

# MUNICIPAL DE SYSTEMS: MANAGING ISSUES THROUGH LEGAL DOCUMENTATION

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# Overview

- Municipal DE System in British Columbia:
  - establish, operate and maintain
- Some Key Issues and Risks
- Tools:
  - Regulatory
  - Contractual

# Municipal Regulatory Authority in BC

- May regulate, prohibit and impose requirements in relation to services being provided by or on behalf of the municipality – including district energy (heating and cooling)
- By Bylaw (ordinances, charters, codes)
- BC Utilities Commission regulates public utilities
- Municipality is not a public utility if provides municipal services within own boundaries
- Rate-setting within control of council or elected body as regulator

# Key Risks

- Connection & use
- Building system compatibility
- Land access rights
- End-user obligations
- O&M



# Key documents

- Multi-pronged approach to reduce and manage risk
- Bylaw
- Land Use Agreements (Section 219 Covenants and Statutory Rights of Way)
  - Leveraging planning and land development processes:
    - At rezoning
    - At building permit stage
    - Post-occupancy
- Energy Services Agreement
- O&M Agreement



# Bylaw

- Establish service and service area
- Ownership of system
- Mandate connection – compulsory use
- Building mechanical system design and approval requirements
- Access to land
- Operational issues (e.g. no liability for failure, protection of equipment)
- Rates and fees

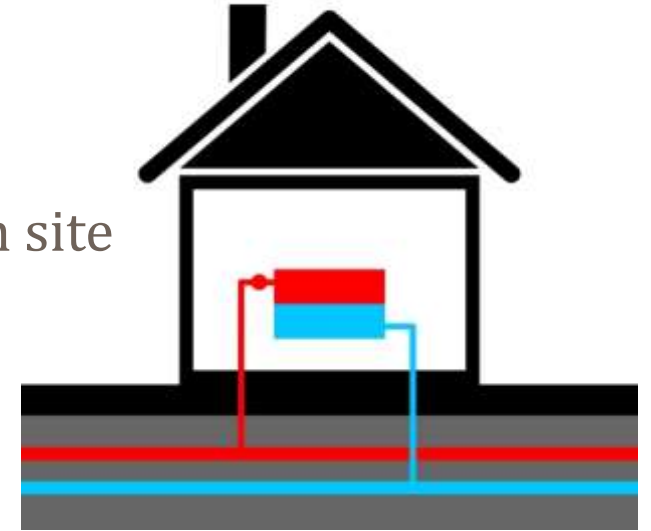


# Land Use Covenants, Statutory Rights of Way

- Sections 218, 219 *Land Title Act*
- Considerations at Zoning and Permit Issuance:
  - Building Permit
  - Occupancy Permit
- SRW for access to DEU works installation, maintenance, repair, replacement
- No BP until prove ability to connect to and use DE System, provide energy modelling reports
- No occupancy until provide SRW, Energy Services Agreement
- Future DE System – must provide professional certification of building connection capability, blanket SRW + additional contract of use + financial security

# Energy Services Agreement

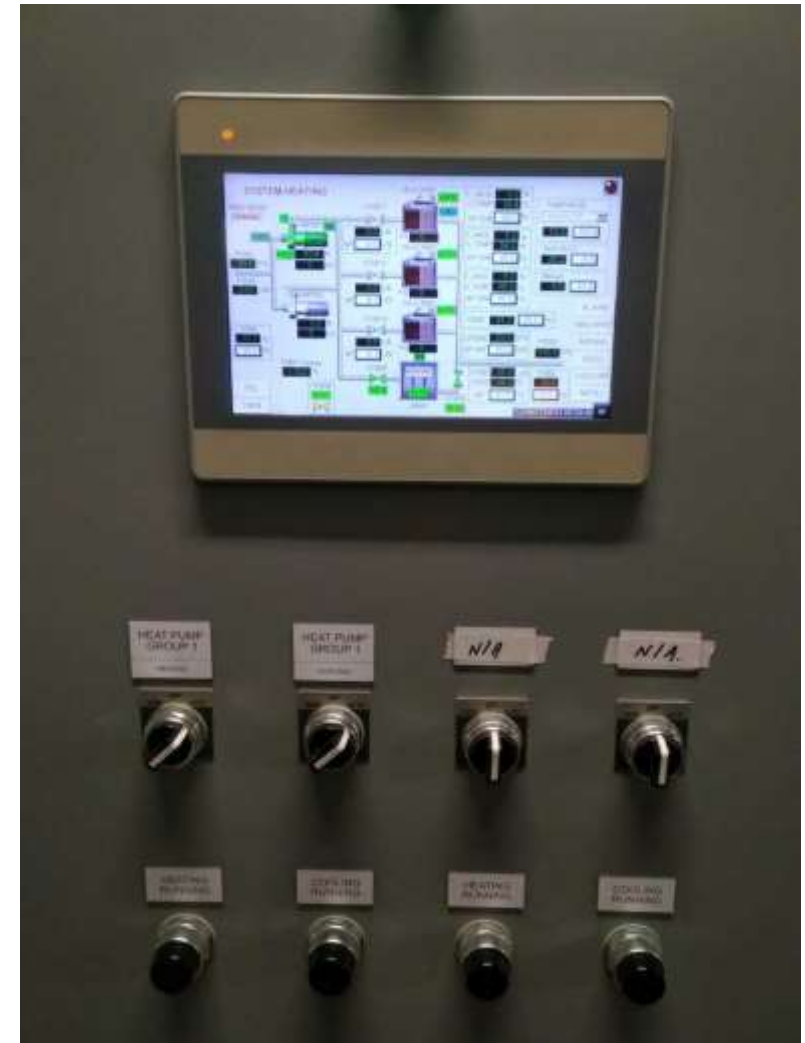
- Ownership of system components, building components on site
- Agreement to connect and use
- Professional certification for building system
- Service provider rights and responsibilities
- End-user or customer rights and responsibilities – including:
  - site preparation
  - maintain and repair building mechanical system
  - prevent fouling
  - provide right of way for access
  - pay rates





# Operations & Maintenance

- In-house program
- Service contract with 3<sup>rd</sup> party
- Partnership model – Concession Agreement

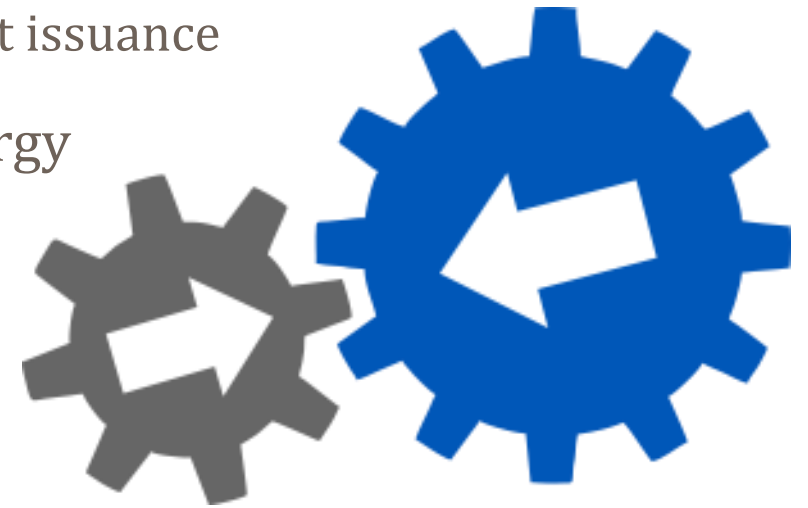


# The Issues Managed by Legal Documentation

- Customer building system compatibility with DEU system, including defined performance requirements
- Ensuring timely customer building connection
- Ensuring agreements and regulations are transferred from developer to end user
- Land access – managing DE owned assets on private property
- Operations and Maintenance, including on-going performance management and customer engagement

# System Compatibility

- Engagement early in the development process with the building design team
- Detailed peer review completed prior to issuance of Building Permit
  - Both Bylaw and registered Covenants ensure that the DE Provider (through the City) must first approve design before permit issuance
- Energy Services Agreement defines the “Thermal Energy Design Parameters”



# Ensuring On-time Connection



- DEU Provider is responsible for design and construction of all required energy transfer infrastructure – including on the development property
- Close coordination with the development construction team
- Coordinated efforts are required during commissioning
- Control over approval of building permit and occupancy award

# Ensuring Developer Agreements Stick

- City Bylaws apply regardless of ownership
- Covenants Registered on land title – the agreements run with the land
- Energy Service Agreement – Prior to award of occupancy, the agreement is transferred from the Developer to the newly formed Strata



# Land Access Issues

- Statutory Right of Way registered on title
- Maintenance responsibilities defined in the Energy Services Agreement



# Ongoing Engagement and Performance Optimization



- Continual system performance monitoring
- Engagement with Strata's through annual and monthly meetings
- Engagement with property managers through quarterly billing and regular check-ins
  - Working with building-side mechanical contractors on optimization projects as needed

*Questions?*