



CORPORATION OF THE TOWNSHIP OF ESQUIMALT

Agenda - Final

Special Meeting of Council

Municipal Hall
1229 Esquimalt Road
Esquimalt, B.C. V9A 3P1

Thursday, June 8, 2017

5:45 PM

Esquimalt Council Chambers

1. CALL TO ORDER
2. LATE ITEMS
3. APPROVAL OF THE AGENDA
4. PUBLIC INPUT (On items listed on the Agenda)
Excluding items which are or have been the subject of a Public Hearing.
5. STAFF REPORTS

Development Services

- 1) [17-221](#) Housing Agreement Application, 101 Island Highway, Staff Report DEV-17-034

Recommendation:

That Council resolves that Housing Agreement (101 Island Highway) Bylaw, 2017, No. 2897 attached as Schedule "A" of staff report DEV-17-034 be **read a first, second and third time.**

Attachments: [DEV-17-034 Schedule A - Housing Agreement Bylaw No. 2897](#)
[DEV-17-034 Schedule B - Housing Agreement - 101 Island Highway \(Schedule A, Bylaw No. 2897\)](#)

6. ADJOURNMENT



CORPORATION OF THE TOWNSHIP OF ESQUIMALT

Municipal Hall
1229 Esquimalt Road
Esquimalt, B.C. V9A 3P1

Staff Report

File #:17-221

REQUEST FOR DECISION

DATE: June 5, 2017

Report No. DEV-17-034

TO: Laurie Hurst, Chief Administrative Officer

FROM: Trevor Parkes, Senior Planner

SUBJECT:

Housing Agreement Application, 101 Island Highway, PID 000-025-569, Lot A, Section 2, Esquimalt District, Plan 39273.

RECOMMENDATION:

That Council resolves that Housing Agreement (101 Island Highway) Bylaw, 2017, No. 2897 attached as Schedule "A" of staff report DEV-17-034 be **read a first, second and third time**.

RELEVANT POLICY:

Official Community Plan Bylaw, 2006, No. 2646

Zoning Bylaw, 1992, No 2050

Local Government Act [RSBC 2015] c.1

STRATEGIC RELEVANCE:

This Request for Decision does not directly relate to a specific strategic objective.

BACKGROUND:

Purpose of the Application

The property owner of 101 Island Highway has submitted an application to the Township to rezone the lands from C-5A [Tourist Commercial] to CD-102 [Comprehensive Development District No. 102] to accommodate changes to the uses permitted on the property and refine parking requirements associated with the proposed uses. The applicant proposes the site change to a commercial/residential mixed-use development, including retaining a 145 square metre restaurant/coffee shop on the site, to be run by an independent operator, retaining a modest 59 square metre office space for on-site management of the buildings and reducing the total number of units on the site from 121 to 96 units.

Under Section 483 of the *Local Government Act* the Township may, by bylaw, enter into a Housing Agreement including terms and conditions agreed to by the local government and the owner regarding the occupancy of the housing units identified in the agreement.

The property owner and the Township wish to enter into Housing Agreement that would include provisions:

- restricting the residential portion of the development to market rental,
- ensuring dwelling units are available to all classes of persons, except that units built as accessible units may be restricted to those persons with disabilities requiring such units, and
- relating to the administration and management of all the units that further any of the regulations of the CD-102 zone, including restrictions on leasing more than 10 units to an individual, governmental agency or corporation, and reporting requirements, including with respect to allocation of units and floor area amongst the uses.

Should this Housing Agreement Bylaw be adopted a Notice of this Housing Agreement shall be placed on the titles of the subject properties.

Schedules:

“A” Housing Agreement (101 Island Highway) Bylaw, 2017, No. 2897;

“B” Housing Agreement - Schedule A - Bylaw No. 2897.

ISSUES:

1. Rationale for Selected Option

Registration of this Housing Agreement would ensure that dwelling units would be offered as market, and not subsidized rental housing, would ensure that units built as accessible units may be restricted to those persons with disabilities requiring such units, and would prevent the institutionalization of the site by restricting the leasing of a group of units to a maximum of 10 units.

Should Council read Housing Agreement (101 Island Highway) Bylaw, 2017, No. 2897 a first, second and third time it would enable staff to return the Housing Agreement Bylaw and the associated Zoning Amendment Bylaw, back to Council for consideration of adoption at the same meeting provided that Bylaw No. 2893 receives third reading.

2. Organizational Implications

This Request for Decision has no organizational implications.

3. Financial Implications

There may be property tax implications given the change of use from commercial to commercial - residential mixed use.

4. Sustainability & Environmental Implications

The proposal represents the adaptive reuse of the existing buildings and secures public access to the Gorge Waterway in the future.

5. Communication & Engagement

The requirement for a housing agreement was identified as part of the rezoning application when it

was first presented to Council, May 23, 2017. The *Local Government Act* does not require that notification be provided when a municipality is considering approval of a housing agreement bylaw.

ALTERNATIVES:

1. Council read Housing Agreement (101 Island Highway) Bylaw, 2017, No. 2897 for a first, second and third time.
2. Council defeats Housing Agreement (101 Island Highway) Bylaw, 2017, No. 2897.

CORPORATION OF THE TOWNSHIP OF ESQUIMALT

BYLAW NO. 2897

A Bylaw to authorize a Housing Agreement
under section 483 of the *Local Government Act*

THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF ESQUIMALT, in open
meeting assembled, enacts as follows:

1. This bylaw may be cited as the *"HOUSING AGREEMENT (101 Island Highway) BYLAW, 2017, NO. 2897"*.
2. The Mayor and the City's Corporate Officer are authorized to execute the Housing Agreement:
 - (a) set out in Schedule A,
 - (b) between the Township and 1096659 B.C. LTD. INC.NO. BC1096659, and
 - (c) that applies to the land known as 101 Island Highway, legally described as:

PID: 000-025-569
LOT A, SECTION 2, ESQUIMALT DISTRICT, PLAN 39273.

READ a first time by the Municipal Council on the ---- day of -----, 2017.

READ a second time by the Municipal Council on the ---- day of -----, 2017.

READ a third time by the Municipal Council on the ---- day of -----, 2017.

ADOPTED by the Municipal Council on the ---- day of -----, 2017.

BARBARA DESJARDINS
MAYOR

ANJA NURVO
CORPORATE OFFICER

**SCHEDULE A to Bylaw No. 2897
HOUSING AGREEMENT**

HOUSING AGREEMENT

(Pursuant to Section 483 of the *Local Government Act*)

THIS AGREEMENT is made the ____ day of _____, 2017.

BETWEEN:

THE CORPORATION OF THE TOWNSHIP OF ESQUIMALT

1229 Esquimalt Road
Esquimalt, BC V9A 3P1

(the "TOWNSHIP")

AND

1096659 B.C. LTD. INC. NO. BC1096659,

C/O Suite 370-425 Carrall Street
Vancouver, BC V6B 6E3

(the "OWNER")

RECITALS:

- A. Under section 483 of the *Local Government Act*, R.S.B.C. 2015 c.1 ("LGA") the Township may, by bylaw, enter into a Housing Agreement with an owner regarding the occupancy of the housing units identified in the Agreement, including but not limited to terms and conditions referred to in section 483(2) of the *Local Government Act*;
- B. The Owner is the registered owner in fee-simple of those lands with a current civic address of 101 Island Highway in the Township of Esquimalt in Province of British Columbia, and legally described as:
PID: 000-025-569
LOT A, SECTION 2, ESQUIMALT DISTRICT, PLAN 39273
(the "**Lands**").
- C. The Owner has submitted an application to the Township to rezone the Lands from C-5A [Tourist Commercial] to CD No.102 [Comprehensive Development District No. 102] further to ZONING BYLAW, 1992, NO. 2050, AMENDMENT BYLAW NO. 2893 ("**Rezoning Bylaw**"), and acknowledges that it is in the public interest that the use of the Lands be limited, in particular given the intent to provide non-institutional market

rental housing. The CD-102 Zone includes density bonusing provisions under LGA s.482 which permits higher density of development in exchange for amenities and for this Housing Agreement, the latter described as follows:

(1) Housing Agreement: The owner shall enter into a Housing Agreement under Section 483 of the *Local Government Act* with the Township, including

- restricting the residential portion of the development to market rental,
- ensuring Dwelling Units are available to all classes of persons, except that units built as accessible units may be restricted to those persons with disabilities requiring such units, and
- provisions related to the administration and management of all the units that further any of the regulations of this zone, including restrictions on leasing more than 10 units to an individual, governmental agency or corporation, and reporting requirements, including with respect to allocation of units and floor area amongst the uses

D. The Owner proposes to renovate and reuse the existing buildings on the Lands under one fee simple legal title, with no stratification (either land or building), as follows:

- a. West Block A – Commercial Uses plus either multi-family residential Dwelling Units or Tourist Accommodation Units;
- b. Centre Block B – Either multi-family residential Dwelling Units or Tourist Accommodation Units;
- c. South Block C – Either multi-family residential Dwelling Units or Tourist Accommodation Units;
- d. East Block D – Either multi-family residential Dwelling Units or Tourist Accommodation Units; and
- e. 5 Two Family Dwelling Units - Either multi-family residential Dwelling Units or Tourist Accommodation;

all in accordance with the Zoning Bylaw (collectively, the “**Proposed Development**”);

E. The Owner and the Township wish to enter into this Agreement, as a Housing Agreement pursuant to section 483 of the *Local Government Act*, to secure the agreement of the Owner with respect to the matters noted herein (the “**Agreement**” or “**Housing Agreement**”), the parties acknowledging that Notice of this Housing Agreement shall be placed on title to the Lands and shall be binding on future owners in accordance with LGA s.483(6).

NOW THIS AGREEMENT WITNESSES that pursuant to section 483 of the *Local Government Act*, and in consideration of the premises and covenants contained in this Agreement, the parties agree each with the other as follows:

1. DEFINITIONS

- 1.1. Unless otherwise stated, the definitions of the Township's ZONING BYLAW, 1992, NO. 2050 ("**Zoning Bylaw**"), apply to this Agreement.
- 1.2. The following words and terms have the following meanings:
 - (a) "**Commercial Units**" means the units dedicated to or used for commercial uses listed under the "Permitted Uses" section of the CD-102 Zone, other than Tourist Accommodation uses and Home Occupation uses;
 - (b) "**Dwelling Units**" means the units dedicated to or used for residential uses, including two-family dwellings, multi-family dwellings any accessory home occupation uses;
 - (c) "**Tourist Accommodation Units**" means the units dedicated to or used for Tourist Accommodation uses;
 - (d) "**Any of All of the Units**" means Commercial Units, Dwelling Units and Tourist Accommodation Units collectively.

2. RENTAL UNITS ONLY

- 2.1. The Owner covenants and agrees that the Owner shall not take any steps, or enter into any agreements, or impose any rules or regulations whatsoever the effect of which would be to sell, transfer or otherwise dispose of:
 - (a) the **Dwelling Units** on the Lands other than for rental purposes;
 - (b) the **Tourist Accommodation Units** on the Lands other than for rental purposes, with any individual stay not exceeding thirty (30) days.
- 2.2. Without limiting the generality of Section 2.1,
 - (a) the Owner covenants and agrees that it will not make application to deposit a strata plan to stratify **Any of All of the Units**;
 - (b) the tenancy agreements or leases for the **Dwelling Units** must not be of a term inconsistent with rental tenure and any assignments or subletting of those tenancy or lease agreements shall be approved by the Owner and not be in a manner that is inconsistent with this Agreement, registered encumbrances or bylaws of the Township existing as at the date of registration of this Agreement;
 - (c) the tenancies and occupancies for the **Dwelling Units** must be market rental;

- (d) the tenancies and occupancies for the **Dwelling Units** and **Tourist Accommodation** must be at all times available to all classes of persons, and must not be institutional in nature, however the parties acknowledge and agree that this provision does not:
 - (1) restrict units built as accessible units from being restricted to those persons with disabilities requiring such units,
 - (2) restrict rental of individual units to individual person(s) with disabilities,
 - (3) prohibit one allocation of up to ten (10) units in the Proposed Development to a single individual, governmental agency or corporation for use by that individual, governmental agency or corporation, and for clarity, not more than 10 units in the Proposed Development may be so allocated at any given time.

provided all other provisions of this Agreement and Township Bylaws are satisfied.

- 2.3 The Owner acknowledges that it is within the Township's sole discretion to consent or not to consent to modifications of this Agreement and that such consent may be withheld for any reason.

3. ADMINISTRATION & MANAGEMENT - REPORTING

- 3.1. Within thirty (30) days of receipt of request from the Township, the Owner must provide a report in writing that identifies the following for the Proposed Development, or portions thereof, respectively:
- (a) Location of, by building "Block" and unit number, and total number of Commercial Units, Dwelling Units and Tourist Accommodation Units, respectively, on the Lands;
 - (b) Total floor area, by building "Block", dedicated to Commercial Units, Dwelling Units and Tourist Accommodation Units respectively on the Lands;
 - (c) Number of occupants of each Dwelling Unit;
 - (d) Subject to the provisions of relevant prevailing law in connection therewith, the name and contact information of all individuals, governmental agencies or corporations that:
 - (1) use, occupy, manage or operate more than one Dwelling Unit;
 - (2) use, occupy, manage or operate more than one Tourist Accommodation Unit;

(3)

as well as the respective applicable unit numbers;

- (e) Copy of the standard form(s) of tenancy or occupancy agreement for the Dwelling Unit, including term of that agreement (but without the personal information of each individual agreement);
 - (f) Median, Low, High and Average monthly rents of the Dwelling Units, distinguished by number of bedrooms in the Multiple-Family Dwelling, with separate reporting for the Two-Family Dwellings; and
 - (g) Such further information identified in the request from the Township, provided such is relevant to the interpretation, administration or enforcement of this Housing Agreement.
- 3.2. The parties acknowledge that reporting requirements will not be imposed more than once per year, unless there are reasonable grounds to believe that there may be a breach, in fact or in spirit, of this Housing Agreement (as determined in the Township's sole discretion, acting reasonably, for the purposes of reporting).
- 3.3. For greater certainty, there are no reporting requirements unless the Township so requests.

4. NOTICE IN LAND TITLE OFFICE

- 4.1. Notice of this Agreement will be filed in the Land Title Office by the Township at the cost of the Owner in accordance with section 483 of the *Local Government Act*, and this Agreement is binding on the parties to this Agreement as well as all persons who acquire an interest in the Lands after filing of the Notice.

5. RELEASE AND INDEMNITY

- 5.1. The Owner covenants and agrees to indemnify and save harmless the Township from any and all claims, causes of action, suits, demands, fines, penalties, costs or expenses or legal fees (on a solicitor-client basis) whatsoever, in law or equity, which anyone has or may have against the Township or which the Township incurs as a result of any loss, damage, deprivation, enrichment or injury, including economic loss, arising out of or connected with the restrictions or requirements of this Agreement, the breach of any covenant in this Agreement, or the use, occupancy and tenure of the Lands contemplated under this Agreement.

- 5.2. The Owner releases and forever discharges the Township of and from any claims, causes of action, suits, demands, fines, penalties, costs or expenses or legal fees (on a solicitor-client basis) whatsoever, in law or equity, which the Owner can or may have against the Township for any loss, damage, deprivation, enrichment or injury, including economic loss, arising out of or connected with the restrictions or requirements of this Agreement, the breach of any covenant in this Agreement, or the use, occupancy and tenure of the Lands contemplated under this Agreement.

6. GENERAL PROVISIONS

- 6.1. **NOTICE:** Any notice permitted or required by this Agreement to be given to either party must be given to that party at the address set out above, or to any other address of which the party has given the other party notice in writing expressly for the purposes of this Agreement.
- 6.2. **CONFLICT:** In the event of a conflict between the terms of this Agreement and the provisions of Township Bylaws in relation to use or density, the bylaws will prevail in accordance with section 483(3) of the *Local Government Act*.
- 6.3. **BINDING EFFECT:** This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, successors, and permitted assignees, and in accordance with section 483(6) of the *Local Government Act*.
- 6.4. **TIME:** Time is to be the essence of this Agreement.
- 6.5. **WAIVER:**
- (a) No provision of this Agreement is to be considered to have been waived by a party unless the waiver is expressed in writing by the party.
 - (b) The waiver by a party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement is not to be construed as a waiver of any future or continuing failure, whether similar or dissimilar.
- 6.6. **CUMULATIVE REMEDIES:** No remedy under this Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or in equity.
- 6.7. **RELATIONSHIP OF PARTIES:**
- (a) No provision of this Agreement may be construed to create a partnership or joint venture relationship, an employer-employee relationship, a landlord-tenant, or a principal-agent relationship.

- (b) The Owner is solely responsible for all costs and expenditures required to fulfill its obligations under this Agreement, whether those costs and expenses are specifically referred to in this Agreement.
- 6.8. **FURTHER ASSURANCES:** The Owner will do, execute, and deliver, or cause to be done, executed, and delivered all such further acts, documents and things as may be reasonably required from time to time to give effect to this Agreement.
- 6.9. **ENTIRE AGREEMENT:**
 - (a) This Agreement contains the entire agreement and understanding of the parties with respect to the matters contemplated by this Agreement and supersedes all prior and contemporaneous agreements between them with respect to such matters.
 - (b) No representations, warranties or conditions, express or implied, oral or otherwise, have been made other than those expressed in this Agreement.
- 6.10. **NO RESTRICTION ON TOWNSHIP AUTHORITY:** Except as required by section 483 of the *Local Government Act*, nothing contained or implied in this Agreement:
 - (a) prejudices or affects the rights, powers or discretion of the Township in the exercise of its functions under any public or private statutes, bylaws, orders and regulations, all of which may be fully and effectively exercised in relation to the Lands as if the Agreement had not been executed and delivered by the Owner;
 - (b) imposes any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement or the breach of any provision in this Agreement; or
 - (c) imposes any public law duty, whether arising from the principles of procedural fairness or the rules of natural justice, on the Township with respect to its exercise of any right or remedy expressly provided in this Agreement or at law or in equity.
- 6.11. **SEVERABILITY:** Each article of this Agreement is severable. If any provision of this Agreement is held to be illegal or invalid by a Court of competent jurisdiction, the provision may be severed and the illegality or invalidity must not affect the validity of the remainder of this Agreement.
- 6.12. **ACKNOWLEDGEMENT:** The Owner acknowledges having been directed to obtain independent legal advice and having read and fully understood all the terms and conditions of this Agreement. The Owner confirms that this Agreement has been entered into voluntarily.

- 6.13. **COUNTERPARTS:** This Agreement may be executed in counterpart with the same effect as if both parties had signed the same document. Each counterpart is deemed to be an original. All counterparts are construed together and constitute one and the same Agreement.
- 6.14. **APPLICABLE LAW:** This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

IN WITNESS WHEREOF the parties have set their hands and seals as of the day and year first above written.

TOWNSHIP OF ESQUIMALT

by its authorized signatories

Mayor

Chief Administrative Officer

1096659 B.C. LTD. INC.NO. BC1096659,

by its authorized signatories

Name:

Name:

PRIORITY: **PEOPLES TRUST COMPANY INCORPORATION NO. A0033943** (the "Chargeholder") is the registered holder of a charge by way of MORTGAGE and ASSIGNMENT OF RENTS against each of parcels that comprise the Lands, registered under No. CA5690068 and CA5690069 respectively (the "**Charges**"), agrees with the Township, in consideration of the sum of Ten Dollars (\$10.00) paid by the Township to the Chargeholder (receipt and sufficiency acknowledged), that the Agreement shall be an encumbrance upon the Lands in priority to the Charges in the same manner and to the same effect as if the Agreement had been dated and registered prior to the Charges.

PEOPLES TRUST COMPANY INCORPORATION NO. A0033943

by its authorized signatories

)
_____)
Name:)
)
_____)
Name:)