



Planning and Land Use Committee Report

For the Meeting on July 17, 2014

Date: July 16, 2014 **From:** Jim Handy, Senior Planner - Development Agreements
Subject: Provision of Community Space at 253 and 259 Esquimalt Road (Roundhouse)

Purpose

The purpose of this report is to present Council with information, analysis and recommendations regarding the provision of community space in association with a proposed development at 253 and 259 Esquimalt Road, also known as the Roundhouse.

Background

Section 15 of the Roundhouse Master Development Agreement (MDA) requires that the Developer provide, at the option of the City, an area for community space or cash in lieu. The Developer must give to the City notice, in writing, requiring the City to elect one of the following options within six months of that notice:

- a) to have the Developer provide, as the community space within the Commercial Heritage Roundhouse Phase, an area of 300 m² in floor area; or
- b) to have the Developer provide as the community space an area having less than 300 m² in floor area in a location mutually agreed by the Developer and the City; or
- c) to have the Developer pay cash in lieu of community space in the amount of \$660,000 (subject to a financial adjustment).

Under the terms of the MDA, if the City fails to provide written notice to the Developer of the City's election of one of the options by August 5, 2014, the City shall be deemed to have elected the cash in lieu option. It should be noted that the cash in lieu sum is subject to a financial adjustment based on the Consumer Price Index and is currently valued at \$690,134.

In accordance with the MDA, the applicant provided the required notice relating to the provision of the community space on February 7, 2014. The Developer submitted a further letter dated June 6, 2014, requesting the deferment of any community space contribution to a later phase of the project. The rationale for the proposed deferment is based on offsetting the significant costs associated with developing the Commercial Heritage Roundhouse Phase (Phase 1). Such costs are cited as being attributable to environmental remediation work, the provision of other required public amenities and the rehabilitation of the Heritage-Designated buildings. If deferred, the value of the cash in lieu option would be further adjusted based on the Consumer Price Index at the time the Developer would eventually be required to make the necessary payment.

Staff subsequently provided advice on this matter to Planning and Land Use Standing Committee (PLUC) in a closed meeting. Following this meeting the Developer submitted a letter to the City, dated July 16, 2014, confirming that they would be willing to extend the deadline for Council to choose one of the community space options, but only if Council agree that they will either elect option b or c. The reason for excluding option a is that they are well into the process of leasing

space within the Commercial Roundhouse Heritage Phase and it would present a challenge to put that program on hold.

Options for Council Consideration

In light of the above, Council are presented with the following choices:

1. Council may choose option a, b or c and notify the Developer of this choice before August 5, 2014. If option c (cash in lieu) is chosen, then Council must also decide whether they wish to receive the monies in accordance with the MDA (prior to the occupancy of any building within the Commercial Heritage Roundhouse Phase) or alternatively, agree to the Developer's request and direct staff to prepare an amendment to Section 15 of the Roundhouse Master Development Agreement requiring that the Developer pays cash in lieu of community space.
2. Council direct staff to prepare an amendment to the MDA extending the deadline in relation to electing a community space option by a further six months. Following consultation with the community Council may then choose either option b or c. Again, if Council chooses option c (cash in lieu), then Council must also decide whether they wish to receive the monies in accordance with the MDA (prior to the occupancy of any building within the Commercial Heritage Roundhouse Phase) or alternatively, agree to the Developer's request and direct staff to prepare an amendment to Section 15 of the Roundhouse Master Development Agreement requiring that the Developer pays cash in lieu of community space at a later stage.
3. Council may direct staff to negotiate a further option, not considered above, with the Developer.

As outlined above, in the event that Council have not chosen a community space option by August 5, 2014, or the MDA has not been amended to extend the deadline in relation to Council electing a community space option, the MDA states that the City shall be deemed to have elected the cash in lieu option.

Analysis

The Developer has indicated that they are willing to agree to an MDA amendment to extend the deadline in relation to Council electing a community space option but only if Council agree that they will either elect option b or c. As this would limit the choice available to Council, staff recommend that Council do not agree to amend the MDA on this basis.

Staff have reviewed these provisions of the MDA as well as considerations relevant to the needs, provision, operation and maintenance of recreational space in the Victoria West neighbourhood and recommend option c (cash in lieu). The City currently has a community centre in Victoria West, operated by the Victoria West Community Association and supported with grants through the Neighbourhood Development Program. If the City acquired community space in the Roundhouse development, there would be additional maintenance and operating costs not covered in the current financial plan.

It is important to plan effective community spaces to continue to meet current and future needs of the community. To this end, it is important that future planning for community space be undertaken with community consultation and research into trends and best practices. This type of exercise would need to occur at a later date as part of a work program item with the Parks, Recreation and Culture Department. It is anticipated that any community consultation would assess community needs with a view to establishing appropriate community amenities with the financial contribution.

In light of the stated preference of the Developer with regard to the possibility of deferring the decision to a later date, electing the cash in lieu option would still allow for City consultation with the community to determine the best use of these financial resources and would also achieve to some extent the desire of Council to engage the community on this matter. For these reasons staff recommend that Council choose the cash in lieu option.

Should Council approve the Developer's request to defer the community space contribution to a later stage, an amendment to the MDA will be necessary and staff recommends to Council that the amendment require the Developer to pay the cash in lieu of community space prior the submitting a Development Permit Application for the first building constructed in Development Area 3, 4 or 5 of the CD-12 Zone, Roundhouse District.

Although the Developer has withdrawn the option of providing community space within the Commercial Heritage Roundhouse Phase in association with any deadline extension to allow the City additional time to consider a community space option, staff recommend that Council agree to the request to defer the payment of the cash in lieu. However, Council should note that a deferral on these terms would mean that there would be no fixed date for the payment of the cash in lieu, as the Developer has not provided any timelines with respect to the commencement of construction on these Development Areas and it is anticipated that this will largely be dictated by market forces. Therefore, an alternative recommendation has been provided should Council decide to request the cash in lieu option under the current terms of the MDA. This would require that the Developer pay the cash in lieu option before the occupancy of any building within the Commercial Heritage Roundhouse Phase and may facilitate earlier consultation with the community.

Recommendation

1. That Council direct staff to prepare an amendment to Section 15 of the Roundhouse Master Development Agreement requiring that the Developer pays cash in lieu of community space prior to submitting a Development Permit Application for the first building constructed in Development Area 3, 4 or 5 of the CD-12 Zone, Roundhouse District, to the satisfaction of the Director of Sustainable Planning and Community Development and the City Solicitor.
2. That Council direct the Mayor and Corporate Administrator to execute the MDA Amendment and other instruments necessary to effect its registration in the Land Title Office.
3. That Council direct staff to consult with community groups with respect to how the cash in lieu of community space could be reinvested back into the community and report back to Council with the feedback received.
4. That Council Rise and Report on this resolution should it be adopted at the July 10, 2014, Council Meeting.

Alternate Recommendation

That Council decline the request to amend the Roundhouse Master Development Agreement and, in accordance with Section 15 of that Agreement, elect that the Developer pays cash in lieu of community space at the adjusted amount.

Respectfully submitted,



Jim Handy
Senior Planner – Development Agreements
Development Services Division



Deb Day
Director of Sustainable Planning
and Community Development

Report accepted and recommended by the City Manager:



Jason Johnson

Date: July 16, 2014

JH:aw

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Attachments

- Letter from Developer dated February 5, 2014
- Letter from Developer dated June 6, 2014
- Letter from Developer dated July 16, 2014
- Section 15.0 of the Roundhouse Master Development Agreement
- Plan identifying Development Areas 1, 2 and 3
- Aerial map.

BAYVIEW PLACE

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February 5, 2014

City of Victoria
Sustainable Planning and Community Development Dept.
1 Centennial Square
Victoria BC V8W 1P6

Attn: Deb Day, Director

RE: Bayview Place, Roundhouse: Community Space

Dear Ms. Day:

Per the terms of the Master Development Agreement ("MDA"), Section 15.2, as applicable to the Commercial Heritage Roundhouse Phase, this letter shall serve as notice to the City of Victoria of its option under the MDA to select Community Space within the project or cash in lieu.

At the request of the City, we would be pleased to present various Community Space options available within Bayview Place for discussion purposes.

We trust that this letter meets the requirements of the MDA and request that this letter be directed to the appropriate Department or to Mayor or Council as may be required to advance the process forward.

Sincerely,

David Fullbrook
Bayview Place



June 6, 2014

City of Victoria
Sustainable Planning and Community Development Dept.
1 Centennial Square
Victoria BC V8W 1P6



Attn: Deb Day, Director

RE: Bayview Place, Roundhouse: Community Space

Dear Ms. Day:

Per our discussion of June 4, 2014 regarding Community Space for the Commercial Heritage Roundhouse Phase, we are writing to request that Section 15 of the Master Development Agreement be amended to defer the requirements under this Section to a later phase in the project.

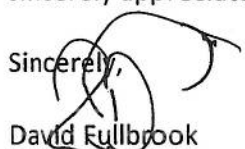
As was suggested in the meeting, the original phasing plan for the Roundhouse Lands anticipated the construction of up to two towers before the completion of the National Historic Roundhouse precinct. This strategy was in recognition of the significant costs associated with environmental remediation, heritage building revitalization and public amenity contributions inherent in the Roundhouse phase, while also recognizing the City's interest in seeing the revitalization realized in a timely manner.

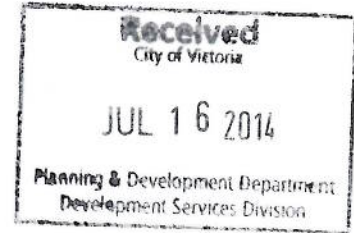
As a result of changing market conditions, however, we have since elected to proceed now with the revitalization of the heritage Roundhouse buildings as a first phase and have embarked on an ambitious plan to deliver the completed Roundhouse by summer of 2016. The project will now bring a significant neighbourhood and community amenity on stream much earlier in the development sequencing than anticipated. Deferral of the Community Space contribution to a later phase of the project helps by offsetting this cost from the already heavily-burdened Commercial Heritage Roundhouse Phase and supports the greater viability of the project.

We are also continuing to explore other ways that might improve the viability of the Roundhouse as the build-out of the remaining residential towers proceeds; however, market constraints will limit the pace of development.

In our meeting we identified other potential changes to our development plan to reinforce and improve the financial viability of the Roundhouse phase of the project, to include: exploration of heritage tax abatement and interim rezoning of the South Roundhouse lands to allow for temporary commercial, retail and artisan use of the existing warehouse buildings, furthering the objective of animating the site. It will be our intention in the coming weeks to formally introduce these items to the City and we sincerely appreciate your time and expertise in examining them with us earlier this week.

Sincerely,


David Fullbrook
Focus Equities



July 16, 2014

City of Victoria
Sustainable Planning and Community Development Dept.
1 Centennial Square
Victoria, BC V8W 1P6

Attn: Alison Meyer, Assistant Director, Development Services *via email: ameyer@victoria.ca*

**Re: ROUNDHOUSE AT BAYVIEW PLACE – MASTER DEVELOPMENT AGREEMENT /
COMMUNITY SPACE**

Dear Ms. Meyer,

Roundhouse Properties Limited Partnership and 0771279 B.C. LTD. (collectively, the "Developer") of the above referenced property is amenable to the City's request for a 6-month deferral of its decision to elect Community Space, as defined in the Master Development Agreement dated July 26th, 2008 (the "Agreement"), or cash in lieu of Community Space, under the terms of Sections 15.2 (b) and 15.2 (c), but not 15.2 (a) of said Agreement, outlined as follows:

15.2 (b) to have the Developer provide as the Community Space an area having less than three hundred (300) square meters in floor area, finished to plans and specifications provided by the City in a location mutually agreed to by the Developer and the City (the "Alternate Space"), provided that the cost to the Developer of providing the Alternate Space finished as required by the City must not exceed Six Hundred and Sixty Thousand (\$660,000.00) Dollars, as adjusted pursuant to section 15.7;

15.2 (c) cash in lieu of Community Space in the amount of Six Hundred and Sixty Thousand (\$660,000.00) Dollars, as adjusted pursuant to section 15.7, to be paid by the Developer to the City prior to the issuance of an occupancy permit for any building within the Commercial Heritage Roundhouse Phase.

Section 15.2 (a) has been explicitly excluded as the Developer has already advanced leasing negotiations of the areas within the Roundhouse. A 6-month hold on the leasing initiative would jeopardize months of progress as well as representations made to prospective anchor tenants, not to mention the financial implications at stake.

In addition, the Developer had requested as per a letter dated June 6, 2014, that should the City elect option 15.2 (c) following the 6-month deferral, the provision of cash in lieu be paid by the Developer to the City prior to the issuance of an occupancy permit for a later Phase of Development. The basis for the request was a change in the phasing schedule that will effectively accelerate the completion of the Commercial Heritage Roundhouse Phase together with most of the Public Amenities that were originally planned for a later Phase. Deferring the payment to a future Phase supports the economic viability of the Commercial Heritage Roundhouse Phase, which is heavily burdened with significant capital costs associated with the heritage building revitalization, environmental remediation, and provision of significant community amenities.

Capitalized terms used but not defined herein have the meanings assigned to them in the Agreement.

Thank you for your continued support. If there are any questions or concerns, please do not hesitate to contact me.

Warm Regards,



George D. Kallergis
Focus Equities

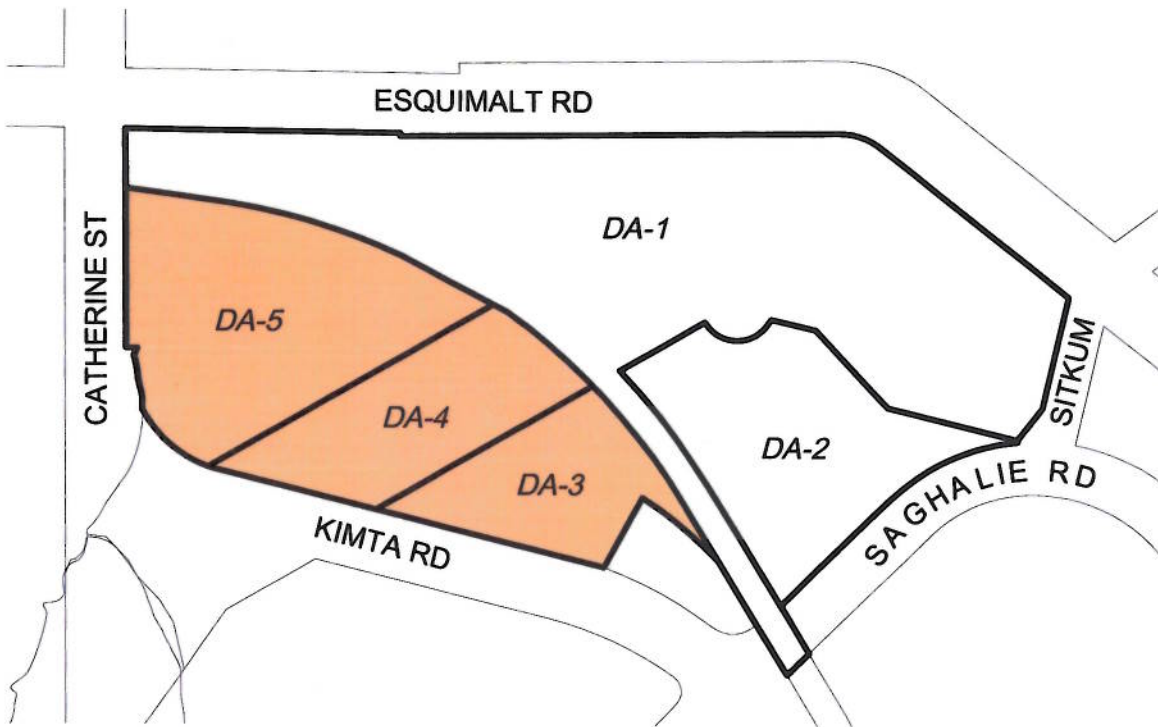
the Development and other related development activities on the Development Lands strictly in accordance with the City's Tree Preservation Bylaw No. 05-106, as it may be amended or replaced from time to time.

15.0 COMMUNITY SPACE

- 15.1 The Developer must provide, at the option of the City, an area within the Development as a Community Space (the "**Community Space**"), or cash in lieu, in accordance with this Part 15.0.
- 15.2 Prior to the submission of an application for a development permit for the Commercial Heritage Roundhouse Phase, the Developer must give to the City notice in writing requiring the City to elect one of the following options within six (6) months of that notice (the "Notice Period"):
- (a) to have the Developer provide as the Community Space within the Commercial Heritage Roundhouse Phase an area of three hundred (300) square metres in floor area and finished to the shell condition described in Schedule "L" hereto so as to permit the City to construct "tenant improvements". In the event the City selects this option, the Developer shall, during the construction of the Commercial Heritage Roundhouse Phase, finish the Community Space to the basic standards described in Schedule "L";
 - (b) to have the Developer provide as the Community Space an area having less than three hundred (300) square metres in floor area, finished to plans and specifications provided by the City in a location mutually agreed to by the Developer and the City (the "**Alternate Space**"), provided that the cost to the Developer of providing the Alternate Space finished as required by the City must not exceed Six Hundred and Sixty Thousand (\$660,000.00) Dollars, as adjusted pursuant to section 15.7;
 - (c) cash in lieu of Community Space in the amount of Six Hundred and Sixty Thousand (\$660,000.00) Dollars, as adjusted pursuant to section 15.7, to be paid by the Developer to the City prior to the issuance of an occupancy permit for any building within the Commercial Heritage Roundhouse Phase.
- 15.3 If the City fails to provide written notice to the Developer of the City's election of one of the options referred to in section 15.2, within the Notice Period, the City shall be deemed to have elected the cash in lieu option under section 15.2 (c).
- 15.4 If the Developer does not give notice under section 15.2 within five (5) years of the date of this Agreement, the City may in its sole discretion elect the cash in lieu option under section 15.2(c), by providing written notice of that election to the Developer, in which case the Developer must pay the cash in lieu amount under section 15.2(c) (as adjusted pursuant to section 15.7) within six (6) months of receipt of notice of the City's election.

- 15.5 In the event the City elects to have the Developer provide the Community Space or Alternate Space, the Developer shall lease the Community Space or Alternate Space to the City for a period of ninety-nine (99) years commencing upon the issuance of an occupancy permit for the Community Space. The Lease:
- (a) shall provide for total rent payable for the term in the amount of Ten (\$10.00) Dollars;
 - (b) shall provide that the City is not obliged to pay any strata fees or property taxes for the use or occupancy of the Community Space;
 - (c) shall impose no liabilities of a capital nature upon the City;
 - (d) shall limit the uses of the Community Space to the uses described in Schedule "L".
 - (e) shall provide that the City is responsible for all non-capital operating and maintenance costs, other than those for which a landlord of commercial property is generally responsible.
- 15.6 If the City and the Developer both agree, the Developer may instead transfer the fee simple title to the Community Space or Alternate Space to the City, for nominal consideration, on terms and conditions that are agreeable to both parties.
- 15.7 The Six Hundred and Sixty Thousand (\$660,000.00) Dollar amount referred to in sections 15.2 (b) and (c), and the financial limit of the Developer's obligation under these provisions, shall be increased on the first anniversary date of this Agreement, and on each anniversary date thereafter, by an amount that is equal to the percentage increase in the Consumer Price Index for the Greater Victoria Region over the twelve (12) months preceding that anniversary date, as determined by Statistics Canada or its successor in function.
- 16.0 RESTRICTIVE COVENANTS**
- 16.1 Prior to the final adoption of the Rezoning Bylaw, the Developer shall provide an executed restrictive covenant to be registered against title to the Development Lands, pursuant to Section 219 of the Land Title Act, which incorporates the terms of this Master Development Agreement and is in the form attached as Part 1 of Schedule "J" to this Agreement.
- 16.2 Prior to the final adoption of the Rezoning Bylaw, the Developer shall provide an executed restrictive covenant to be registered against title to the Development Lands, pursuant to Section 219 of the Land Title Act, in the form attached as Part 2 of Schedule "J", which restricts the use of the existing E & N Railway Corridor

Development Area's (DA) 3, 4 and 5





251-259 Esquimalt Road, 355 Catherine Street,
200 E&N Rail Line and 210 Kimta Road

