



Council Report

For the Meeting of September 7, 2017

To: Council **Date:** August 25, 2017
From: Jonathan Tinney, Director, Sustainable Planning and Community Development
Subject: **Update Report 2 - Development Permit with Variances Application No. 00025 for 848 and 852-856 Yates Street and 845 and 849 Johnson Street**

RECOMMENDATION

That Council give first, second and third reading of the Housing Agreement Bylaw No. 17-091.

EXECUTIVE SUMMARY

The purpose of this report is to provide an update on the Council conditions set out in the motion moved by Council on May 11, 2017 (attached). The Housing Agreement Bylaw was not adopted concurrent with Council's authorization of Development Permit with Variances Application No. 00025 for 848 and 852-856 Yates Street and 845 and 849 Johnson Street and requires Council's adoption for the issuance of the permit.

The proposal is to construct a mixed-use building comprised of two towers, both at 21 storeys, with ground-floor retail facing Johnson Street and Yates Street and residential above.

Housing Agreement

A Housing Agreement (attached) has been prepared to ensure that future strata bylaws cannot restrict the age of occupants or prohibit strata owners from renting residential strata units.

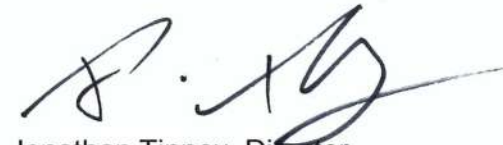
CONCLUSIONS

The Application has been updated in response to the conditions set out by Council. Development Permit Application No. 00025 for 848 and 852-856 Yates Street and 845 and 849 Johnson Street is ready for issuance subject to adoption of the Housing Agreement Bylaw.

Respectfully submitted,


for Miko Betanzo
Senior Planner - Urban Design
Development Services Division

JH


Jonathan Tinney, Director
Sustainable Planning and Community
Development Department

Report accepted and recommended by the City Manager:

Jocelyn Senfayus
Date: Aug. 30, 2017

List of Attachments

- Housing Agreement Bylaw No. 17-091
- Housing Agreement
- Council Minutes dated May 11, 2017.

HOUSING AGREEMENT (848 YATES) BYLAW
A BYLAW OF THE CITY OF VICTORIA

The purpose of this Bylaw is to authorize an agreement for rental housing for the lands known as 848 and 852-856 Yates Street and 845 and 849 Johnson Street, Victoria, BC.

Under its statutory powers, including section 483 of the *Local Government Act*, the Council of The Corporation of the City of Victoria in an open meeting enacts the following provisions:

Title

- 1 This Bylaw may be cited as the "HOUSING AGREEMENT (848 YATES) BYLAW (2017)".

Agreement authorized

- 2 The Mayor and the City's Corporate Administrator are authorized to execute the Housing Agreement
- (a) substantially in the form attached to this Bylaw as Schedule A;
 - (b) between the City and 848 Yates Nominee Ltd. or other registered owners from time to time of the lands described in subsection (c); and
 - (c) that applies to the lands known as 848 and 852-856 Yates Street and 845 and 849 Johnson Street, Victoria, BC, legally described as:
PID 009-359-184, Lot 374 Victoria City;
PID 009-359-192, Lot 375 Victoria City;
PID 009-359-206, Lot 380 Victoria City;
PID 009-359-222, Lot 381 Victoria City.

READ A FIRST TIME the	day of	2017
READ A SECOND TIME the	day of	2017
READ A THIRD TIME the	day of	2017
ADOPTED on the	day of	2017

CITY CLERK

MAYOR

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

BETWEEN:

THE CORPORATION OF THE CITY OF VICTORIA

#1 Centennial Square
Victoria, B.C.
V8W 1P6
(the "City")

OF THE FIRST PART

AND:

848 YATES NOMINEE LTD.

(Inc. No. BC1036196)
Suite 500 – 509 Richards Street
Vancouver, BC V6B 2Z6

(the "Owner")

OF THE SECOND
PART

AND:

COAST CAPITAL SAVINGS CREDIT UNION

Suite 400 – 645 Tyee Road
Victoria, B.C. V6A 6X5

(as to priority)

(the "Existing Chargeholder")

OF THE THIRD
PART

WHEREAS

- A. Under section 483 of the *Local Government Act* the City 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 lands in the City of Victoria, British

Columbia, with a civic address of 848 Yates Street and legally described as:

009-359-206

LOT 380, VICTORIA CITY;

009-359-192

LOT 375, VICTORIA CITY

009-359-184

LOT 374, VICTORIA CITY; and

009-359-222

LOT 381, VICTORIA CITY

(collectively the "**Lands**");

- B. The Owner has applied to the City for a development permit to alter the permitted height and number of storeys of the development permitted on the Lands;
- C. The Dwelling Units are intended to be stratified and therefore will be subject to the *Strata Property Act* (British Columbia) and the bylaws of the Strata Corporation, but the intent of this Housing Agreement is to ensure the perpetual availability of rental units (in addition to owner-occupied units);
- D. The City and the Owner wish to enter into this Agreement, as a Housing Agreement pursuant to section 483 of the *Local Government Act*, to establish the terms and conditions regarding the occupancy of the residential units identified in this Housing Agreement.

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:

1.0 Definitions

1.1 In this Agreement:

"Development" means the proposed development of two mixed residential and commercial use towers on the Lands to include 224 Dwelling Units.

"Dwelling Unit" means a self-contained residential dwelling unit within the building that *is/will be* located on the Lands, and includes any dwelling unit that is developed on the Lands in future, whether as part of the Development or otherwise, and "Dwelling Units" means collectively all of such residential dwelling units located on the Lands.

"Immediate family" includes a person's husband, wife, child, mother, father, brother, sister, mother-in-law, father-in-law, grandparent, brother-in-law, sister-in-law, niece and nephew.

"Non-owner" means a person who occupies a Dwelling Unit for residential purposes,

other than the Owner of that Dwelling Unit, and other than a member of the Owner's Immediate family.

"Owner" includes a person who acquires an interest in the Lands or any part of the Lands and is thereby bound by this Agreement, as referred to in section 7.3.

"Tenancy Agreement" has the same meaning as under the *Residential Tenancy Act*.

"Strata Corporation" means, for the portions of the Lands or any building on the Lands that is subdivided under the *Strata Property Act*, a strata corporation as defined in that Act, including the Owner while in control of the strata corporation and subsequently the individual strata lot owners collectively acting as the strata corporation.

1.2 In this Agreement:

- (a) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment; and
- (b) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided.

2.0 No Restrictions on Rentals

- 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 prevent or restrict the Owner of a Dwelling Unit from renting that Dwelling Unit to a Non-owner under the terms of a Tenancy Agreement.
- 2.2 Without limiting the generality of section 2.1, the Owner covenants and agrees that it will not make application to deposit a strata plan for or in respect of the Lands or a building on the Lands unless the strata bylaws in no way restrict rental of any Dwelling Unit to a Non-owner under the terms of a Tenancy Agreement.
- 2.3 For certainty, if the Lands or the Development on the Lands are subdivided under the *Strata Property Act*, the Dwelling Units within the Development may be occupied by the Owners of the strata lots.

3.0 Reporting

- 3.1 The Owner covenants and agrees to provide to the City, upon written request from the City's Director of Sustainability Planning and Community Development, a report in writing confirming:
 - (a) the number, type and location by suite or strata lot number, of Dwelling Units that are being rented to Non-owners; and
 - (b) any changes or proposed changes to the Strata Corporation's bylaws that may affect the terms of this Agreement.

3.2 The Owner covenants and agrees:

- (a) to exercise its voting rights in the Strata Corporation against the passage of any bylaws that would restrict the availability for rental of any Dwelling Unit under the terms of a Tenancy Agreement unless this Agreement is amended; and
- (b) to notify the City of any proposed amendments to its strata bylaws.

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

4.0 Notice to be Registered in Land Title Office

4.1 Notice of this Agreement ("**Notice**") will be registered in the Land Title Office by the City at the cost of the Owner in accordance with section 483(5) 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 registration of the Notice.

5.0 Liability

5.1 The Owner agrees to indemnify and saves harmless the City and each of its elected and appointed officials, employees and agents and their respective administrators, successors and permitted assigns, of and from all claims, demands, actions, damages, costs and liabilities, which all or any of them shall or may be liable for or suffer or incur or be put to by reason of or arising out of failure of the Owner to comply with the terms and conditions of this Agreement.

5.2 The Owner hereby releases and forever discharges the City and each of its elected and appointed officials, employees and agents and their respective administrators, successors and permitted assigns, of and from any and all claims, demands, actions, damages, economic loss, costs and liabilities which the Owner now has or hereafter may have with respect to or by reason of or arising out of the fact that the Lands are encumbered by and affected by this Agreement.

6.0 Priority Agreement

6.1 The Existing Chargeholder, as the registered holder of charges by way of a Mortgage and Assignment of Rents against the Lands, which said charges are registered in the Land Title Office at Victoria, British Columbia, under numbers CA5559346 and CA5559347, for and in consideration of the sum of One Dollar (\$1.00) paid by the City (the receipt whereof is hereby acknowledged), agrees with the City that upon filing of a Notice with the Land Title Office that the Lands are subject to this Agreement, pursuant to Section 483(5) of the *Local Government Act*, this Agreement shall be an encumbrance upon the Lands in priority to the said charges in the same manner and to the same effect as if Notice had been filed prior to the said charges.

7.0 General Provisions

Notice

7.1 If sent as follows, notice under this Agreement is considered to be received

- (a) seventy-two (72) hours after the time of its mailing (by registered mail) or faxing, and
 - (b) on the date of delivery if hand-delivered,
- to the City:

City of Victoria
 #1 Centennial Square
 Victoria, BC V8W 1P6
 Attention: Director of Sustainability Planning and
 Community Development
 Fax: 250-361-0386

to the Owner:

848 Yates Nominee Ltd.
 Suite 500 – 509 Richards Street
 Vancouver, BC V6B 2Z6
 Attention: David Chard
 Fax: (604) 682-4160

or upon registration of a strata plan for the Lands, to the Strata Corporation, and to the Owner of any Dwelling Unit that is subject to the restrictions under section 2.1.

If a party identifies alternate contact information in writing to another party, notice is to be given to that alternate address.

If normal mail service or facsimile service is interrupted by strike, work slow-down, force majeure, or other cause,

- (a) notice sent by the impaired service is considered to be received on the date of delivery, and
- (b) the sending party must use its best efforts to ensure prompt receipt of a notice by using other uninterrupted services, or by hand-delivering the notice.

Time

7.2 Time is to be the essence of this Agreement.

Binding Effect

7.3 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. In accordance with section 483(6) of the *Local Government Act*, this Agreement and all obligations hereunder is binding on all who acquire an interest in the Lands, and the

Owner only during the Owner's ownership of any interest in the Lands, and with respect only to that portion of the Lands of which the Owner has an interest.

Waiver

- 7.4 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.

Headings

- 7.5 The headings in this Agreement are inserted for convenience and reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any provision of it.

Language

- 7.6 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.

Equitable Remedies

- 7.7 The Owner acknowledges and agrees that damages would be an inadequate remedy for the City for breach of this Agreement and that the public interest strongly favours specific performance, injunctive relief (mandatory or otherwise), or other equitable relief, as the only adequate remedy for a default under this Agreement.

Cumulative Remedies

- 7.8 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.

Entire Agreement

- 7.9 This Agreement when executed will set forth the entire agreement and understanding of the parties as at the date it is made.

Further Assurances

- 7.10 Each of the parties 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.

Amendment

- 7.11 This Agreement may be amended from time to time, by consent of the Owner and a bylaw duly passed by the Council of the City and thereafter if it is signed by the City and the Owner.

Law Applicable

7.12 This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

No Derogation from Statutory Authority

7.13 Nothing in this Agreement shall:

- (a) limit, impair, fetter or derogate from the statutory powers of the City all of which powers may be exercised by the City from time to time and at any time to the fullest extent that the City is enabled and no permissive bylaw enacted by the City, or permit, licence or approval, granted, made or issued thereunder, or pursuant to statute, by the City shall estop, limit or impair the City from relying upon and enforcing this Agreement; or
- (b) relieve the Owner from complying with any enactment, including the City's bylaws, or any obligation of the Owner under any other agreement with the City.

Joint and Several

7.14 The Owner, if more than one, are jointly and severally obligated to perform and observe each and every of the covenants, warranties and agreements herein contained by the Owner to be observed and performed.

Counterpart

7.15 This Agreement may be executed in counterparts and delivered by facsimile or emailed PDF file, each of which will have the same effect as if all parties had signed the same document. Each counterpart shall be deemed to be an original. All counterparts shall be construed together and shall constitute one and the same Agreement.

Effective Date

7.16 This Agreement is effective as of the date of the signature of the last party to sign.

IN WITNESS WHEREOF the parties have hereunto set their hands as of the dates inscribed at a place within British Columbia:

MAYOR

CITY CLERK

Date signed: _____

838 BROUGHTON HOLDINGS LTD., by its
authorized signatory: _____

David Chard

Date signed: April 3, 2017

COAST CAPITAL SAVINGS CREDIT UNION, by its authorized signatories:

Print Name: William Li
Sr. Manager, Commercial Credit

Print Name: Alix Ross
Sr. Manager, Commercial Credit

Date signed: April 10, 2017

PUBLIC AND STATUTORY HEARINGS

1. Development Permit with Variances Application No. 00025 for 848, 852-856 Yates Street and 845 & 849 Johnson Street

1. Hearing

Development Permit with Variances No. 00025

The Council of the City of Victoria will consider issuing a Development Permit with Variances for the land known as 848 and 852-856 Yates Street and 845 and 849 Johnson Street, in Development Permit Area 2 (HC) Core Business, for the purpose of approving the exterior design and finishes for the mixed-use building as well as landscaping.

The Development Permit will vary the following requirements of the *Zoning Regulation Bylaw*:

- Section 3.67.5(2) - increase the building height from 30m to 59.7m; and
- Section 3.67.5(2) - increase the number of storeys from 10 storeys to 21 storeys.

Legal description of the land:

Lot 374, Victoria City; Lot 375, Victoria City; Lot 380, Victoria City; and Lot 381, Victoria City.

Charlotte Wain (Senior Planner): Advised that the application is for a Development Permit with Variances for a 21-storey (two tower) mixed-use building.

Mayor Helps opened the public hearing at 7:08 p.m.

David Chard (Chard Development): Provided information regarding the application which would be mixed use building of commercial and residential. Also noted is the inclusion of 81 parking stalls designated for commercial parking.

Project Architect: Provided information regarding the improvements to mid-block walkway and specification on the height and setback of the proposed application.

Project Landscaper: Provided information regarding the landscaping of the mid-block walkway and the roof. A habitat garden for birds will also be included on the roofs.

Council discussed the following:

- *The voluntary inclusion of 81 parking stalls for commercial parking in the downtown core.*

Jane McGregor (CEO of the Victoria Conservatory of Music): Expressed support for the application as it will enhance the neighbourhood.

Dylan Willows (Yates Street): Expressed support for the application as it will enhance the neighbourhood, and hope that they will work with the club to mitigate noise concerns.

Jason Markus (Yates Street): Expressed concerns regarding the application due to the possible affect to an access door to their building.

Debra Nelson (Yates Street): Expressed concerns regarding the noise-proofing that would be provided with the buildings due to potential noise concerns in the neighbourhood.

Dan Markus (Yates Street): Expressed support for the application, but noted concerns relating to the access door to the neighbouring building.

Council discussed the following:

- *Lack of consultation that occurred with the neighbouring building.*
- *How noise concerns in the neighbourhood would be communicated to potential purchasers.*
- *How the applicant is working with BC Housing to create housing affordability.*
- *That transient accommodation is not a permitted use.*

Mayor Helps closed the public hearing at 7:58 p.m.

Councillor Loveday withdrew from the meeting at 7:58 p.m. and returned at 7:59 p.m.

2. Development Permit with Variances Approval

Motion:

It was moved by Councillor Thornton-Joe, seconded by Councillor Lucas, that Council authorize the issuance of Development Permit Application No. 00025 for 848 and 852-856 Yates Street and 845 and 849 Johnson Street in accordance with:

1. Plans date stamped April 27, 2017.
2. Development meeting all *Zoning Regulation Bylaw* requirements, except for the following variances:
 - a. Section 3.67.5(2) - increase the building height from 30m to 59.7m;
 - b. Section 3.67.5(2) - increase the number of storeys from 10 storeys to 21 storeys;
3. Preparation and registration of the following documents, signed and executed by the applicant, to the satisfaction of the Director of Planning and Sustainable Development:
 - a. 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. in the form satisfactory to the City Solicitor;
 - b. Statutory Right-of-Way of a minimum of 1.22m along the western property line to allow for the expansion of the through-block walkway to the satisfaction of the Director of Planning;
 - c. Housing Agreement to ensure that future strata bylaws cannot restrict the age of occupants or prohibit strata owners from renting residential strata units.
4. Receipt of evidence that the application is in compliance with the Ministry of Environment's Environmental Management Act as it pertains to potentially contaminated sites;
5. That Council authorize the Mayor and City Clerk to execute an Encroachment Agreement for a fee of \$750, plus \$25 per m² of exposed shored face during construction in a form satisfactory to the Director of Engineering and Public Works. This is to accommodate shoring for construction of the underground parking structure if the method of construction involves anchor pinning into the public Right-of-Way;
6. Final plans to be generally in accordance with the plans identified above to the satisfaction of the Director of Planning and Sustainable Development;
7. The Development Permit lapsing two years from the date of this resolution unless the permit holder substantially starts construction.

Amendment:

It was moved by Councillor Isitt, seconded by Councillor Madoff, that the motion be amended to add a new clause 3 (d), as follows:

- d. **Section 219 covenant to ensure that the Property Disclosure Statement for all potential purchasers clearly discloses the presence of a nightclub adjacent to the property.**

On the amendment:
Carried Unanimously

Council discussed the following:

- *Whether the increase of height to 21 storeys is supportable.*
- *Noise mitigation for the building to minimize impacts of the nearby nightclub.*
- *The positive inclusion of parking for commercial uses in the downtown core.*

Main motion as amended:

That Council authorize the issuance of Development Permit Application No. 00025 for 848 and 852-856 Yates Street and 845 and 849 Johnson Street in accordance with:

1. Plans date stamped April 27, 2017.
2. Development meeting all *Zoning Regulation Bylaw* requirements, except for the following variances:
 - a. Section 3.67.5(2) - increase the building height from 30m to 59.7m;
 - b. Section 3.67.5(2) - increase the number of storeys from 10 storeys to 21 storeys;
3. Preparation and registration of the following documents, signed and executed by the applicant, to the satisfaction of the Director of Planning and Sustainable Development:
 - a. 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. in the form satisfactory to the City Solicitor;
 - b. Statutory Right-of-Way of a minimum of 1.22m along the western property line to allow for the expansion of the through-block walkway to the satisfaction of the Director of Planning;
 - c. Housing Agreement to ensure that future strata bylaws cannot restrict the age of occupants or prohibit strata owners from renting residential strata units.
 - d. Section 219 covenant to ensure that the Property Disclosure Statement for all potential purchasers clearly discloses the presence of a nightclub adjacent to the property.
4. Receipt of evidence that the application is in compliance with the Ministry of Environment's Environmental Management Act as it pertains to potentially contaminated sites;
5. That Council authorize the Mayor and City Clerk to execute an Encroachment Agreement for a fee of \$750, plus \$25 per m² of exposed shored face during construction in a form satisfactory to the Director of Engineering and Public Works. This is to accommodate shoring for construction of the underground parking structure if the method of construction involves anchor pinning into the public Right-of-Way;
6. Final plans to be generally in accordance with the plans identified above to the satisfaction of the Director of Planning and Sustainable Development;
7. The Development Permit lapsing two years from the date of this resolution unless the permit holder substantially starts construction.

On the main motion as amended:

Carried

For:

Opposed:

**Mayor Helps, Councillors Alto, Coleman, Lucas, Thornton-Joe, and Young
Councillors Isitt, Loveday, and Madoff**