

REPORT

Engineering Services

To: Mayor Johnstone and Members of Council
Date: June 10, 2024

From: Lisa Leblanc
Director of Engineering Services
File: 05.1035.10
(EDMS# 2473785)

Item #: 2024-339

Subject: **Development Variance Permit for Works & Services Security - 602 Agnes Street (68 Sixth Street) Affordable Housing Project – Notice of Consideration of Issuance**

RECOMMENDATION

THAT Council provides notice to consider issuance of Development Variance Permit No. DVP00730 to vary the definition of “Security” in the *City’s Subdivision and Development Control Bylaw No. 7142, 2007, as amended*, to include the use of Letter of Indemnity from British Columbia Housing Management Commission (BCHMC) for Works and Services Agreement, and to proceed to Public Notification.

PURPOSE

The purpose of this report is to request that Council issue notice that it will consider varying the definition of “Security” in the Subdivision and Development Control Bylaw No. 7142, 2007, as amended, by including an Indemnification Servicing Agreement from BC Housing and Management Commission, as an acceptable form of security for the proposed supportive housing project located at 602 Agnes Street (68 Sixth Street).

BACKGROUND

BC Housing, British Columbia Housing and Management Commission, is the proponent for the construction of the proposed supportive housing development project at 602 Agnes Street (68 Sixth Street), including offsite servicing. BC

Housing will be entering into a Works and Services Agreement with the City and is required under the Subdivision and Development Control Bylaw No. 7142, 2007 to provide a security in the form of cash, certified cheque or an irrevocable Letter of Credit (LOC) in the amount of 120% of the estimated value of the offsite works, which it is obligated to provide for the proposed Development. BC Housing has requested that the City accept a Letter of Indemnity (LOI) in lieu of cash or letters of credit to secure Works and Servicing Agreement requirements.

EXISTING POLICY/PRACTICE

The acceptable forms of Security Deposit under a Works and Services Agreement for offsite works as regulated by the Subdivision and Development Control Bylaw No. 7142, 2007, Section 4.4 and 4.5 are cash, certified cheque or an irrevocable Letter of Credit in favour of the City.

ANALYSIS

The City has identified the need for affordable and supportive housing in the Housing Needs Report (Understanding Housing and Housing Needs in New Westminster: Housing Needs Report 2021-2031). The report identified existing and projected gaps and estimated the need for additional housing units in the community, given the available resources, senior government funding and competing municipal priorities.

City staff are reviewing various regulatory approaches to facilitate the delivery of affordable and supportive housing developments where the primary function meets the funding requirements of the British Columbia Housing Management Commission (“BCHMC”) or other government-funded projects such as CMHC.

The City’s Subdivision and Development Control Bylaw No. 7142, 2007, as amended, identifies only cash, a certified cheque or an irrevocable Letter of Credit in favour of the City as the only acceptable forms of security. The security ensures that the developer fulfils its obligations to complete the required servicing works under the Works and Services Agreement. The security is also used as a lever to resolve any construction deficiencies or if the developer becomes insolvent.

For the proposed supportive housing development at 602 Agnes Street (68 Sixth Street), BCHMC has requested that the City consider a **Letter of Indemnity** in lieu of a letter of credit security under the Works and Services Agreement. A Rationale for utilizing Letter of Indemnity request letter from BCHMC is provided in Attachment 1 of this report.

Staff have reviewed the current request from BCHMC and factored in the possibilities of freeing up capital and saving banking costs that could be reutilized towards the delivery of government-funded housing facilities. In addition, adopting the letter of indemnity affirms the collaboration commitment and promotion of partnership between the City and BC Housing in continuing to deliver much-needed affordable housing. An indemnification agreement with BCHMC provides a high level commitment and assurance that the necessary work will be completed. Other municipalities in the Lower Mainland, namely, the City of Surrey, District of North Vancouver (DNV), and Coquitlam, have entered into a similar Indemnification Agreement with BCHMC.

Earlier Council has approved the use of a Letter of Indemnity Agreement for the affordable housing project at 823-841 Sixth Street under a pilot project, which is currently under construction. Staff supports the proposed Letter of Indemnity Agreement for the proposed supportive affordable housing project. This approach would free up working capital for BCHMC and redirect the savings toward project delivery while the City maintains leverage to address any construction deficiencies that may arise.

This approach supports Council’s strategic plan and the City’s policy to increase housing options and affordability. The proposed project at 602 Agnes Street (68 Sixth Street) aligns with the vision and values of the Strategic Plan by providing affordable housing for those in need in our City. A Development Variance Permit will be required to vary the definition of “Security” under the Subdivision and Development Control Bylaw No. 7142.

FINANCIAL IMPACT

The arrangement of the proposed use of the Indemnity Agreement with BCHMC is not anticipated to have and direct financial implications for the City.

INTERDEPARTMENTAL LIAISON

This report has been prepared in consultation with the Office of the CAO, the Planning & Development Department, in-house legal counsel and the Staff Committee on Affordable Housing.

OPTIONS

The following options are presented for Council’s consideration:

1. **THAT** Council provides notice to consider the issuance of Development Variance Permit No. DVP00730 to vary the definition of “Security” in the *City’s Subdivision and Development Control Bylaw No. 7142, 2007, as*

amended, to include the use of an Indemnification Agreement from British Columbia Housing Management Commission (BCHMC) for Works and Services Agreement, and to proceed to Public Notification.

- 2. Provide staff with other direction.

Staff recommend Option 1.

CONCLUSION

Staff is supportive of the proposed use of Letter of Indemnity in lieu of a letter of credit as requested by BCHMC for Security under the Works & Services Agreement. A Development Variance Permit is required to vary the definition of Security under the Subdivision and Development Control Bylaw No. 7142.

ATTACHMENTS

Attachment 1 – Rationale for utilizing Letter of Indemnity request letter from BCHMC

This report was prepared by:
Binega Markos, P.Eng., Project Engineer

This report was reviewed by:
Kwaku Agyare-Manu, P.Eng., PMP., MBA, Senior Manager – Engineering Services

This report was approved by:
Lisa Leblanc, Director of Engineering Services
Lisa Spitale, Chief Administrative Officer

Attachment #1
Rationale for Utilizing Letter of Indemnity
Request Letter from BCHMC



Home Office
1701 – 4555 Kingsway
Burnaby, BC V5H 4V8

Phone 604-433-1711
www.bchousing.org

File: 95815 – 10729
Project Address: 68 Sixth St, New Westminster

March 27, 2024

City of New Westminster
511 Royal Avenue
New Westminster
BC V3L 1H9

Attention: Binega Markos, Project Engineer

Re: Rationale for utilizing Letter of Indemnity

Dear Binega,

Per your request, we are providing a rationale for our request to provide a Letter of Indemnity for engineering works for our project at 68 Sixth St.

By opting for a Letter of Indemnity, BC Housing can optimize the allocation of public financial resources in responding to the various needs of affordable housing projects. Unlike a Letter of Credit, which ties up cash deposits or credit for extended periods, a Letter of Indemnity allows us to leverage our bank credit capacity until and unless additional capital injection is required.

Furthermore, the use of a Letter of Indemnity provides a publicly accountable mechanism for indemnification against any outstanding deficiencies that may arise, ensuring transparency and accountability through the project lifecycle.

Should you have any further inquiries, please do not hesitate to contact us.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sara Jellicoe".

Sara Jellicoe
Development Manager, Lower Mainland, BC Housing