no longer visible building elements located within the building and its structure. All of this information is publicly available at virtually no cost to lending institutions, appraisers, lawyers, designers and property owners (current and future) and can be relied upon by those parties in the future to make decisions regarding renovation, finance, repair etc.

With the advent of modern objective based Building Codes this historical information has become more and more important. Objective based code requirements provide a greater opportunity for flexibility through alternate solutions to prescriptive code requirements. These alternate solutions are ‘variances’ to the code that have been investigated and shown to provide similar, adequate or equivalent levels of protection and/or performance. Equivalencies (and any associated design and/or construction requirements) are similarly captured in the permitting and inspection documentation and are available to future property owners, tenants and building officials limiting the possibility that future changes to the building compromise occupant health and safety.

#### ***Linkage to other Priorities***

There are a number of additional similar ‘links’ to be made between permitting and inspection and other priorities of local government:

- regulation of construction safety with respect to adjacent properties
- regulation of building demolitions (safety and policy aspects)

- review of construction with respect to other regulation (primarily provincial) – flooding, erosion...etc.

There are also a number of ‘benefits’ of the service and process that are not so directly related to health and safety, but are nonetheless important to the local government and often the broader community as well:

- compilation and maintenance of historic records related to construction – broad community and industry benefit
- response to public enquiries relating to property sizes, locations, owners, construction advise (often not associated with a specific permit)
- trigger and collection method for Development Cost Charges (DCCs) where applicable at the time of construction
- Information for billing properties with respect to connect/disconnection to services
- collection and submission of construction related statistics for CMHC and Statistics Canada
- collection of development activity data used by other organizations – B.C. Assessment (BCA) for example

Also important is the link of local government permitting and inspection with those building related areas that are not under local government jurisdiction. For the RDN those areas include electrical, gas and septic systems, the approval of which rest with the B.C. Safety Authority and the local Health Authority. Again the connection of permitting to those requirements and approvals ensures that those requirements are in place and met prior to buildings being occupied. When and where there is not building inspection service in place this link is broken.

#### ***Linkage to Property Assessment***

Permitting and inspection are also closely linked to the assessment of taxes in the region. BC Assessment (BCA) is responsible for providing assessment rolls to local governments from which the tax rates are determined. The accuracy of assessments is of paramount importance in order that local governments are able to equitably and accurately requisition assessment based taxes. This process requires that the BCA add, update and maintain accurate data on additions, renovations and new construction. This work is challenging at the best of times and the BCA relies greatly on data reported from local governments through their permit processes to capture the new value of development in the community. Without permits and inspections, and the information provided through the service, assessment information in the RDN is at times inaccurate and this missing information can have a direct negative impact on the general taxpayer.

#### ***Linkage to Planning and Policy Priorities***

The role of permitting and inspection is broadened in British Columbia through the legislative framework that has been developed to regulate building, land use and development. Existing legislation (*Local Government Act, Community Charter*) gives local authorities broad control over development through land use (zoning) bylaws and the ability to consult with the community in the development of Official Community Plans (OCP). The regulatory and legislative framework provides permitting and inspection to local government as a central tool in the development approval process governed by this. The building permit acts as both a trigger for other requirements (Development Permits (DP) for example) as well as a process by which those other requirements can be confirmed. No other approval (DP, DVP) has any similar or equivalent statutory tools to ensure completion. The linking of these other requirements to permit conditions and occupancy approval grants local government significant authority to ensure that planning and zoning related requirements are completed. As such the permitting and inspection process plays a central role (beyond assuring safe construction) in implementing policy established by the community through individual OCPs and other plans and documents.

### **Alternatives to Building Inspection**

Board members have been keenly interested in the viability of alternative regulatory processes as replacements for a direct role of the Regional District in inspection services. Three main alternative candidates are most often referred to as adequate replacements including: warrantee inspections as required under the regulation of the Homeowner Protection Office (HPO) legislation, building inspection undertaken as part of the purchase/sale of property and the use of siting/use permits or some other version of ‘building inspection lite’. Board members have also raised the question that, given the B.C. Building Code is Provincial legislation regulation of construction it is a Provincial responsibility and as such should not be a service undertaken by local governments at all.

#### ***HPO Warrantee Inspection***

The Homeowner Protection Office (HPO) is a provincial Crown Corporation formed in 1998 in response to the need to introduce basic consumer protection legislation and regulatory improvements within the residential construction sector. Following the Barrett Commission investigation into the quality of condominium construction in British Columbia the HPO was established under the Homeowner *Protection Act*, (*HPO Act*) which was passed on July 28, 1998 for the main purposes of:

- strengthening consumer protection for buyers of new homes
- helping bring about improvements to the quality of residential construction
- supporting research and education respecting residential construction in British Columbia, and
- providing financial assistance to qualified owners of water-damaged homes (this aspect of the HPO program is no longer accepting new applications for financial assistance).

This consumer protection system with the associated warrantee (and requisite insurance inspections), education and funding programs has been suggested as an adequate replacement for the formal permitting and building inspection process. The framework established in the *Act* requires all new home construction in British Columbia to be undertaken by a builder registered by HPO and under a warrantee insurance policy from a private insurance provider. Though individual providers differ substantially in their approach, the areas of primary concern to warrantee insurers are workmanship quality and foundation and building envelope integrity. As such, inspections by warrantee providers encompass a site evaluation of limited and specific aspects of construction and have a different focus – to limit potential insurance losses. These inspections are only indirectly related to confirming conformity of the construction with the requirements of the Building Code, and are not intended as (nor do they constitute) a replacement for the local government site inspection process.

The HPO regulatory framework is also limited to its application to residential construction only. The builder registration, warrantee process and research and education programs are not applicable to other types of construction such as commercial, industrial or institutional buildings which are not covered under the *HPO Act*.

The HPO requirements were envisioned and implemented as part and parcel of a broad regulatory framework for the construction of residential buildings that includes permitting and inspection by local governments. The *HPO Act* specifically references the permitting and inspection processes of local governments and at least in part relies upon the existence of those processes to help ensure that that builder registration and warrantee enrolment requirements of the *HPO Act* are complied with. Without the connection to permitting and inspection there is no method in place to assure HPO registration and warrantee coverage is in effect. HPO must rely upon its small inspection team (less than one fulltime inspection staff member for all of Vancouver Island) to identify non-registrant builders and properties in non-inspection areas. Again, the HPO system was not intended to replace permitting and inspections

processes, but work with the regulatory framework already in place to improve the provision of residential construction in the British Columbia.

### ***Home Inspection***

Home inspections as part of real-estate transactions are similarly focussed differently than the regulation of construction through permitting and inspection. Like warrantee inspections, home inspection is focused only on one segment of construction - residential buildings (mostly single family homes), and is in addition limited to the review of completed construction versus during the construction process.

A number of questions remain regarding the training and qualifications of Home Inspectors and the responsibility these inspectors and their commercial entities have with respect to errors and omissions. Because of the nature of the inspections of existing buildings the typical contract for home inspection includes a wide range of exclusions to remove the inspector from responsibility for unforeseen consequences of deficiencies. Furthermore, recent concern has been raised regarding the business relationships between realtors and the commercial house inspection companies, and the impact those relationships have had on the 'independence' of inspections.

Though changes and improvements in these areas are occurring, and there is a place for home inspection in the due diligence necessary for an informed purchase, fundamentally we must recognize the home inspector is primarily tasked with reviewing the building for excessive deferred maintenance issues/costs that would impact a new owner. These inspections are of course post construction and only able to examine what can be seen. This inspection process is only indirectly focused on confirming code compliance and building occupant health and safety, and in this way, like warrantee inspection, is neither adequate nor appropriate as a stand-in for permitting and inspection.

### ***Other Alternatives***

Other alternatives suggested include replacement of local government inspections with registered professionals and modified permitting and inspection processes focused on siting and use.

A few larger jurisdictions in British Columbia have undertaken and implemented alternative construction inspection processes using certified professionals (CP) in place of local government inspection staff and processes for some buildings.

The CP designation is specific and requires a registered professional (architect or engineer) to undertake a lengthy training and testing program on the requirements of the Building Code and carry significant levels of professional errors and omissions insurance. In a market the size of the City of Vancouver these requirements have been more readily accepted by the development community and the program has met with some success. An adequate pool of qualified professionals is not realistic in smaller markets like the RDN, and due to the costs and level of professional involvement required, this alternative is limited (even in Vancouver and Surrey) only to large projects - which represent a very small portion of development in the RDN. Finally, the CP scheme provides an alternate route primarily for the inspection of construction. It does not relieve the local government from the task of receiving and maintaining applications, design and inspection documents for access in the future.

### ***Siting and Use Permits***

Over the past two years staff has also investigated a number of innovative alternative processes on behalf of the Board. The most promising of these has been the concept of introducing siting and/or use permits to those areas that currently are not within the building inspection service. There is no specific legislation that provides local government authority in this area. Notwithstanding the specific authority issue, review

of this option by staff and the RDN solicitor suggests that one interpretation of existing legislation could create space for this type of regulatory approach, however it does not result in a satisfactory alternate regulatory process.

Under the Section 903 of *Local Government Act*, local government can ‘regulate’ the use of land and other structures including the size, siting, dimensions of structures and uses permitted on the lands. The power to ‘regulate’ has been taken in case law to include the authority to establish a permit-granting scheme even where the legislation does not expressly provide for such a framework. By interpreting the legislation in this way it appears that a siting and use permit system could be established. The drawback of proceeding in this way is that such a framework would lack specific powers generally attributable to permitting because the authority is not defined by legislation. Most significantly the ability to register notices on title where the regulation has been contravened would not be possible nor would the ability to post ‘stop work orders’ on non-compliant work.

Staff has spent considerable time and effort in reviewing and investigating options for the Board to consider as alternatives to the existing Regional District building inspection service. In all cases the potential for alternatives appears to be very limited. The regulatory framework in British Columbia has been established in the governing legislation with building inspection and permitting at the centre of the regulatory process. Without significant legislative change the only conclusion that can be drawn from this research is that the best interests of the community in terms of protecting health and safety, and ensuring other aspects of community planning and policy are implemented through development, are best addressed when activity is monitored through building regulation.

### **Effects of Changing Building Code Philosophy in Canada and British Columbia**

This discussion has outlined the connection of the permitting and inspection processes to many other aspects of local government policy and operation. An emerging area that is only just starting to become apparent is the future link of the Building Codes and their requirements to the Green House Gas (GHG) emissions reduction and sustainability related goals that are being established in this province.

The Building Codes are moving away from their focus on health and safety in light of energy efficiency, GHG reduction, sustainability and climate change priorities. British Columbia is certainly a leader in this area having adopted the ‘Green Building Code’ amendments to the BCBC in September, 2008. Code officials at all levels of government are indicating that more developments within the codes in this area will be forthcoming. At the national level NRC and the CCBFC (in partnership with the provinces and territories) are currently developing a new National Energy Code for Buildings with a publication target of 2011. This code targets larger buildings (Part 3) and is expected to receive support and adoption at the provincial level. In addition, the national groups are about to get underway on similar requirements for houses and Part 9 buildings with a target for publishing in 2012. All of this work at the national level is underway with strong support from the provincial bodies, increasing the likelihood of adoption of national standards at the provincial level.

Along with this code development work, the new Bill 27 requirements in British Columbia require local governments to include GHG emission and reduction targets in OCPs and RGSs and most local governments have signed on to the Climate Action Charter committing to energy use and GHG emission reductions aligned with broad provincial targets. Building energy use is responsible for a significant portion of GHG emissions (up to 40% in many communities). The codification of energy efficiency is becoming a priority and the confirmation that new construction meets these new requirements is going to be paramount in light of the commitments required and being made by local governments. Building permitting and inspection is central to these requirements and has a very important role to play in every community, municipality and regional district’s ability to meet their established targets. In this emerging

milieu the future of development approvals includes an even stronger connection and integration in approvals, enforcement and compliance in development bringing planning, building inspection, energy use and sustainability closer and closer together.

### **Conclusion**

This discussion paper has outlined the important role local government has to play in the regulation of construction in British Columbia. Permitting and inspection of buildings plays a central role in the protection of public health and safety through working to ensure new construction complies with the minimum standards established by the Building Code. The shifting priorities of government policy at all levels brings into renewed focus the central role that the regulation of construction plays beyond that fundamental public good of providing safe and healthy constructed environments. Nowhere else is this shift more apparent than in North America, Canada, British Columbia and the Regional District of Nanaimo. The RDN is recognized as a leader, and at the forefront of policy and planning related to sustainable community development. It is very difficult to envision progress on these energy efficiency, sustainability and policy goals related to development in our community without the regulation of building through permitting and inspection. Taking action at this time on regulating construction in the region will solidify this position and move the RDN forward beyond plans to actions and achievements.