

## **REPORT**

### ***Engineering Services***

**To:** Mayor Cote and Members of Council      **Date:** May 30, 2022

**From:** Lisa Leblanc      **File:** 09.1715.20-21  
Director of Engineering Services

**Item #:** 2022-379

**Subject:** **Development Variance Permit for Works & Services Security (823-841 Sixth Street Affordable Housing Project) – Notice of Consideration of Issuance**

---

#### **RECOMMENDATION**

**THAT** Council provide notice that it will consider issuance of Development Variance Permit No. DVP00699 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) and a reduced letter of credit from the Developer, 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, plus a reduced letter of credit from the Developer, as an acceptable form of security for the affordable housing project located at 823-841 Sixth Street.

#### **BACKGROUND**

British Columbia Housing and Management Commission (“BCHMC”) is providing a loan to the Aboriginal Land Trust Society (“Society”) for the construction of the affordable housing project at 823 – 841 Sixth Street including offsite servicing. The

Society is 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. In lieu of the Society providing the specified security to the City, BCHMC has offered to indemnify the City with respect to the installation of the offsite works under the Works and Services Agreement.

### **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 available resources, senior government funding and competing municipal priorities.

City staff are reviewing various regulatory approaches to facilitate the delivery of the affordable and supportive housing developments where the primary function meets the funding requirements of British Columbia Housing Management Commission.

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 is to ensure that the developer fulfils its obligations to complete the required servicing works under the Works and Services Agreement. The security is also a lever to resolve any construction deficiencies or in the event that the developer becomes insolvent.

For the proposed affordable housing development at 823-841 Sixth Street, BCHMC and the project proponent, Aboriginal Land Trust Society (Society), have requested that the City consider an **Indemnification Agreement** in lieu of a letter of credit security under the Works and Services Agreement.

Staff reviewed the current request from BCHMC and the Society within the context of financial constraints facing non-profit societies and the tight competition to secure BCHMC funding. An indemnification agreement with BCHMC provides a high level of commitment that the necessary works will be completed. Other municipalities in the Lower Mainland such as the City of Surrey and District of North Vancouver (DNV) have also entered into a similar Indemnification Agreement with BCHMC (See Attachment 1).

Staff is supportive of piloting the proposed Indemnification Agreement in combination with a reduced letter of credit security for the proposed affordable housing project. This balanced approach<sup>1</sup> would free up working capital for the Society and redirect the savings towards project delivery while the City maintains leverage to address any construction deficiencies that may arise. The balanced approach has been discussed with BCHMC and the Society and they are in agreement.

This pilot approach supports Council's strategic plan and the City's policy to increase housing options and affordability. The proposed project at 823-841 Sixth Street aligns with the vision and values of the Strategic Plan by providing affordable housing for indigenous and newcomer groups. A Development Variance Permit will be required to vary the definition of Security under the Subdivision and Development Control Bylaw No. 7142.

### **FINANCIAL IMPACT**

This balanced approach to pilot the security arrangement with BCHMC and the Society is not anticipated to have financial implication to the City.

### **INTERDEPARTMENTAL LIAISON**

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

### **OPTIONS**

The following options are presented for Council's consideration:

1. **THAT** Council provide notice that it will consider issuance of Development Variance Permit No. DVP00699 to vary the definition of "Security" in the

---

<sup>1</sup> In lieu of a letter of credit security in the amount of 120% of the value of the works, the balanced approach is to have the indemnification agreement from BCHMC for 100% of the value of the works while the Developer provides a letter of credit for 20% of the value of the works.

*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) and a reduced letter of credit from the Developer, for Works and Services Agreement, and to proceed to Public Notification.

2. Provide staff with other direction.

Option 1 is recommended.

### **CONCLUSION**

Staff is supportive of piloting an approach for Security under the Works & Services Agreement using a combination of Indemnification Agreement from BCHMC and a reduced letter of credit from the Aboriginal Land Trust Society. A Development Variance Permit is required to vary the definition of Security under the Subdivision and Development Control Bylaw No. 7142.

### **ATTACHMENTS**

Attachment 1 – Sample Indemnification Agreement between DNV & BCHMC

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

This report was reviewed by:  
Eugene Wat, P.Eng. PTOE, Manager of Infrastructure Planning

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

## Attachment # 1

### **Sample Indemnification Agreement between DNV & BCHMC**

January 12, 2022

The District of North Vancouver  
355 West Queens Road  
North Vancouver, BC V7N 4N5

Attention: Development Engineering Department

Re: Project at 267 Orwell Street, North Vancouver, BC

---

Dear Sirs/Mesdames:

The Corporation of the District of North Vancouver (the "**District**") and Sanford Affordable Housing Society (the "**Society**") will be entering into a lease agreement to be registered in the Land Title Office with respect to the District owned property located at 267 Orwell Street, North Vancouver, BC (the "**Lands**").

The Society intends to construct not for profit housing on the Lands (the "**Project**") and to that end will enter into an Engineering Services Agreement dated for reference the 20<sup>th</sup> day of November, 2021 with the District (the "**Services Agreement**") to ensure completion of the Project.

Pursuant to the Services Agreement, the Society agrees to complete the design and construction of certain off-site works and services related to the Project as set out in the Services Agreement (the "**Works**"). To ensure completion of the Works in accordance with the Services Agreement, the Society has amongst other things, agreed to secure the completion of the Works with an Irrevocable Letter of Credit in the favour of the District (the "**LOC**").

British Columbia Housing Management Commission ("**BCHMC**") has agreed to loan the Society monies for construction of the Project on the Lands, including the Works.

In lieu of the Society providing the LOC in favour of the District, thereby allowing such saved costs to be used to better fund the Project, BCHMC has requested and the District has agreed, that BCHMC indemnify the District with respect to the installation of the Works in accordance with the Services Agreement and the timelines set out therein.

In consideration of the District (i) permitting the construction of the Project, including the Works and (ii) waiving the District's right that the Society provide the LOC, BCHMC hereby agrees to indemnify and save harmless the District against any liabilities, claims, judgments, losses, damages, costs and expenses incurred by the District as a result of the non-completion of the Works in accordance with the Services Agreement within the timelines set out therein.

The Society and BCHMC agree that:

INDEMNITY CLAUSE  
REVISED BY LEGAL SERVICES

*AME* *PC*



- (a) should the Works, or any portion of the Works, not be completed in accordance with the Services Agreement within the timelines set out therein, the District may, in its sole discretion, place a stop work order on the construction of the Project. The Society and BCHMC agree to immediately comply with such stop work order, subject only to resolving issues related to securing the Lands and the safety of the Project. The Society and BCHMC further agree that the District will only be required to lift the stop work order upon the Society or BCHMC providing an irrevocable letter of credit for 150% of the value of the Works that remain to be completed (the "**Outstanding Works at Time of Default**"); or
- (b) should any of the Works not be completed by the date that is one day before the issuance by the District of a certificate of occupancy for any dwelling unit in any building on the Lands, then the District will not issue the occupancy permit and the Society and BCHMC will not insist upon the issuance of the occupancy permit unless and until the Society or BCHMC provides an irrevocable letter of credit for 150% of the value of the Works that remain to be completed (the "**Outstanding Works at Time of Occupancy Request**").

Any irrevocable letter of credit provided pursuant to either of the above will be held by the District on all of the terms and conditions set out in the Services Agreement.

The District, the Society and BCHMC agree to act reasonably in determining the scope and value of the Outstanding Works at Time of Default or the Outstanding Works at Time of Occupancy Request, as the case may be. Despite the preceding sentence, if the District, the Society and BCHMC do not agree on the scope and value of the Outstanding Works at Time of Default or the Outstanding Works at Time of Occupancy Request, as the case may be, the District may, in its sole discretion, determine both the scope and the value of the Outstanding Works at Time of Default or the Outstanding Works at Time of Occupancy Request.

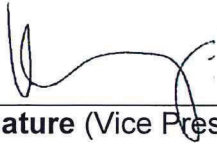
We trust you will find the foregoing acceptable.

Yours truly,



Naomi Brunemeyer, Director of Regional Development, Lower Mainland  
British Columbia Housing Management Commission

By executing this letter agreement, BCHMC commits itself to be bound by the terms set out in this letter agreement.



**Signature** (Vice President, Development and Asset Strategies)

By executing this letter agreement, Sanford Affordable Housing Society commits itself to be bound by the terms set out in this letter agreement.



**Authorized Signatory** *Dale N. Clannaghan*  
*Director & V.P.*