



## **Committee of the Whole Report**

### **For the Meeting of July 29, 2021**

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**To:** Committee of the Whole **Date:** July 15, 2021

**From:** Karen Hoesse, Director, Sustainable Planning and Community Development

**Subject:** **Requests from BC Housing to Terminate Housing Agreement, cancel Development Permit with Variance, and Discharge Legal Agreements Registered on the Title of 953 Balmoral Road**

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### **RECOMMENDATION**

That Council:

1. Decline the request to terminate the Housing Agreement for 953 Balmoral Road.
2. Authorize the City Solicitor to discharge the existing Car Share Covenant and associated Statutory Right-of-Way (CA7872359 and CA7872361) from the title of 953 Balmoral Road.
3. Approve the cancellation of Development Permit with Variance No. 000506.
4. Direct staff to prepare the legal agreements to secure a Statutory Right-of-Way of 1.22m along the frontage of 959 Balmoral Road.

### **LEGISLATIVE AUTHORITY**

Once a local government bylaw is adopted, it may only be repealed by bylaw. Generally, bylaws to repeal an existing bylaw are subject to the same approval and other requirements as the power to adopt a new bylaw under that authority.

### **EXECUTIVE SUMMARY**

The purpose of this report is to present Council with information, analysis and recommendations in response to a request from BC Housing to remove a number of encumbrances from title at 953 Balmoral Road. Specifically, BC Housing would like Council to consider the following:

- cancellation of a Housing Agreement for 953 Balmoral Road
- discharge a car share covenant and an associated Statutory Right-of-Way (SRW (CA7872359 and CA7872361) from title
- cancellation of Development Permit with Variances No. 000506 from the title.

There is currently a registered Section 219 Covenant and easement securing a 1.22m SRW on the Balmoral frontage, which will remain on title. In a letter dated June 29, 2021, BC Housing has

offered to extend this SRW onto the adjacent property at 959 Balmoral Road to achieve the standard width of a secondary collector street of 20.0m in the *Highway Access Bylaw* and extend the frontage improvements.

On December 12, 2019, Council approved a rezoning and development permit with variances application to construct a four-storey, multi-unit building consisting of 11 rental dwelling units at 953 Balmoral Road. The application included legal agreements to secure rental tenure for 25 years, transportation demand management measures and a statutory right-of-way to improve pedestrian conditions. Following the approval of the rezoning and DP, the site was purchased by BC Housing. BC Housing intends to construct affordable supportive housing to be operated by a non-profit housing provider.

Given the urgent need of supportive housing in the city, BC Housing is relying on its exemption from enactments related to the use and development of land and from municipal processes to expedite the construction of supportive housing at 953 and 959 Balmoral Road. BC Housing will not be applying for a new rezoning and development permit application to facilitate this supportive housing development; as a result, there will be no opportunity for the City to request legal agreements, such as a new housing agreement to secure rental housing. Furthermore, the zoning adopted in 2019 will remain in effect for this property, notwithstanding that BC Housing intends to proceed with a different project.

It is recommended, therefore, to decline the request to cancel the Housing Agreement. This would mitigate the possibility of BC Housing selling the property to a private developer, who could either strata title a building that may have been constructed by BC Housing or construct a new multi-unit residential building on the property without providing any rental housing on the portion of the property currently subject to the housing agreement. However, it is noted that this risk is small and staff have provided an alternate motion for Council's consideration should there be a desire to support BC Housing's request to repeal the Housing Agreement Bylaw.

The requests to cancel Development Permit with Variances (DPV) No. 000506 and the car share agreement with an associated SRW (the SRW permits the public to access a car share vehicle on-site) are recommended as being supportable. This is because the DPV will lapse on December 12, 2021, if work has not substantially commenced and given that no building permit application has been submitted, this will likely be the case. As the car share agreement is linked to the approved DPV and associated plans, it will likely become redundant with the lapsing of the permit.

## **BACKGROUND**

### **Description of Proposal**

The purpose of this report is to present Council with information, analysis and recommendations in response to a number of requests from BC Housing to remove charges from title of 953 Balmoral Road. Specifically, BC Housing would like Council to consider the following:

- termination of the Housing Agreement for 953 Balmoral Road), which secures 11 dwelling units as rental for 25 years in which two of the units would be rented at 10% below market rent
- discharge a car share covenant and an associated Statutory Right-of-Way (SRW) from title, which secures a transportation demand management (TDM) program for the 11-unit residential building which has a shortfall of on-site parking. The TDM measures include a

car share vehicle and parking space, car share memberships, one monthly transit pass for each unit over a period of three years (396 monthly passes), and one bicycle for each unit

- cancel Development Permit with Variances No. 000506 from the title, which pertains to the approved four-storey multi-unit residential building and associated parking, setbacks, site coverage and open site space variances.

## **Relevant History**

On December 12, 2019, Council approved a rezoning and development permit with variances application to construct a four-storey, multi-unit building consisting of 11 rental dwelling units at 953 Balmoral Road. The subject property was rezoned from the R-2 Zone, Two-Family Dwelling District, to the new R-95 Zone, Balmoral Multiple Dwelling District, to increase the density from 0.5:1 to 1.38:1 floor space ratio (FSR) and permit a multiple dwelling building. The variances were associated with reductions in parking, setbacks, and open site space, and an increase in building site coverage. The applicant entered a housing agreement to secure the rental dwelling units for a minimum period of 25 years as well as ensure two of the units are rented at below-market rates. The approved development was only providing 42% of the required parking on site, and therefore, the applicant offered a comprehensive transportation demand management program for residents, secured in a legal agreement.

In the R-95 Zone, there is a requirement for an amenity contribution in the amount of \$76,694.69 towards the Local Amenity Reserve Fund if the density of a multi-unit residential building exceeds the base density of 0.5:1 floor space ratio (FSR) in the zone. Since the province is declaring an exemption from municipal zoning, they will not be required to make this contribution.

Following the approval of the rezoning and development permit with variances application, the property was sold to BC Housing for a supportive housing development.

## **COMMENTS**

### **Terminating Housing Agreement**

The Housing Agreement that applies to the site, secures 11 dwelling units as rental for 25 years in which two of the units would be rented at 10% below market rent.

In the letter dated June 29, 2021, BC Housing explains that a Housing Agreement is not needed as they are building supportive housing, which will provide an opportunity for people to leave the streets and shelter system for safe and stable housing. In this instance, supportive housing is considered to be apartments with support services provided on-site, such as tenant support workers, life skills training, employment assistance, connection and referral to community services and support groups. BC Housing has confirmed that the rents will be based on 30% of income; however, most tenants would be paying the shelter rate of income assistance, which is approximately \$375/month for a single person. The rental rate will also vary based on an individual's income. BC Housing intends to construct and engage a non-profit housing provider to operate the supportive housing on site for the long-term.

More specifically, BC Housing believes that the existing housing agreement reflects the approved four-storey multi-unit residential building and is not relevant to their development. To clarify, the housing agreement would apply to any development on the subject property regardless of the number of storeys or number of dwelling units in the building for a minimum period of 25 years

and at least two of the dwelling units must be rented at below-market rates.

Therefore, the continued presence of the Housing Agreement should in no way impact BC Housing's ability to construct supportive housing on this site. There is, however, a potential risk associated with terminating the existing housing agreement, which should be taken into account when considering BC Housing's request. Namely, if for some unforeseen circumstance BC Housing sells the subject property and there is no housing agreement in place, this would allow a new property owner to strata title an existing building or construct a strata condominium under the R-95 zone, with no requirement for rental dwelling units.

Based on the information provided by BC Housing, the supportive housing development would comply with the existing housing agreement and therefore, it is challenging to support the request to terminate the housing agreement that secures some of the housing as rental for a minimum of 25 years. However, an alternate motion has been provided for Council's consideration should Council wish to support BC Housing's request to terminate the Housing Agreement.

#### Discharging notations and legal agreements

The requests to discharge the notice of permit for Development Permit with Variances Application No. 000506 and car share agreement with an associated SRW (SRW permits the public to access a car share vehicle on-site) are reasonable given that the car share agreement is affiliated with the approved Development Permit with Variance Application for a multi-unit residential building with a parking variance. As no building permit application has been submitted, it is unlikely that any construction could commence under this permit prior to its lapse on December 12, 2021; as variances do not "run with the lands," if a notice of permit is discharged from title, or a development permit lapses, then a new application would be required and new variances would be assessed at that time.

#### Statutory Right-of-Way at 959 Balmoral Road

There is currently a registered Section 219 Covenant and easement securing a 1.22m SRW along the 953 Balmoral Road frontage, which will remain on title. In the letter dated June 29, 2021, BC Housing has offered to extend the 1.22m SRW on the 959 Balmoral Road frontage to achieve the standard width of a secondary collector street of 20.0m. Obtaining this additional SRW will allow for sidewalk realignment and a new boulevard and street trees.

#### Reversing 2019 rezoning

Once a local government bylaw is adopted, it may only be repealed by bylaw. Generally, bylaws to repeal an existing bylaw are subject to the same approval and other requirements as the power to adopt a new bylaw under that authority. On December 12, 2019, Council adopted Zoning Amendment Bylaw No. 19-091 which amended the Zoning Regulation Bylaw by creating the R-95 Zone and rezoned 953 Balmoral Road from the R-2 Zone, Two Family Dwelling District to the R-95 Zone.

Council could consider rezoning the subject property back to the R-2 Zone, which is also the current zone of 959 Balmoral Road and permits a duplex or a single-family dwelling with a secondary suite or garden suite. This option would trigger a full rezoning process, including a public hearing, and may not be a practical option given that, utilizing its exemption from enactments dealing with development and use of land, BC Housing is planning to construct a new supportive housing building that may not comply with the *Zoning Regulation Bylaw* regardless of

the zoning of the property. However, rezoning the site to its original zone would ensure that if the site is sold without being developed, and another rezoning process allowing the City to negotiate amenities and ensure custom tailored regulations could be considered. Although not recommended, an alternate motion has been provided should Council wish to rezone 953 Balmoral Road back to R-2 Zone, Two Family Dwelling District.

## **RESOURCE IMPACTS**

There are legal costs associated with discharging legal agreements from title. It is expected, however, that BC Housing would carry out this work.

## **CONCLUSIONS**

To conclude, the requests to cancel Development Permit with Variances No. 000506 and discharge car share agreement with an associated SRW are reasonable; however, termination of the Housing Agreement is problematic given that the housing agreement does not appear to have an impact on BC Housing's ability to construct supportive housing on the subject properties. Retaining the existing housing agreement would ensure that there would be at least some rental housing on site for at least 25 years regardless of the ownership of the subject property.

## **ALTERNATE MOTIONS**

### **OPTION 1 (Terminate Housing Agreement plus other BC Housing Requests)**

That Council:

1. Instruct City Solicitor to bring forward a bylaw that would authorize termination of the Housing Agreement for 953 Balmoral Road.
2. Authorize the City Solicitor discharge the existing Car Share Covenant and associated Statutory Right-of-Way (CA7872359 and CA7872361) from the title of 953 Balmoral Road.
3. Cancel Development Permit with Variance No. 000506.
4. Direct staff to prepare the legal agreements to secure a Statutory Right-of-Way of 1.22m along the frontage of 959 Balmoral Road.

### **OPTION 2 (Rezone to R-2 Zone and support other BC Housing Requests)**

That Council:

1. Instruct City Solicitor to bring forward a bylaw that would authorize termination of the Housing Agreement for 953 Balmoral Road.
2. Request Director of Sustainable Planning and Community Development to commence City-initiated rezoning of 953 Balmoral Road back to R-2 Zone, Two Family Dwelling District.
3. Authorize the City Solicitor to discharge the existing Car Share Covenant and associated Statutory Right-of-Way (CA7872359 and CA7872361) from the title of 953 Balmoral Road.
4. Cancel Development Permit with Variance No. 000506.
5. Direct staff to prepare the legal agreements to secure a Statutory Right-of-Way of

1.22m along the frontage of 959 Balmoral Road.

**OPTION 3 (Decline all BC Housing Requests)**

That Council decline BC Housing's requests to terminate Housing Agreement for 953 Balmoral Road, to cancel Development Permit with Variance No. 000506, and discharge legal agreements registered on the title of 953 Balmoral Road.

Respectfully submitted,

Leanne Taylor  
Senior Planner  
Development Services Division

Karen Hoese, Director  
Sustainable Planning and Community  
Development Department

**Report accepted and recommended by the City Manager.**

**List of Attachments**

- Attachment A: Aerial Map
- Attachment B: Letter from BC Housing to Mayor and Council dated June 29, 2021
- Attachment C: Housing Agreement (953 Balmoral Road) Bylaw (Bylaw No. 19-092)
- Attachment D: Notice of Housing Agreement
- Attachment E: Car Share Covenant and associated Statutory Right-of-Way (CA7872359 and CA7872361)
- Attachment F: Development Permit with Variance Application No. 000506
- Attachment G: Notice of Development Permit.