



Planning and Land Use Committee Report

For the Meeting of December 11, 2014

To: Planning and Land Use Committee **Date:** November 27, 2014
From: Jim Handy, Senior Planner – Development Agreements
Subject: Request to amend Section 219 Covenant for 189 Dallas Road (Ogden Point)

RECOMMENDATION

Staff recommend that Committee forward this report to Council and that Council consider the following motion:

“That Council accept the Greater Victoria Harbour Authority’s request to amend the Section 219 Covenant to allow the temporary building to remain in place until November 8, 2019 and direct staff to execute an amendment to the Section 219 Covenant to reflect the new timeline, to the satisfaction of the Director of Sustainable Planning and Community Development and the City Solicitor.”

EXECUTIVE SUMMARY

The purpose of this report is to present Council with information, analysis and recommendations regarding a request from the Greater Victoria Harbour Authority (GVHA) to amend a Section 219 Covenant to allow a temporary building at 189 Dallas Road (Ogden Point) to remain in place until November 8, 2019.

On January 27, 2011, Council approved a Development Permit allowing a temporary building at Ogden Point, subject to a Section 219 Covenant being registered on the property’s title requiring that the building be removed from the site by January 20, 2016. The GVHA has indicated that the temporary building is currently being used by the Victoria Marine Rescue Society (VMRS) to support their vessels moored at Ogden Point.

The following points were considered when reviewing this request:

- The proposal is consistent with the *Official Community Plan*.
- The temporary building is in good condition and continues to be used for purposes ancillary to the marine-related activities at Ogden Point.

Staff recommend that Council approve the request to amend the Section 219 Covenant.

BACKGROUND

Description of Proposal

The proposal is to amend a Section 219 Covenant to allow a temporary building at 189 Dallas Road (Ogden Point) to remain in place until November 8, 2019.

Relevant History

On January 27, 2011, Council approved a Development Permit allowing a temporary building at Ogden Point. In order to ensure that the building is only located on the site on a temporary basis until more permanent accommodation becomes available and to not negatively affect the planning exercise which is in progress for the site as a whole, a Section 219 Covenant was registered on the property's title requiring that the building be removed from the site by January 20, 2016.

ANALYSIS

The key issues arising from the proposal relate to:

- consistency with the *Official Community Plan, 2012* (OCP)
- whether the Section 219 Covenant should be amended to allow the building to remain in place until November 8, 2019.

These issues are discussed in the sections below.

Consistency with the OCP

Council's approval of the Development Permit for the temporary building preceded the adoption of the OCP. However, the proposal is consistent with the OCP which identifies Ogden Point within a Marine Industrial Urban Place Designation where marine-related and working harbour facilities are envisioned.

Amendment to the Section 219 Covenant

The temporary building is still in good condition and continues to be used for purposes ancillary to the marine-related activities at Ogden Point, namely as a training and emergency response room for the Victoria Marine Rescue Society (VMRS).

The GVHA is in the process of developing a Master Plan for the Ogden Point site and anticipate that, following this Master Plan process and subject to receiving any necessary permits from the City, permanent office facilities will eventually be made available on site and any temporary facilities will no longer be required.

An amendment to the Section 219 Covenant allowing the temporary building to remain in place until November 8, 2019, will provide the VMRS with short-term accommodation while acknowledging that the building is temporary in nature and that, unless Council grant a further extension of time, it will be removed from site when this timeline expires.

CONCLUSIONS

Staff recommend that Council approve the request to amend the Section 219 Covenant. The proposal is consistent with the OCP and would allow the temporary building to remain in place until November 8, 2019, providing the VMRS with accommodation while acknowledging that the building is temporary in nature.

ALTERNATE MOTION

That Council decline the request to amend the Section 219 Covenant to allow the temporary building to remain in place until November 8, 2019.

Respectfully submitted,


Jim Handy
Senior Planner – Development Agreements
Development Services


Deb Day, Director
Sustainable Planning and Community
Development Department

Report accepted and recommended by the City Manager:


Jason Johnson

Date:


December 3, 2014

JH:aw:af

S:\TEMPEST_ATTACHMENTS\PROSPERO\PL\DP\DP000228\NEW PLUC REPORT.DOC

List of Attachments

- Letter from GVHA dated October 23, 2014
- Section 219 Covenant.

October 23, 2014

SENT VIA EMAIL ONLY: jhandy@victoria.ca

City of Victoria
1 Centennial Square
Victoria, BC V8W 1P6

Attention: Jim Handy, Senior Planner

**Re: Request to Extend - Temporary Structure Removal date (5 Years) to
November 8, 2019
Development Permit Application #000228
189 Dallas Road, Victoria, BC**

Greater Victoria Harbour Authority (GVHA) respectfully requests City of Victoria (COV) Council consideration to extend the Temporary Structure removal date related to Development Permit Application #000228 for a period of five (5) years to November 8, 2019.

For reference a historical summary is provided below:

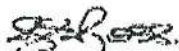
- Permanent office space ancillary to marine operations at Ogden Point have yet to be realized as the Master Planning process has yet to be completed
- November 2010 – COV approved GVHA's application for Development Permit for a temporary trailer structure on the Ogden Point site to accommodate office space and a meeting room to assist in meeting operational needs as the GVHA had relocated from the Belleville Terminal due to seismic upgrades to the building
- Covenant registered on title to the property limiting the proposed building to a temporary time period of five years, following which the temporary structure would be removed from the site (being November 8, 2015)
- April 2014 – GVHA vacated the temporary trailer structure as result of consolidation of its marina and corporate offices to one facility located at 600 – 1019 Wharf Street
- June 2014 – Victoria Marine Rescue Society (VMRS) approached GVHA for space to accommodate their operational requirements including an emergency response ready room, training facility and office space to support their rescue vessels moored at Ogden Point
- Use for the temporary structure has not changed continuing as office use ancillary to marine operations at Ogden Point
- July 2014 – GVHA and VMRS enter into an agreement for VMRS use of the temporary trailer structure until September 2015

GVHA would like to be in a position to offer longer tenure to the VMRS for use of this temporary structure while more permanent facilities can be considered once the Master Planning process is complete. For your reference you will find attached pictures depicting the well-kept condition of the temporary trailer structure.

We are happy to provide any additional information required to facilitate this request.

Sincerely,

Greater Victoria Harbour Authority



Sonterra Ross
Chief Operating Officer



**GREATER VICTORIA
HARBOUR AUTHORITY**

600-1019 Wharf Street
Victoria, British Columbia
Canada V8W 2Y9

Tel: 250-383-8300

Fax: 250-383-8306

Web: www.gvha.ca

October 23, 2014

SENT VIA EMAIL ONLY: jhandy@victoria.ca

City of Victoria
1 Centennial Square
Victoria, BC V8W 1P6



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Fax: 250-383-8306

Web: www.gvha.ca

Temporary trailer structure as @ October 6, 2014



Temporary Structure – Interior Pictures



Suit – Ready Room



Suit – Drying Room



Office



Storage Room

18 JAN 2011 14 23

FB395672

Land Title Act (Section 219.81) (now s.233)

FORM C

Province of British Columbia

GENERAL INSTRUMENT - PART 1

(This area for Land Title Office use)

Page 1 of 7 pages

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)

STEWART JOHNSTON LAW CORP, Barristers & Solicitors (LTO# 11642)

1521 Amelia Street, Victoria, B.C., V8W 2K1

Telephone: (250) 385-2975, File No. 10405 SJ

Authorized Signatory

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:*

(PID) (Legal Description)

026-580-454 LOT 1, SECTION 31, BECKLEY FARM VICTORIA DISTRICT AND PART OF THE
BED OF VICTORIA HARBOUR PLAN VIP80448

3. NATURE OF INTEREST:*

Description

Document Reference
(page and paragraph)

Person Entitled to Interest

Section 219 Covenant

Entire document

Transferee

4. TERMS: Part 2 of this instrument consists of (select one only)

(a) Filled Standard Charge Terms ☐

D.F. Number:

(b) Express Charge Terms ☒

Annexed as Part 2

(c) Release ☐

There is no part 2 of this instrument.

A selection of (a) includes any additional or modified terms referred to in item 7 or in a schedule annexed to this instrument. If (c) is selected the charge described in item 3 is released or discharged as a charge on the land described in item 2.

5. TRANSFERORS:*

GREATER VICTORIA HARBOUR AUTHORITY (Inc. No. S-44228)

6. TRANSFEREES: (including postal address(es) and postal code(s))*

THE CORPORATION OF THE CITY OF VICTORIA, 1 Centennial Square, Victoria, British Columbia,
V8W 1P6

7. ADDITIONAL, OR MODIFIED TERMS: N/A

8. Execution(s): This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in item 3 and the Transferor and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)

STEWART JOHNSTON
Solicitor
1521 Amelia Street
Victoria BC V8W 2K1

Execution Date

Y	M	D
10	12	22

Party(ies) Signature(s)

GREATER VICTORIA HARBOUR AUTHORITY
by its authorized signatory:


Name: Souferra Ross

OFFICER CERTIFICATION: Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c. 124 to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

Land Title Act
Form D

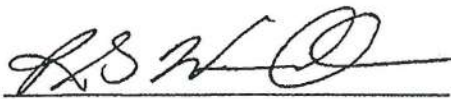
Page 2

EXECUTIONS CONTINUED

Execution Date

Y M D

Officer's Signature



ROBERT G. WOODLAND
A Commissioner for taking Affidavits
for British Columbia
#1 Centennial Square
Victoria, BC V8W 1P6

11 01 10

The Corporation of the City of Victoria
by its authorized signatory(ies):

Name:

MAYOR DEAN FORTIN
#1 Centennial Square
Victoria BC V8W 1P6

Name:

OFFICER CERTIFICATION: Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c. 124 to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

PART 2 - TERMS OF INSTRUMENT

WHEREAS:

- A. The Transferor is the registered owner in fee-simple of those lands and premises located within the City of Victoria, in the Province of British Columbia, more particularly described as:
- PID: 026-580-454
Lot 1, Section 31, Beckley Farm, Victoria District and part of the Bed of Victoria harbour
Plan VIP80448
- (hereinafter referred to as the said "Lands")
- B. The Transferee is The Corporation of the City of Victoria;
- C. The Transferor acknowledges that it is in the public interest that the use of the Building on the Lands be limited and wishes to grant this covenant to the Transferee;
- D. Section 219 of the Land Title Act provides that a covenant, whether of negative or positive nature, in respect of the use of land or the use of a building on or to be erected on land may be granted in favour of the municipality and may be registered as a charge against the title to that land.

NOW THEREFORE THIS AGREEMENT WITNESSES that under Section 219 of the Land Title Act, and in consideration of the premises and the mutual covenants and agreements contained herein, and the sum of ONE (\$1.00) DOLLAR of lawful money of Canada now paid to the Transferor by the Transferee (the receipt and sufficiency of which is hereby acknowledged), and for other good and valuable consideration the parties covenant and agree each with the other as follows:

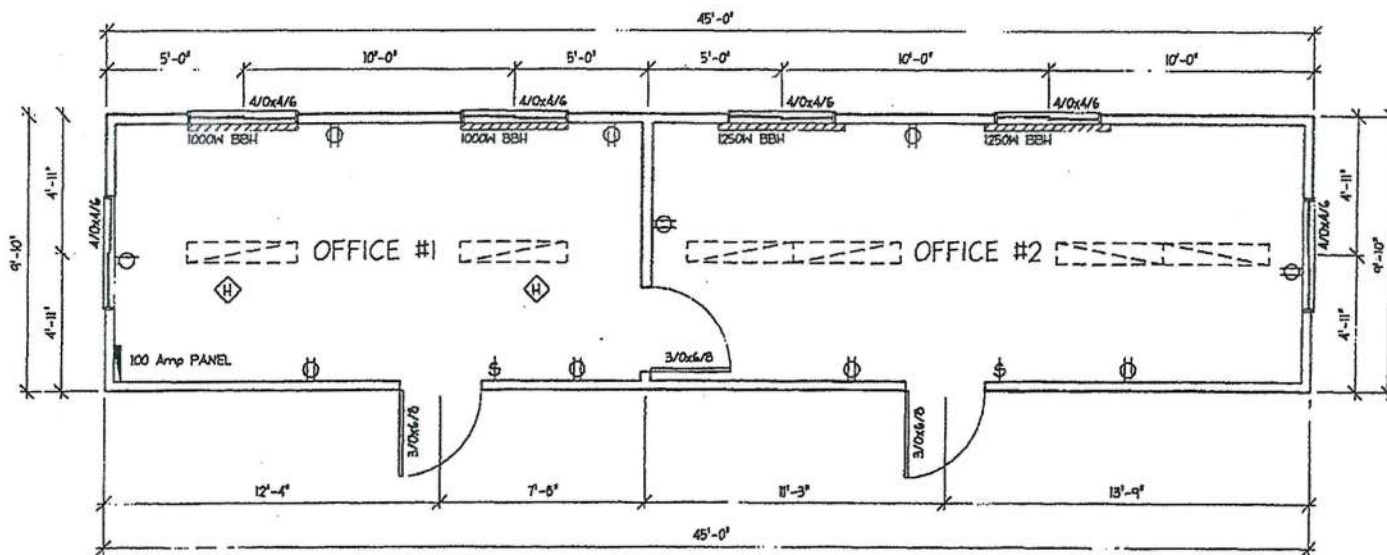
- 1 In this Agreement the following word has the following meaning:

"Building" means the prefabricated trailers to be constructed on the Lands as depicted in the plans, a copy of which are attached hereto.
2. The Transferor covenants and agrees with the Transferee that the Building to be constructed on the Lands shall only be used for a period of FIVE (5) Years from January 20, 2011 and shall thereafter and at the request of the Transferee be removed from the Lands by the Transferor at its cost.
3. The Transferor covenants and agrees with the Transferee that it shall not use or permit the use of the prefabricated buildings to be situated on the Lands to be used except in strict accordance with this Agreement.
4. The Transferor shall indemnify and save harmless the Transferee from any and all claims, causes of action, suits, demands, fines, penalties, costs or expenses or legal fees whatsoever which anyone has or may have against the Transferee or which the Transferee incurs as a result of any loss or damage or injury, including economic loss, arising out of or connected with:
 - (a) the breach of any covenant in this Agreement;
 - (b) the use of the Building contemplated under this Agreement; and
 - (c) restrictions or requirements under this Agreement

5. The Transferor hereby releases and forever discharges the Transferee of and from any claims, causes of action, suits, demands, fines, penalties, costs or expenses or legal fees whatsoever which the Transferor can or may have against the Transferee for any loss or damage or injury, including economic loss, that the Transferor may sustain or suffer arising out of or connected with:
 - (a) the breach of any covenant in this Agreement;
 - (b) the use of the Building contemplated under this Agreement; and
 - (c) restrictions or requirements under this Agreement.
6. At the Transferor's expense, the Transferor must do everything necessary to secure priority of registration and interest for this Agreement and the Section 219 Covenant it creates over all registered and pending charges and encumbrances of a financial nature against the Lands.
7. Nothing contained or implied in this Agreement shall prejudice or affect the rights and powers of the Transferee 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 Transferor.
8. Time is of the essence of this Agreement.
9. The Transferor covenants and agrees for itself, its heirs, executors, successors and assigns, that it will at all times perform and observe the requirements and restrictions set out in this Agreement and they shall be binding upon the Transferor as personal covenants only during the period of its respective ownership of any interest in the Lands.
10. It is mutually understood, acknowledged and agreed by the parties hereto that the Transferee has made no representations, covenants, warranties, guarantees, promises or agreements (oral or otherwise) with the Transferor other than those contained in this Agreement.
11. The waiver by a party of any breach of this Agreement or 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, and no waiver shall be effective unless it is in writing signed by both parties.
12. Wherever the singular, masculine and neuter are used throughout this Agreement, the same is to be construed as meaning the plural or the feminine or the body corporate or politic as the context so requires.
13. 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.
14. The restrictions and covenants herein contained shall be covenants running with the Lands and shall be perpetual, and shall continue to bind all of the Lands when subdivided or consolidated, and shall be registered in the Victoria Land Title Office pursuant to section 219 of the Land Title Act as covenants in favour of the Transferee as a first charge against the Lands.

15. The Transferor agrees to execute all other documents and provide all other assurances necessary to give effect to the covenants contained in this Agreement.
16. If any part of this Agreement is found to be illegal or unenforceable, that part will be considered separate and severable and the remaining parts will not be affected thereby and will be enforceable to the fullest extent permitted by law.
17. This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.
18. Upon satisfactory removal of the Building from the Lands the Transferee will execute a release of this Covenant in registrable form.

The Transferor and Transferee acknowledge that this Agreement has been duly executed and delivered by the parties executing Forms C and D (pages 1 and 2) attached hereto



OVERALL FLOOR PLAN

SCALE: 1/4" = 1'-0"

THIS DRAWING, AS AN INSTRUMENT OF SERVICE, IS THE PROPERTY OF SHELTER INDUSTRIES INC. AND MAY NOT BE USED OR REPRODUCED WITHOUT THE PRIOR WRITTEN CONSENT OF THIS OFFICE.



TITLE
10'-0" x 45'-0" OFFICE
SHELTER LEASE, ALDERGROVE B.C.

SCALE AS NOTED	DATE ??/??/??	SHT. No. A1
DRAWN KTH	PROJECT No. 8045X427	

From: Stewart Johnston Law Corp.

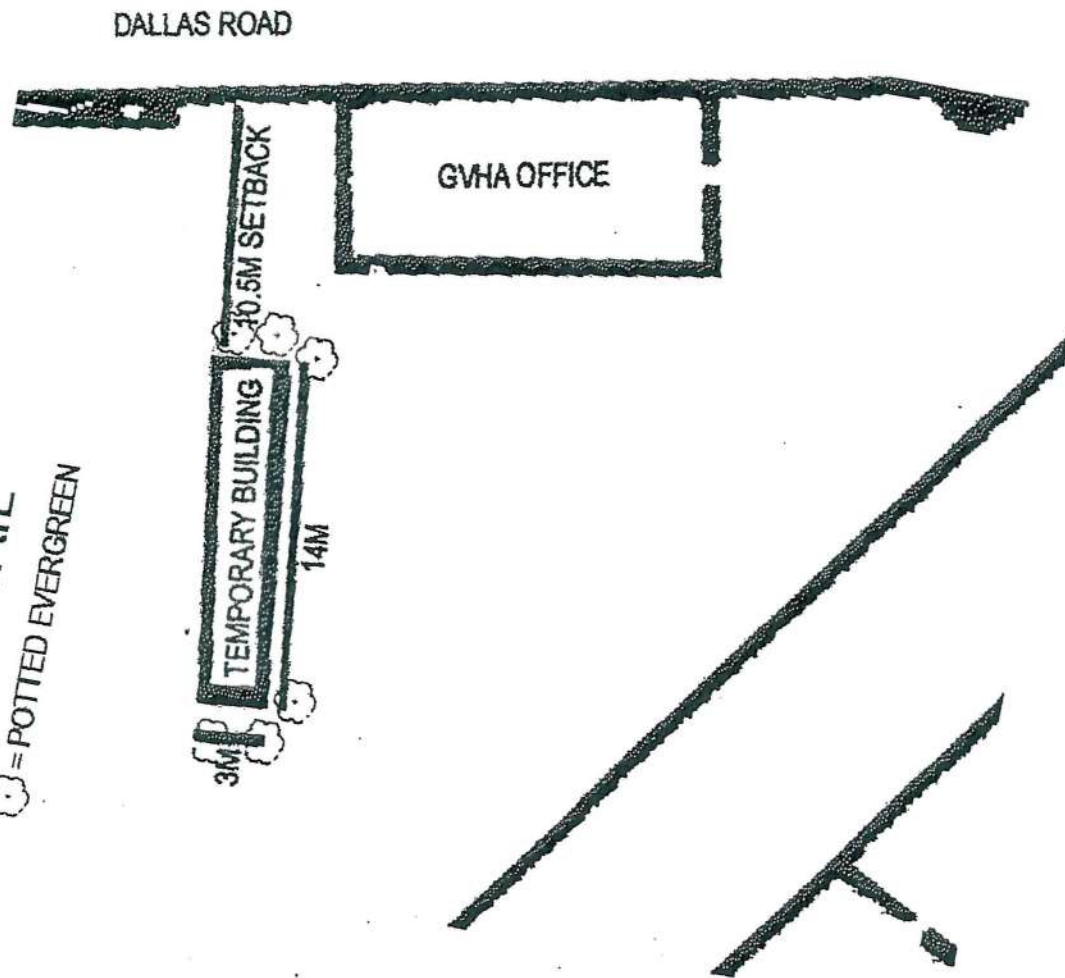
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SITE DETAIL

☁ = POTTED EVERGREEN



END OF DOCUMENT