



The following points were considered in assessing this application:

- The proposal is subject to regulations under Development Permit Area 2: Core Business, and is not consistent with the applicable Design Guidelines in the *Downtown Core Area Plan, 2011* (DCAP), which identifies the walkway as a “Key Pedestrian Connection” in the downtown pedestrian network
- The excessive height and awkward configuration of fences and gates, particularly the 68-foot length of north-south fencing between the gates at 836 Yates Street and the gates at 848 Yates Street, is not consistent with the applicable *Guidelines for Fences, Gates and Shutters* and contributes to the fortress-like appearance of the property
- Installing gates in the heritage-designated façade is not a supportable heritage alteration because staff are recommending rejection of the rest of the system of gates and fencing for non-compliance with walkability, accessibility and urban design policies. The heritage façade gates cannot effectively secure the walkway unless the entire system of fencing and gates is approved. The needless alteration of the heritage facade would not be consistent with the purpose of heritage protection of the property and is inconsistent with Standards 3 and 5 of the Standards and Guidelines, which discourage unnecessary alterations to heritage property that do not serve a realistic objective
- The proposal is not consistent with the height requirements of the *Fence Bylaw* and is proposed to be 30cm taller than the maximum 1.83m permitted under the *Bylaw*. For the most part this increase in height exacerbates challenges associated with the proposal, intensifying the sense of closure and fortification that is experienced from the street.

As a result of policy inconsistency and the resulting negative impact on the urban fabric, staff recommend that Council decline the application.

## **BACKGROUND**

### **Relevant History**

#### 836 Yates Street

In 1936, the two-storey building at 836 Yates Street was constructed as a movie theatre called the Atlas Theatre. It was designed by architect Eric Charlesworth Clarkson in the Art Deco style. Council designated the property in 1990 under Bylaw No. 90-186 and the Municipal Heritage Site Registry form described its significance as follows:

*“Despite alterations to the marquee and entry, this elegant Art Deco structure maintains its original charm and character. Built as the Atlas Theatre, the symmetrical centre tower once supported an elaborate marquee sign, complete with an insignia of Atlas supporting the earth. The windows and cornice setbacks are angled in imitation of a Mayan motif popular as one of the revival styles of the time. A horizontal frieze of lozenge relief shapes echoes the setback and ties together the vertical wall surfaces. The Atlas was the first air-conditioned theatre in Victoria. It was later used as the Coronet Theatre.”*

The purpose of heritage designation according to the registry form was to protect the building’s original charm and character expressed through its symmetry, fenestration, and façade detailing. Of the original building, only the front façade still exists and is the only portion of the site that is designated.

On October 26, 1994, the City issued Development Permit No. 3002 approving the redevelopment of the site with a four-storey office building, retaining and designating the heritage façade of the former Atlas Theatre. As part of the rezoning, the City negotiated construction of a pedestrian walkway connecting Yates Street to Johnson Street. Rather than securing the walkway through a statutory right-of-way (SRW), the City created a site-specific zone for the property (CA-28, Coronet District Zone) which stated that if a 3.7-metre-wide pedestrian walkway connecting Yates Street to Johnson Street was provided, then no side yard setback was required. This provision was inadvertently omitted from the 2018 Zoning Bylaw update (Zoning Bylaw 2018 (18-072), but that issue is not relevant to consideration of this application.



In 2019, the owner installed gates in the Yates Street façade and at the Johnson Street end of the walkway without City permission. Following discussions, the owner retained an architect to redesign the gates. The owner is under no legal obligation to maintain public access to the walkway but must seek a heritage alteration permit to alter the heritage-designated façade and authorize the side yard fencing, and the gates facing Johnson Street. The Heritage Alteration Permit with Variance application addresses all three aspects of the proposal:

- alterations to the heritage-designated front façade
- installation of a fence/changes to landscaping along the length of the east side yard
- request to allow a fence that exceeds the *Fence Bylaw*.

In 2017, a delegated approval (DDP00080) was issued to allow the raised planters along the eastern edge of the property to be filled with rocks. Staff understood that this was to be an interim condition since the property located at 848 Yates was then under construction and the planters were to be removed entirely when the area was comprehensively relandscaped to create a contiguous combined midblock walkway.

#### Adjacent Property at 848 Yates Street

In May 2017, Council approved a Development Permit (DP) for a mixed-use residential building at 848 Yates Street, which included construction of a 1.22 metre walkway on the western edge of the property secured with a statutory right-of-way (SRW). The intention was to integrate the two linear sections of what was supposed to be a shared midblock walkway connecting Yates and Johnson Streets, running between the two buildings.

The final design of the walkway was the result of a collaborative process between staff and the owner (Chard Developments), with agreement in principle from the owner of 836 Yates Street (Coronet Ventures Ltd.). It included a number of design elements to ensure the walkway was accessible, welcoming and safe for users:

- the grades of the two properties along the walkway would match, with the exception of steps adjacent to the Johnson Street sidewalk
- townhouse units, a residential lobby and bike storage access were oriented towards the through-block walkway to ensure natural surveillance
- the concrete planters which extend along the majority of the walkway at 836 Yates Street would be removed, resulting in a more usable and accessible space

- the existing globe light fixtures would be replaced with recessed wall lighting.

The developer of 848 Yates Street has now applied to the City to close their walkway permanently and abandon the plan to consolidate the two walkways (See DPV No. 00179).

## **Description of Proposal**

The proposal consists of the following three inter-related components:

- a) installing gates in the heritage-designated façade of 836 Yates Street, facing Yates Street
- b) installing a north-south fence measuring 66 metres (217 feet) in length between 836 and 848 Yates Street
- c) installing a set of gates facing Johnson Street.

The entire proposed system of gates and fencing measures 2.14 metres tall, which exceeds the maximum 1.83 metre height permitted under the City's *Fence Bylaw*. Currently, the property line between the walkway at 848 Yates Street and 836 Yates Street is boarded by construction fencing and is gated. The owner is under no legal obligation to maintain public access to the walkway and is seeking permission to replace the existing illegal gates with a set of legally permitted gates and fencing measuring 2.14 metres in height, with a design that borrows motifs and themes from the Atlas Theatre façade.

## **ISSUES & ANALYSIS**

The building is heritage designated and the site is located in Development Permit and Heritage Conservation Area DPA 2 (HC): Core Business, and therefore a heritage alteration permit is required for alterations to the building and a development permit is required prior to undertaking alterations to the property. Additionally, a variance is required in relation to the height of the fence. In accordance with the *Official Community Plan, 2012* (OCP) and routine practice, the differing but related aspects of the proposal (DP and HAP) can be dealt with together under one permit application.

The key policy and regulatory issues in this application include the heritage response and height of the gate. These issues have been assessed against City policies including:

- *Official Community Plan, 2012* (OCP)
- Development Permit and Heritage Conservation Area DPA 2 (HC): Core Business
- *Downtown Core Area Plan (2010)*
- *Standards and Guidelines for the Conservation of Historic Places in Canada (2010)*
- *Guidelines for Fences, Gates and Shutters (2010)*
- *Fence Bylaw No. 93-112 (1993)*.

### **The Standards and Guidelines for the Conservation of Historic Places in Canada (2010)**

The Standards and Guidelines states “find a use for an historic place that requires minimal or no change to its character-defining elements” (Standard 5) and that owners should do “enough, but only enough to meet realistic objectives while protecting heritage values” (Standard 3). In other words, alterations to a heritage property should only be carried out if essential to meeting a realistic objective. The objective of blocking access to the midblock walkway depends on the approval and supportability of the entire system of gates and fencing. In staff's opinion, the gates facing Johnson Street and the north-south fencing should not be approved since they are

inconsistent with key public realm policies under the DCAP and OCP. If they are declined, the Yates Street gates would no longer contribute to the applicant's security and crime prevention objectives and would become a needless alteration.

In terms of design, the proposed gates have diamond and lozenge motifs embedded in mesh panels with round perforations, which emulate details of the façade. These design features contribute to the visual compatibility of the fence with the historic place, as required by Standard 11.



## Accessibility

As previously stated, the *Standards and Guidelines for the Conservation of Historic Places in Canada* urges owners to do “enough, but only enough to meet realistic objectives while protecting heritage values”. In this situation, adding the gate and fence does not serve a valuable purpose – in fact, it creates a barrier that negatively impacts transit accessibility for area residents.

The City has received recent complaints about the closure of the connecting through block walkway. For example, staff received correspondence from the 834 Johnson Street strata on behalf of its residents, who live across the street. Some residents of the building have mobility issues and in the past were able to access the bus stop directly in front of 836 Yates Street via the midblock pedestrian walkway, which has barrier-free access at both ends. According to residents of 834 Johnson Street, closure of the walkway has tripled the distance that these residents need to travel to reach the bus stop on Yates Street.

For the time being, residents have the alternative option of using the 1.22-metre-wide walkway at 848 Yates Street, which is required to be open to the public during daylight hours. This walkway does not meet the City's minimum required sidewalk width of 1.5 metres but meets the minimum sidewalk clearance requirement of 1.2 metres. However, it is a tight space to navigate for pedestrians travelling in opposite directions, especially if one or both uses a mobility device. Additionally, the developer of 848 Yates Street has now applied to the City to close their walkway

permanently and abandon the plan to consolidate the two walkways (See DPV No. 00179).



### **Official Community Plan**

Policy 8.49 of the *Official Community Plan, 2012* (OCP) states that the City should support new additions that conserve and enhance heritage property and are consistent with the Standards and Guidelines. As explained above, staff do not believe the proposal meets this test because of its redundancy if the Johnson Street Gates and the north-south fencing are declined.

The proposal is inconsistent with policies directing the enhancement and expansion of through-block pedestrian passageways throughout the Downtown Core Area in order to break up long blocks. Both Johnson Street and Yates Street include midblock traffic crossings aligned with the through-block walkway. The proposed closure of the walkway would disrupt the continuity created through the alignment of the traffic crossings with the walkway.

The property is located in Development Permit Area 2 (Heritage Conservation): Core Business designation (DPA 2). Objectives of DPA 2 include the enhancement of the area through a high quality of architecture, landscape and urban design, and the conservation and enhancement of the heritage value, special character and the significant historic buildings, features and characteristics of the area. As discussed, the proposed system of gates and fencing does not enhance the area or represent high quality landscape and urban design.

### **Downtown Core Area Plan**

With respect to the fence and gate along Johnson Street, the property is subject to guidelines under Development Permit Area 2: Core Business and with respect to local area plans, the *Downtown Core Area Plan, 2011* (DCAP) is applicable. The through-block walkway at 836 Yates Street is identified as a “Key Pedestrian Connection” within a Priority Through-Block Walkway Area on Map 16. The DCAP explains that through-block walkways as a unique feature of the Downtown Core Area, which includes narrow historic alleys in Chinatown and Old Town and modern examples like this one. According to the DCAP, the function of through-block walkways is to provide public access and direct connectivity with the pedestrian network, north-south access, and urban design that enhances the unique character of each walkway and contributes to placemaking. Applicable policies include:

- 3.12. Locate through-block walkways to provide strategic access through longer city blocks and meaningful connections with the Pedestrian Network as illustrated in Map 16.

5.36. Maintain public access through the use of legal mechanisms, such as the dedication of the through-block walkway as a right-of-way or through the use of an easement.

5.40. Provide midblock street crossings to offer safe pedestrian access and to support vitality on facing sidewalks.

5.41. Continue to close gaps in the pedestrian network with midblock street crossings to connect through-block walkways, with priority for new midblock street crossings in the Central Business District, the Historic Commercial District, the Inner Harbour District, and points of connection with the Harbour Pathway system.

The through-block walkway at 836 Yates Street was not secured through a legal agreement when it was created in 1994 and should the application be declined, staff will continue to seek one in order to clearly define the hours of public access. The walkway is aligned with midblock street crossings on Johnson and Yates streets, which increases its importance within the network.

The DCAP also includes policies related to Crime Prevention Through Environmental Design (CPTED) and suggests incorporating design elements that animate and improve the attractiveness, safety and usability of through-block walkways.

### **Guidelines for Fences, Gates and Shutters (2010)**

The *Guidelines for Fences, Gates and Shutters* (2010) include the following guidelines indicating that gates and fences should:

- complement the character of the street and not result in a “fortress-like” appearance
- integrate with building design, architectural finishes, and materials for a cohesive effect
- acknowledge colours within the building or immediate context. Contrasting colours may be considered if it contributes to pedestrian interest along adjacent public sidewalks.

Fencing the eastern side yard of 836 Yates Street will give the property a “fortress-like” appearance. This is somewhat mitigated on Yates Street as the new proposed gates are much more decorative in appearance than the existing gates, and in staff’s opinion, they better fit the character of the building.

### **Fence Bylaw**

According to the City’s *Fence Bylaw No. 93-112*, a fence on a property zoned for residential use must not exceed the maximum permitted height of 1.83 metres (6-feet). The proposed gates and fencing are 2.14 metres (7-feet) tall, which is 0.3 metres (1-foot) taller than permitted and require a variance.

If Council approves the request to fence and gate the area, there is a design rationale for the increased height in the case of the Yates Street gates, in that the increased height enables the lozenge designs and geometric door design to line up with building façade features. However, the extra height of the north-south fencing and the Johnson Street gates is not required and should be reduced to minimize a “fortress-like” appearance. Alternate motion two is worded to require the applicant to redesign the fencing and Johnson Street gates to be in compliance with the *Fence Bylaw*, at 1.83m high and reinstate natural landscaping.

Alternate motion three would approve the fence height but require some more soft landscaping to mitigate the appearance of the north-south fence.

In both alternate motions, if Council wishes to permit the gate and fence heights to exceed *Fence Bylaw* requirements, staff are recommending that Council forgo an opportunity for public comment. An opportunity for public comment is not a legislative requirement, and the existing unpermitted gates already exceed bylaw maximum heights. The main issue for debate is access to the walkway and fit with the heritage façade. An opportunity for public comment for a fence height variance could not consider these issues, and staff believe it would not add any value.

## **Planters**

As noted in the background section of this report, the planters were filled with rock and concrete to address concerns about unsocial behaviour. At the time, this was understood to be an interim measure while the site next door was under construction and only intended to be in place until the two paths were integrated. If Council supports a variation of the application as proposed by the applicant, wording has been added to the alternate motions to reinstate soft landscaping within the planters to try to soften the appearance of the fences and gates.

## **Heritage Advisory Panel**

The application was reviewed by the Heritage Advisory Panel (“HAPL”) at its April 13, 2021 meeting and Panel members made the following recommendation:

*That the Heritage Advisory Panel recommend to Council that Heritage Alteration with a Variance Application No. 00024 for 836 Yates Street be approved with the following changes:*

- *That the applicant considers revising the colour of the gates to better fit with the building and the neighbourhood.*

In response to the comment, the applicant revised the colour of the metal mesh from black to grey. The review of HAPL was limited to the “fit” of the gates into the heritage designated façade.

## **OPTIONS**

This is a complicated situation involving two properties and a lengthy development history. The staff recommendation is to decline the application in order to protect the heritage value of the property and enhance a fine-grained urban fabric, offering visual interest and a welcoming environment to pedestrians and other passers-by. However, four options, along with the potential benefits and challenges have been prepared and are presented below.

### **OPTION 1 - Decline (recommendation)**

That Council decline the issuance of Heritage Alteration Permit with a Variance Application No. 00024 for 836 Yates Street.

Benefits:

- reduces negative impact on heritage appearance of the façade of the building
- maintains public access
- reduces visual impact of fencing and related sense of fortification
- helps to keep the area active with pedestrians cutting through.

Challenges:

- perceptions related to security issue not directly addressed

**OPTION 2 - Continued Negotiations**

1. That Council direct staff to communicate with the owners of 836 and 848 Yates Street to explore possible resolutions including those listed below and report back to Council:
  - a) Plan revisions to:
    - move the Johnson Street gates at 836 Yates Street further south to align with the gates at 848 Yates Street;
    - eliminate the north-to-south concrete planters and lighting between the properties consistent with the 2017 approved Development Permit plans for 848 Yates Street.
  - b) Preparation and execution of a legal agreement with the owner 836 Yates Street to secure the following, with form and contents satisfactory to the Director of Sustainable Planning and Community Development and the City Solicitor:
    - Statutory right-of-way for public access of a minimum of 4.5m along the eastern property line of 836 Yates Street to allow for the expansion of the through-block walkway; and
    - Section 219 covenant to ensure the security gates on the through-block walkway remain open to the public between 7 a.m. and 10 p.m.

Benefits:

- reduces negative impact on heritage appearance of the façade of the building
- maintains public access during the daytime
- reduces visual impact of intervention with heritage property (sense of fortification) to nighttime hours only
- address security concerns during nighttime hours.

Challenges:

- gates would be locked over night when pedestrians may expect to take the midblock connection.

**OPTION 3 - Approve with Revisions to Fence Height (Johnson Street and north/south fence) and Landscaping**

That Council forgo an opportunity for public comment, and subject to receipt of revised plans that show by-law compliant fencing and natural landscaping in the planters to the satisfaction of the Director of Sustainable Planning and Community Development, that Council authorize the issuance of Heritage Alteration Permit Application No. 00024 for 836 Yates Street, in accordance with:

- a) Plans, date stamped June 30, 2021.
- b) Development meeting all *Zoning Regulation Bylaw* requirements, except for the following variance:
  - i. increase the fence and gate height facing Yates Street only from 1.83

metres to 2.14 metres

- c) Final plans to be generally in accordance with the plans identified above to the satisfaction of the Director, Sustainable Planning and Community Development.
- d) Heritage Alteration Permit with Variance Application No. 00024 lapsing two years from the date of this resolution.

Benefits:

- addresses perceptions of crime and public safety
- mitigates the impact of the gates on the façade and reduces the fortified appearance of the property by reducing the north-south fence height and increasing soft landscaping.

Challenges:

- negatively impacts the heritage appearance of the façade of the building
- unnecessarily intervenes with the heritage features and thereby creates a barrier to accessibility
- eliminates the prospect of public access to the walkway in the future.

**OPTION 4- Approve as Proposed but Revise Landscaping**

That Council forgo the opportunity for public comment, and subject to receipt of revised plans that show the reintroduction of natural landscaping to the satisfaction of the Director of Sustainable Planning and Community Development, that Council authorizes the issuance of Heritage Alteration Permit with a Variance Application No. 00024 for 836 Yates Street, in accordance with:

- a) Plans, date stamped June 30, 2021.
- b) Development meeting all *Zoning Regulation Bylaw* requirements, except for the following variances:
  - i. increase the fence and gates height from 1.83 metres to 2.14 metres;
- c) Final plans to be generally in accordance with the plans identified above to the satisfaction of the Director, Sustainable Planning and Community Development.
- d) Heritage Alteration Permit with a Variance Application No. 00024 lapsing two years from the date of this resolution.

Benefits:

- addresses perceptions of crime and public safety
- softens the appearance of the north-south fencing, decreasing the “fortress-like” effect

Challenges:

- negatively impacts the heritage appearance of the façade of the building
- unnecessarily intervenes with the heritage features and thereby creates a barrier to accessibility

**CONCLUSIONS**

With respect to the fence and gate on Johnson Street, the DCAP identifies the walkway at 836 Yates Street as a “Key Pedestrian Connection.” It directs the City to complete these pedestrian network connections through well-designed streetscape improvements. The application’s proposed inconsistency with the *Fence Bylaw* as well as the installation of gates and fences, in general, are inconsistent with these key policies as well as design guidelines that recommend

avoiding the fortification of properties and streetscapes.

With respect to the fence and gate on Yates Street, if the Johnson Street gates and north-to-south perimeter fence are declined, then the gates proposed for the heritage designated façade would become a pointless alteration that negatively impact walkability and accessibility in the downtown. This is not consistent with the Standards and Guidelines, which recommends finding a use for an historic place that requires minimal or no change to its character-defining elements, therefore staff recommend that Council consider declining Heritage Alteration Permit with a Variance Application No. 00024.

Respectfully submitted,

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

### **List of Attachments**

- Attachment A: Subject Map
- Attachment B: Aerial Map
- Attachment C: Photographs
- Attachment D: Municipal Heritage Site Registry - Form A
- Attachment E: Heritage Designation Bylaw No. 90-186
- Attachment F: Correspondence from 834 Johnson Street Residents
- Attachment G: CA-28 Zone, Coronet District
- Attachment H: Approved Landscape Plan - 848 Yates Street
- Attachment I: Approved Development Permit No. 3002