

DATE OF MEETING February 7, 2022

AUTHORED BY CALEB HORN, PLANNER, CURRENT PLANNING

**SUBJECT COVENANT AMENDMENT APPLICATION NO. CA16 –  
3789 & 3801 SHENTON ROAD**

## **OVERVIEW**

### **Purpose of Report**

To seek direction from Council regarding Covenant Amendment application No. CA16.

### **Recommendation**

That Council direct Staff to proceed with public notification prior to Council's consideration of Covenant Amendment Application No. CA16 at an upcoming Council meeting.

## **BACKGROUND**

A covenant amendment application, CA16, was received from RW (Bob) Wall Ltd, on behalf of Diver Lake Investments Ltd., to amend an existing Section 219 covenant on the property titles of 3789 and 3801 Shenton Road in order to facilitate a proposed mixed-use residential and office development. The existing covenant (CA6139861) was registered on the properties in 2017 as a condition of rezoning RA346. Among other items, the covenant requires consolidation of the subject properties prior to approval of a development permit. The applicant is proposing to amend the covenant to remove the requirement to consolidate the lots in advance of Council's consideration of proposed Development Permit Application No. DP1165.

The City of Nanaimo's Covenant Amendment Process Policy (No. 8-3360-02) recommends that where a covenant amendment pertains to land use, density, or community contributions, Council may choose to direct the application to a Public Hearing. Covenant Amendment Application No. CA16 does not pertain to land use, density, or community contributions; therefore, Council consideration of approval may occur at an upcoming regular Council meeting concurrently with DP1165. As per the Covenant Amendment Process Policy, no Public Hearing is required but Council direction is required to proceed with notification.

### **Subject Property and Site Context**

<i>Location</i>	The subject properties are located on the south side of Shenton Road facing Diver Lake, between Jingle Pot Road and Kenworth Road.
<i>Total Lot Area</i>	0.73ha
<i>Zoning</i>	Mixed Use Corridor (COR2)
<i>Official Community Plan (OCP) Future Land Use Designation</i>	Map 1 – Future Land Use Plan – Corridor

The subject properties are located in the Diver Lake neighbourhood and are across Shenton Road from the E&N Rail and Island Highway corridors. Both properties are currently vacant, and the property at 3789 Shenton Road previously contained a single residential dwelling that was demolished in 2019. The rear of the properties, adjacent to Diver Lake, includes a 15m-wide protected riparian setback. No encroachment into the riparian setback is proposed. The site slopes downhill by approximately 4m from Shenton Road to Diver Lake.

Surrounding land uses are a mix of residential, commercial, and industrial. The adjacent property to the east contains a dentist office and the adjacent property to the west is an undeveloped portion of Diver Lake Park.

## **DISCUSSION**

### **Proposed Development**

The applicant is proposing a mixed-use development consisting of two buildings. The west building (at 3801 Shenton Road) will consist of 15 residential dwelling units including two live/work units, and the east building (at 3789 Shenton Road) will consist of a medical/dental office with three residential dwelling units above.

### **Proposed Amendments**

The proposed covenant amendment will remove the requirement that the lots be consolidated prior to issuance of a development permit. At the time of rezoning, the proof of concept provided by the applicant would have necessitated consolidation of the lots in order to meet the COR2 zoning regulations. The east building was proposed to be entirely office and the COR2 zone requires an equal amount of residential floor area on the same lot. However, since the time of rezoning the applicant has produced more detailed development plans and determined that the existing two lots can be developed independently and meet the requirements of the COR2 zone by providing residential on the same lot as the medical/dental office building.

In order to proceed with the proposed development, parking shared between the two lots is proposed as permitted by the City of Nanaimo “Off-Street Parking Regulations Bylaw 2018 No. 7266” Section 2.1. Vehicle access to the two lots will be provided separately with the exception of the interior surface parking lot between the two buildings to be shared between both properties and protected by easements.

As such, the existing covenant CA6139861 is proposed to be amended as follows:

<i>Current Covenant</i>	<i>Proposed Amendment</i>
Section 2 prohibits the sale of the two properties separately from one either, leaving the lots title-bound.	The title-bound clause will remain in effect until such time as the other requirements of the covenant are met.
Section 3 requires that the two lots be consolidate prior to development issuance.	This section will be removed and replaced with a new section to covenant and secure future parking and access agreements between the two lots.

The other sections of the covenant, including sections related to extraordinary frontage works/services and riparian restoration, will remain. The applicant has demonstrated that there is a viable building envelope on each lot under the COR2 zone without having to consolidate the lots. No negative impacts are anticipated and Staff support the proposed covenant amendment.

Development Permit Application No. DP1165 may be considered for approval following the approval of CA16.

### **SUMMARY POINTS**

- Covenant Amendment Application No. CA16 proposes to amend an existing Section 219 covenant on the property titles of 3789 and 3801 Shenton Road in order to facilitate a proposed mixed-use residential and office development.
- The proposed covenant amendment will remove the requirement that the lots be consolidated prior to issuance of a development permit.
- The applicant has demonstrated that there is a viable building envelope on each lot under the COR2 zone without having to consolidate the lots.
- Staff support the proposed covenant amendment.

### **ATTACHMENTS**

ATTACHMENT A: Context Map  
ATTACHMENT B: Location Plan  
ATTACHMENT C: Proposed Site Plan  
ATTACHMENT D: Aerial Photo

#### **Submitted by:**

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#### **Concurrence by:**

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GM, Development Services / Deputy CAO