



Council Report

For the Meeting of December 10, 2015

To: Mayor and Council **Date:** November 26, 2015
From: Jonathan Tinney, Director of Sustainable Planning and Community Development
Subject: **Update on Rezoning Application No. 00468, Heritage Alteration Permit No.00195 and Development Permit No. 000448 for 1070 Joan Crescent Bylaw ready to proceed to Public Hearing**

RECOMMENDATION

That Council receive this report for information and that the Rezoning Application and Heritage Alteration Permit Application for the property located at 1070 Joan Crescent proceed to a Public Hearing. For procedural correctness, staff have determined that a Development Permit is also required for this proposal, therefore, the Council Resolution of May 28, 2015, for Rezoning Application No. 00468 should be amended to include the following:

Following consideration of the Zoning Regulation Bylaw Amendment pertaining to Rezoning Application No. 00468 for 1070 Joan Crescent, if approved, that Council consider the following motion:

"That Council authorize the issuance of Development Permit No. 000448 for 1070 Joan Crescent, in accordance with:

1. Revised drawings date stamped May 11, 2015.
2. Development meeting all *Zoning Regulation Bylaw* requirements.
3. Final plans to be generally in accordance with the plans identified above as amended to the satisfaction of staff.
4. The Development Permit lapsing two years from the date of this resolution.

That Council authorize the issuance of the Heritage Alteration Permit (HAP) Application No. 00195 for 1070 Joan Crescent, in accordance with:

1. Revised drawings date stamped May 11, 2015.
2. Development meeting all *Zoning Regulation Bylaw* requirements.
3. Final plans to be generally in accordance with the plans identified above to the satisfaction of the Assistant Director, Community Planning Division."

EXECUTIVE SUMMARY

The purpose of this report is to inform Council that, in accordance with Council's motion of May 28, 2015, the necessary pre-conditions have been met and the Zoning Regulation Bylaw

Amendment that would authorize Rezoning Application No. 00468, Development Permit No. 000448 and Heritage Alteration Permit No. 00195 for the property located at 1070 Joan Crescent have been prepared.

With regard to the pre-conditions associated with this Application, staff can report the following:

Legal Agreements

An easement agreement to allow the use of vehicular parking and bike parking on the Castle property has been prepared (agreement attached). In order to protect the City's interest, a covenant has also been registered against the title that states the easement agreement cannot be modified without the City's permission.

Heritage Advisory Panel Referral

The Rezoning Application and Heritage Alteration Permit Application were referred to the Heritage Advisory Panel (HAPL) on June 9, 2015 (minutes attached). The applicant's response to the Panel's questions are provided in the minutes.

Heritage Condition – Chimney

A condition of setting the Public Hearing was to provide seismic strengthening details of the existing chimney. Preliminary information has been provided to the Heritage Planner and is deemed acceptable at this stage. The chimney retrofit will be monitored as part of the Building Permit process.

Final Plans

Although the final plans have not changed from those reviewed by the Planning and Land Use Committee on May 28, 2015, the proposed site-specific bylaw includes adjustments from the data table as presented in the staff report as follows:

- There is no vehicle parking on-site. It was noted in the staff report that one stall was to be provided on-site, however, this stall does not meet the Schedule C requirements for stall dimensions and, therefore, will not be included as a parking stall. The vehicle parking requirements for the visitors' centre for 10 parking stalls will be provided on the adjacent Castle property, which has excess parking available.
- For the bicycle parking, six Class A spaces will be provided on the subject site. The remainder are to be located on the adjacent Castle property. The arrangement for vehicle parking and bike parking is secured by an easement and covenant as noted above.
- The height of the existing building has been verified by survey and is 8.8m to the midpoint of the roof. This new information has been reflected in the Bylaw.
- The height of the tea room (relocation of existing garage) has been adjusted from a height of 2.94m, as noted in the staff report, to 3.5m. As this garage will be moved to another location on the property and the height (as determined by the *Zoning Regulation Bylaw*) may differ, this adjustment provides an allowance for grade changes.
- Language referring to the setbacks has been simplified.

Development Permit Requirement

For procedural correctness, the redevelopment of 1070 Joan Crescent requires the issuance of a Development Permit because of the extent of commercial uses proposed. However, since the design of this proposal, including the heritage components and landscaping, have been extensively reviewed by staff, the Heritage Advisory Panel and Council, the key components of the Development Permit review, are considered to be satisfied.

CONCLUSIONS

All Council pre-conditions relating to this Application have been satisfied. The recommendation provided above contains the appropriate language to advance Rezoning Application No. 00468 and associated Development Permit No. 000448 and Heritage Alteration Permit Application No. 00195 for consideration at a Public Hearing.

Respectfully submitted,



Lucina Baryluk
Senior Process Planner
Development Services Division

am



Jonathan Tinney, Director
Sustainable Planning and Community
Development Department

Report accepted and recommended by the City Manager:



Date:

December 3, 2015

Attachments

- Planning and Land Use Committee minutes dated May 28, 2015
- Heritage Advisory Panel minutes dated June 9, 2015
- Easement.

8.7 Rezoning Application No. 00468 for 1070 Joan Crescent

Committee received a report regarding rezoning application for 1070 Joan Crescent. The proposal is to rezone the property to permit a Heritage-Registered house with a new addition and an original garage to be used as a cultural facility with commercial exhibits, multi-purpose spaces, administration offices, a tea room and a gift shop.

- Action:** It was moved by Councillor Madoff, seconded by Councillor Alto, that Committee recommends that Council instruct staff to prepare the necessary *Zoning Regulation Bylaw Amendment* that would authorize the proposed development outlined in Rezoning Application No. 00468 for 1070 Joan Crescent, that first and second reading of the *Zoning Regulation Bylaw Amendment* be considered by Council and a Public Hearing date be set once the following conditions are met:
1. Referral of Rezoning Application No. 00468 to the Heritage Advisory Panel, concurrent with Heritage Alteration Permit Application No. 00195.
 2. Registration of an Easement and a Section 219 Covenant to secure access to 10 vehicle parking stalls and one bicycle rack on the property at 1048-1050 Joan Crescent, to the satisfaction of staff.
 3. Provision of an updated Arborist Report on the condition of the existing trees on the property at 1048-1050 Joan Crescent to the satisfaction of staff and, if necessary, a landscaping security for replacement trees, prior to the issuance of a Building Permit.

CARRIED UNANIMOUSLY 15/PLUC158

8.8 Heritage Alteration Permit Application No. 00195 for 1070 Joan Crescent

Committee received a report regarding a heritage alteration permit application for 1070 Joan Crescent. The proposal is to convert the existing Heritage-Registered residence to a Visitor Centre for the Craigdarroch Castle Society. The proposal includes the construction of an addition and the relocation of the existing garage for use as a Tea House.

- Action:** It was moved by Councillor Madoff, seconded by Councillor Alto, that Committee recommends that Council consider the following motions:

"That Council consider referring Heritage Alteration Permit Application No. 00195 for 1070 Joan Crescent to the Heritage Advisory Panel for the meeting of June 9, 2015, for feedback on the proposed exterior alterations and additions to the Heritage-Registered property."

Following consideration of the *Zoning Regulation Bylaw Amendment* pertaining to Rezoning Application No. 00468 for 1070 Joan Crescent:

"That Council authorize the issuance of Heritage Alteration Permit Application No. 00195 for 1070 Joan Crescent, subject to the applicant providing seismic strengthening details of the existing chimneys prior to the Public Hearing for the Rezoning Application in accordance with:

1. Revised drawings date stamped May 11, 2015.
2. Development meeting all *Zoning Regulation Bylaw* requirements.

3. Final plans to be generally in accordance with plans identified above as amended to the satisfaction of staff."

Committee discussed:

- The application provides a way to maintain the character defining elements of the original structures and to adapt to the change in use.

CARRIED UNANIMOUSLY 15/PLUC159

PLUC meeting
May 28, 2015

**6. 1070 Joan Crescent
Rezoning Application No. 00468**

Attendees: John Hughes, Craigdarroch Castle Society (applicant); Christine Lintott and Nicole Fitzgerald, Christine Lintott Architect

Senior Planner

- The proposal is to rezone from the R1-A Zone (Rockland Single Family Dwelling District) to a site-specific zone to permit the adaptive reuse of a Heritage-Registered house and an original garage as a cultural facility with commercial exhibits, multi-purpose spaces, administration offices, a tea room and a gift shop.
- The Craigdarroch Castle Society would adapt the house as a visitor centre and relocate its offices to the new facility to provide more space in the castle to be open to the public.
- The existing garage would be moved from the west side of the house to the southeast part of the site and converted into a tea room with an outdoor patio.

Applicant

- The idea for a visitor centre was first introduced in 2003.
- The "story" of Craigdarroch Castle will remain in the castle.
- The proposal will allow for more gallery space in the castle that is currently being used for other purposes, i.e. the original kitchen is currently the gift shop.

Architect

- Statements of Significance for the exterior and interior of the house were completed.
- The proposal includes retaining the house and converting its use to a visitor centre.
- Due to the porte cochere, there is a high level grade change which the addition addresses.
- The addition will be constructed at the existing location of the garage.
- The new visitor centre will slope upwards to the castle entrance.
- The character-defining elements of the house will be retained.
- The garage will be relocated to the east site and repurposed as a tea room with a patio.
- Since most of these early garages have been destroyed, it is important to retain this one.
- All of the mature trees, except one, will be preserved.
- The original paint colours of the house were investigated and will be used.
- Windows will be reintroduced on the west side of the house.

Panel

- Why was the south lawn not chosen as a location for the visitor centre? Applicant: This option was considered; however, it was felt that it did not make sense as the building would be buried due to the steeply-sloping site contours. The house that is currently on the south lawn is too small for a visitor centre, but will be used by the castle designers and as archival space and offices.
- Where is the parking for the site? Architect: Parking is available on Joan Crescent and there is some parking onsite. There will be no additional parking. The new visitor centre will act as an invitation to pedestrians arriving from Fort Street. Senior

Planner: The existing thirteen parking stalls onsite will be legally secured with an additional parking stall at the visitor centre.

- The effort to rehabilitate the house to its original form is appreciated.

Moved

Seconded

That Council approve the proposed uses for the Heritage-Registered property at 1070 Joan Crescent as presented in Rezoning Application No. 00468, concurrent with Heritage Alteration Permit Application No. 00195.

Carried (unanimous)

7. **1070 Joan Crescent
Heritage Alteration Permit Application No. 00195**

Attendees: as above

Senior Heritage Planner

- The proposed development is consistent with the Official Community Plan and the Standards and Guidelines.
- Staff support the application subject to the applicant providing seismic strengthening details of the existing chimneys on the house.

Panel

- Will Heritage Designation of the house and garage be pursued? Applicant: This will be discussed by the Society's board in September.
- What is the timeline for completion of the proposed development? Applicant: Depending on fundraising and grants, construction would begin in September 2016.
- The proposed development is really well done, will flow nicely and will provide more interpretative space in the castle.
- A query about the closeness of the proposed addition to the lot line was raised. Applicant: The condition is permitted because we have proposed that a water curtain (sprinklers) protect those portions that are close to the property line.

Moved

Seconded

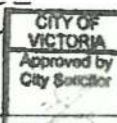
That the Heritage Advisory Panel (HAPL) recommend that Council authorize the issuance of the Heritage Alteration Permit (HAP) Application No. 00195, subject to the applicant providing seismic strengthening details of the existing chimneys prior to the Public Hearing for the Rezoning Application for the property located at 1070 Joan Crescent, in accordance with:

1. Revised drawings date stamped May 11, 2015
2. Development meeting all *Zoning Regulation Bylaw* requirements
3. Final plans to be generally in accordance with the plans identified above to the satisfaction of the Assistant Director, Community Planning Division.

Carried (unanimous)

8. **New Business - nil**

9. **Adjournment - 12:50 pm**



Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.3, and a true copy, or a copy of that true copy, is in your possession.

Paul Guy
Scambler
RCRV5R

Digitally signed by Paul Guy Scambler
RCRV5R
DN: c=CA, cn=Paul Guy Scambler
RCRV5R, o=Lawyer, ou=Verify ID at
www.juricert.com/LKUP.cfm?
id=RCRV5R
Date: 2015.10.29 09:52:11 -07'00'

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

CLAY & COMPANY

Barristers & Solicitors

Main Floor, 837 Burdett Avenue

Victoria

BC V8W 1B3

Document Fees: \$234.30

tel: (250) 386-2261

file no. 35770-001

Deduct LTSA Fees? Yes ☒

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID]

[LEGAL DESCRIPTION]

SEE SCHEDULE

STC? YES ☐

3. NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

SEE SCHEDULE

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

(a) ☐ Filed Standard Charge Terms D.F. No.

(b) ☒ Express Charge Terms Annexed as Part 2

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument.

5. TRANSFEROR(S):

CRAIGDARROCH CASTLE HISTORICAL MUSEUM SOCIETY (INC. NO. S-5806); AND SCOTIA MORTGAGE CORPORATION (AS TO PRIORITY)

6. TRANSFEREE(S): (including postal address(es) and postal code(s))

SEE SCHEDULE

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(s) 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)

PAUL G. SCAMBLER, Q.C.

Barrister & Solicitor

837 BURDETT AVENUE

VICTORIA, BC V8W 1B3

(as to all signatures)

Execution Date

Y	M	D
15	09	17

Transferor(s) Signature(s)

CRAIGDARROCH CASTLE
HISTORICAL MUSEUM SOCIETY
by its authorized signatory(ies):

Name: John Hughes

Name: Stephen C. Lyons

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.

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.3, and a true copy, or a copy of that true copy, is in your possession.

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

CLAY & COMPANY

Barristers & Solicitors

Main Floor, 837 Burdett Avenue

Victoria

BC V8W 1B3

tel: (250) 386-2261

file no. 35770-001

Deduct LTSA Fees? Yes ☒

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:
[PID] [LEGAL DESCRIPTION]

SEE SCHEDULE

STC? YES ☐

3. NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

SEE SCHEDULE

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MORTGAGE CORPORATION (AS TO PRIORITY)

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SEE SCHEDULE

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Officer Signature(s)

PAUL G. SCAMBLER, Q.C.

Barrister & Solicitor

837 BURDETT AVENUE

VICTORIA, BC V8W 1B3

Execution Date

Y	M	D
15	09	17

Transferor(s) Signature(s)

CRAIGDARROCH CASTLE
HISTORICAL MUSEUM SOCIETY
by its authorized signatory(ies):

Name:

John Hughes

Name:

Stephen C. Lyons

(as to all signatures)

OFFICER CERTIFICATION:

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Officer Signature(s)

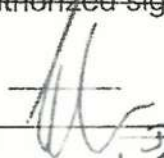
Execution Date

Transferor / Borrower / Party Signature(s)

Y	M	D
15		
15		
15	10	27

~~THE CORPORATION OF THE CITY
OF VICTORIA~~
by its authorized signatory(ies):

Name:


Jason Johnson
Acting Corporate
Administrator

Name:

MAYOR LISA HELPS
#1 Centennial Square
Victoria BC V8W 1P6



AS TO PRIORITY:

SCOTIA MORTGAGE CORPORATION
by its authorized signatory(ies):

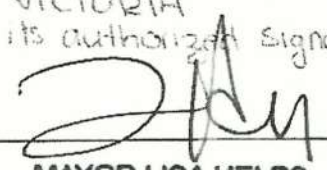
Name:


Denyse Griffin
Senior Operations Officer
Central Mortgage Unit

Name:

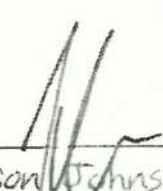
Tammy Whaling
Senior Operations Officer
Central Mortgage Unit

THE CORPORATION OF THE CITY
OF VICTORIA
by its authorized signatory(ies):


MAYOR LISA HELPS
#1 Centennial Square
Victoria BC V8W 1P6


Raelynn Bender, Notary Public
10 Wright Blvd., P.O. Box 1122
Stratford, Ontario N5A 7X9
519-272-0191 ext. 4449

As TO BOTH SIGNATURES


Jason Johnson
A Commissioner for taking
Affidavits for British
Columbia.
#1 Centennial Square
Victoria, BC V8W 1P6

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

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID]

[LEGAL DESCRIPTION]

025-119-681

LOT A, FAIRFIELD FARM ESTATE, VICTORIA CITY, PLAN VIP72665

STC?

YES ☐

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID]

[LEGAL DESCRIPTION]

006-903-291

LOT 127, SECTION 74, VICTORIA DISTRICT, PLAN 985

STC?

YES ☐

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID]

[LEGAL DESCRIPTION]

006-903-312

LOT 128, SECTION 74, VICTORIA DISTRICT, PLAN 985

STC?

YES ☐

LAND TITLE ACT
FORM E

SCHEDULE

PAGE 4 OF 11 PAGES

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Easement		OVER LOT A, FAIRFIELD FARM ESTATE VICTORIA CITY PLAN VIP72665, PID: 025-119-681 DOMINANT LANDS: LOT 127 SECTION 74 VICTORIA DISTRICT PLAN 985, PID: 006-903-291 and LOT 128, SECTION 74 VICTORIA DISTRICT PLAN 985, PID: 006-903-312 Paragraphs 1-5, Pages 7-8

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Covenant		Paragraphs 6-30, Pages 8-10

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		granting the Covenant with one registration number less than this priority agreement priority over Mortgage CA136082; Paragraph 31, page 11

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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**LAND TITLE ACT
FORM E****SCHEDULE**

PAGE 5 OF 11 PAGES

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM, OR GENERAL INSTRUMENT FORM.

6. TRANSFEREE(S): (including postal address(es) and postal code(s)):

CRAIGDARROCH CASTLE HISTORICAL MUSEUM SOCIETY (INC. NO. S-5806),
1050 JOAN CRESCENT, VICTORIA, BRITISH COLUMBIA, V8S 3L5 (as to covenant)

THE CORPORATION OF THE CITY OF VICTORIA, #1 CENTENNIAL SQUARE, VICTORIA, BRITISH
COLUMBIA, V8W 1P6

TERMS OF INSTRUMENT – PART 2

Easement and Section 219 Covenant

This Agreement dated for reference September 17, 2015

BETWEEN:

CRAIGDARROCH CASTLE HISTORICAL MUSEUM SOCIETY

(Inc. No. S-5806)
1050 Joan Crescent
Victoria, BC V8S 3L5

(the “Transferor”)

AND

CRAIGDARROCH CASTLE HISTORICAL MUSEUM SOCIETY

(Inc. No. S-5806)
1050 Joan Crescent
Victoria, BC V8S 3L5

(the “Transferee”)

AND

THE CORPORATION OF THE CITY OF VICTORIA

#1 Centennial Square, Victoria, BC V8W 1P6

(the “City”)

W H E R E A S:

A. The Transferor is the registered owner in fee-simple of:

PID 025-119-681

Lot A, Fairfield Farm Estate, Victoria City, Plan VIP72665

(the “Servient Lands”)

B. The Transferee is the registered owner in fee-simple of:

PID 006-903-291

Lot 127, Section 74, Victoria District, Plan 985

and

PID 006-903-312

Lot 128, Section 74, Victoria District, Plan 985

(collectively, the “Dominant Lands”)

- C. The second transferee is The Corporation of the City of Victoria (referred to herein as the "City");
- D. The Transferee has applied to the City for an amendment to the City's Zoning Regulation Bylaw No. 80-159 in relation to the Dominant Lands for a Development Permit and Heritage Alteration Permit to permit a Heritage-Registered house with a new addition to be used as a cultural facility with commercial exhibits, multi-purpose spaces, retail and a restaurant.
- E. The Transferee requires the use of the Servient Tenement for the visitors to the Dominant Tenement to park motor vehicles and bicycles in a parking area located on the Servient Tenement, as well as ingress to and egress from this parking area, and wishes to obtain an easement over the Servient Lands for the purposes.
- F. Section 219 of the *Land Title Act* provides that a covenant, whether of a negative or positive nature, in respect of the use of lands, or the use of a building on or to be erected on lands, may be granted in favour of the municipality and may be registered as a charge against the title to the lands.

NOW THEREFORE, 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:

ARTICLE 1

GRANT OF EASEMENT

1. The Transferor, as the owner of the Servient Lands, covenants, agrees and grants to the Transferee, as owner of the Dominant Lands, its servants, agents, tenants, invitees and licensees, the full, free and uninterrupted right, licence, liberty, easement, privilege and permission (the "**Easement**") at all times to:
 - (a) park motor vehicles upon the Servient Tenement (the "**Vehicle Right**");
 - (b) park bicycles upon the Servient Tenement (the "**Bicycle Right**"); and
 - (c) enter, pass and repass, as pedestrians or with motor vehicles or bicycles, over the Servient Tenement for the purpose of ingress to and egress the parking area of the Servient Tenement to exercise the Vehicle Right and Bicycle Right.
2. The Vehicle Right shall extend to not less than ten (10) parking spaces and the Bicycle Rights shall extend to accommodate not less than six (6) bikes.
3. The Transferor, as the owner of the Servient Lands, covenants with the Transferee and the City that no building, structure, fence, foundation, pavement, excavation, pile of

material or obstruction will be made, placed, erected or maintained on any portion of the Servient Lands which will have the effect of reducing the available vehicular parking available to the owner of the Dominant Lands to less than ten (10) spaces or the bicycle parking to accommodate less than six (6) bicycle;

4. The right of Easement contained herein shall be construed as running with the Dominant Lands and no part of the fee of the soil of the Servient Lands shall pass to or be vested in the owner of the Dominant Lands.
5. This Easement agreement shall enure to the benefit of the Transferee and shall be binding upon the parties hereto and their respective heirs, executors, successors and assigns.

ARTICLE 2

SECTION 219 COVENANT

6. Under section 219 of the *Land Title Act* there may be registered as annexed to any land a condition or covenant in favour of the City, that the land, or any specified portion of it, is not to be built upon or is to be or is not to be used in a particular manner.
7. The Transferor and Transferee covenant, promise and agree that, notwithstanding the uses permitted from time to time by the City's zoning bylaw, the Dominant Lands and Servient Lands shall not be used except in strict accordance with this Covenant.
8. The Transferor, as owner of the Servient Lands, for itself and its successors and assigns covenants under section 219 of the *Land Title Act*, that the Servient Lands will not be used in any manner which would otherwise detract from or interfere with the Easement.
9. The Transferee, as owner of the Dominant Lands, for itself and its successors and assigns covenants under section 219 of the *Land Title Act*, that he Transferee will not modify, amend, discharge or release the Easement in any manner whatsoever, except with the prior written consent of the City, which consent may be withheld for any reason whatsoever
10. The covenants set forth in this Agreement will charge the Servient Lands and the Dominant Lands (collectively, the "**Lands**") under section 219 of the *Land Title Act*, and will be covenants, the burden of which will run with the Lands. It is further expressly agreed that this Agreement may only be modified or discharged by the agreement of the City under section 219(9) of the *Land Title Act*.
11. The parties agree that enforcement of this Agreement shall be entirely within the discretion of the City and that the execution and registration of this covenant against title to the Lands shall not be interpreted as creating any duty on the part of the City to the Transferor, Transferee or to any other person to enforce any provision or prevent or restrain the breach of any provision of this Agreement.
12. The Transferor and Transferee shall indemnify and save harmless the City and each of its elected and appointed officials, officers, employees, agents and contractors, 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, whether as owner, occupier or user of the Lands, or by a person who has an interest in or comes onto the Lands, or otherwise, which the City 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 Lands contemplated under this Agreement; and
 - (c) restrictions or requirements under this Agreement.
13. The Transferor and Transferee hereby releases and forever discharge the City and each of its elected and appointed officials, officers, employees, agents and contractors, of and from any claims, causes of action, suits, demands, fines, penalties, costs or expenses or legal fees whatsoever which the Transferor and Transferee can or may have against the City for any loss or damage or injury, including economic loss, that the Transferor or Transferee may sustain or suffer arising out of or connected with:
- (a) the breach of any covenant in this Agreement;
 - (b) the use of the Lands contemplated under this Agreement; and
 - (c) restrictions or requirements under this Agreement.
14. At the their expense, the Transferor and Transferee 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.
15. It is mutually understood, acknowledged and agreed by the parties hereto that the City has made no representations, covenants, warranties, guarantees, promises or agreements (oral or otherwise) with the other parties other than those contained in this Agreement.
16. 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.
17. The Transferor and Transferee agree to execute all other documents and provide all other assurances necessary to give effect to the covenants contained in this Agreement.
18. Nothing contained or implied herein will derogate from the obligations of the Transferor and Transferee under any agreement with the City or prejudice or affect the City's rights, powers, duties or obligations in the exercise of its functions under any enactment and the rights, powers, duties and obligations of the City under all public and private statutes, by-laws, orders and regulations, which may be as fully and effectively exercised in relation to the lands as if this Agreement had not been executed and delivered by the Transferor, the Transferee and the City.

19. Where the City is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the Transferor and Transferee agree that the City is under no public law duty of fairness or natural justice in that regard and agrees that the City may do any of those things in the same manner as if it were a private party and not a public body.
20. Time is of the essence of this Agreement.
21. The Transferor and Transferee covenant and agree for themselves, their heirs, executors, successors and assigns, that they will at all times perform and observe the requirements and restrictions set out in this Agreement and they shall be binding upon the Transferor and Transferee as personal covenants only during the period their respective ownership of any interest in the Lands.
22. This Agreement shall enure to the benefit of the City and shall be binding upon the parties hereto and their respective heirs, executors, successors and assigns.
23. This Agreement is the entire agreement between the parties hereto regarding its subject.
24. 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.
25. 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.
26. The restrictions and covenants herein contained shall be covenants running with the Lands, and shall continue to bind all of the Lands when subdivided, 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 City as a first charge against the Lands.
27. By executing and delivering this Agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.
28. 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.
29. If the Transferor or Transferee consists of more than one person, each such person will be jointly and severally liable to perform the Transferor or Transferee's obligations under this Agreement

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

The Transferor, Transferee and City acknowledge that this Agreement has been duly executed and delivered by the parties executing Forms C and D attached hereto.

CONSENT AND PRIORITY AGREEMENT

31. In this Consent and Priority Agreement:

- (a) "City" means the Corporation of the City of Victoria;
- (b) "Existing Charge" means the Mortgage registered under number CA136082;
- (c) "Existing Chargeholder" means Scotia Mortgage Corporation;
- (d) "Land" means the land described in Item 2 of the attached General Instrument - Part 1;
- (e) "New Charge(s)" means the section 219 Covenant or to be registered, in the Victoria Land Title Office on title to and charging the Land in favour of the City and described in Item 3 of the attached General Instrument - Part 1;
- (f) "Owner" means the transferor(s) described in Item 2 of the attached General Instrument - Part 1;
- (g) words capitalized in this Consent and Priority Agreement, not otherwise defined herein, have the meaning ascribed to them in the attached Terms of Instrument - Part 2.

For \$1.00 and other good and valuable consideration, the receipt and sufficiency of which the Existing Chargeholder acknowledges, the Existing Chargeholder:

- (i) consents to the Owner granting the New Charge(s) in favour of the City; and
- (ii) agrees with the City that the New Charge(s) charge the Land in priority to the Existing Charge in the same manner and to the same effect as if the Owner had granted the New Charge(s), and it had been registered against title to the Land, prior to the grant or registration of the Existing Charge or the advance of any money under the Existing Charge.

IN WITNESS WHEREOF, the Existing Chargeholder has caused its duly authorized signatory(ies) to execute the attached General Instrument - Part 1.

Your electronic signature is a representation that: you are a subscriber as defined by the Land Title Act, RSBC 1996, C.250, the original or where designated by the Director, a true copy of the supporting document is in your possession and that the summary of the material facts set out in this declaration accurately reflects the material facts set out in each supporting document and if a supporting document is evidenced by an imaged copy the material facts of the supporting document are set out in the imaged copy of it attached. Each term used in the representation and declaration set out above is to be given the meaning ascribed to it in Part 10.1 of the Land Title Act.

Paul Guy
Scambler
RCRV5R

Digitally signed by Paul Guy
Scambler RCRV5R
DN: c=CA, cn=Paul Guy Scambler
RCRV5R, o=Lawyer, ou=Verify ID at
www.juricert.com/LKUP.cfm?
id=RCRV5R
Date: 2015.11.12 16:32:12 -08'00'

I, Paul Guy Scambler, submitted for registration at Victoria Land Title Office on October 29, 2015 an Easement, covenant, Priority Agreement and Application for Cancellation of Interior Lot Lines, which received pending registration numbers CA4773880, CA4773881, CA4773882 and CA4773883, respectively. A Notice Declining to Register was issued by the Land Title Office on November 9, 2015.

I, on behalf of my client, Craigdarroch Castle Historical Museum Society, and The Corporation of the City of Victoria have agreed to amend the document as follows:

- by deleting "(as to covenant)" after CRAIGDARROCH CASTLE HISTORICAL MUSEUM SOCIETY, on page 5 and adding "(as to covenant)" after THE CORPORATION OF THE CITY OF VICTORIA, #1 CENTENNIAL SQUARE, VICTORIA, BRITISH COLUMBIA, V8W 1P6.
- by adding the following after the word "whatsoever" in paragraph 9, on page 8:

", and that the Dominant Lands will not be used in any manner which would otherwise detract from or interfere with the usage of the Easement granted herein."

NOTE:

A Declaration cannot be used to submit a request to the Registrar for the withdrawal of a document.