

ATTACHMENT C

LETTER OF RATIONALE AND PROPOSED AMENDMENTS



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May 18, 2023

City of Nanaimo
455 Wallace St., Nanaimo
BC V9R 5J6

Your File: CA000017
Our File: 22-04 McRobb / MINT

**Sent electronically to caleb.horn@nanaimo.ca*

Attn: Caleb Horn, Planner

Re: CA000017 - Updated Section 219 Covenant Amendment Application, 6340 McRobb Avenue

Dear Mr. Horn,

Following the original December 24, 2021 application submission from Williamson & Associates, and further to recent discussions regarding the above, we are pleased to provide an updated covenant amendment application in relation to rezoning covenants FB226410 and FB2877633 and modifications FB287634, CA8431401 and CA8431402, all registered against the title of Lot 4, District Lot 48, Wellington District, Plan VIP78452 (6340 McRobb Avenue).

Background

The subject property has been the subject of a number of zoning changes and development proposals over the past 20 years. The unique elements of those previous development proposals (15 and 20-storey towers) created the need for a number of site-specific developments restrictions and commitments.

Phase 1 of this development represents the eastern portion of the site located on the east and south side of Sentinel Drive. Phase 1 contains a 6-storey multi-family residential building detailed by Modification CA8431402, which has received a development permit and a building permit application has been submitted (anticipated to be issued in early 2023). The community contribution for Phase 1 is \$68,880.00, as set out in Covenant FB226410.

For clarity, this updated covenant amendment application does not contemplate or request any further changes as it relates to the Phase 1 project and is instead focussed solely on what is now Phase 2 which is located on the lands located west of Sentinel Drive.

Phase 2 currently contemplate the construction of two 20-storey towers built above underground parking and a total of 308 residential units. The updated proposal involves a move away from the current tower proposal and would instead see the construction of two 6-storey buildings with a total

R E C E I V E D

CA17/DP1260

Page 1 of 6

2023-SEP-13

Current Planning

of 266 residential units. In order to facilitate this updated development proposal, the existing covenants will require further modification to address those regulatory requirements that were specifically established in relation to the significant building height associated with those proposals.

As outlined in Williamson & Associates cover letter submitted with the original application (December 24, 2001), the original rezoning of this property took place in 2004 (allowing for 15-storeys) and was amended in 2008-2009 (increase in building height to 20-storeys). The conceptual site plan being pursued at that time was attached as Schedule A of Covenant FB226410.

Registered zoning related covenants:

- a. Covenant FB226410 is the City of Nanaimo's 2008 Zoning Amendment Covenant for Lot 4. This covenant contains development restrictions to Lot 4 and includes:
 - i. maximum building height,
 - ii. maximum footprint of two towers,
 - iii. separation between the towers,
 - iv. 17m setback from Lot 5,
 - v. Underground and surface parking restrictions, and
 - vi. Community Contribution to be paid at Building Permit Application
- b. Covenant FB287633 and Modification FB287634 – This is a City of Nanaimo Covenant and Covenant Modification. The Covenant portion of the charge specifies an additional community contribution to be paid. The Modification portion removes Sections 3.1 and 3.2 in Covenant FB226410.
- c. Modification CA8431401 – This is a City of Nanaimo Covenant Modification to Covenant FB226410 specifying that a portion of the community contribution specified in the FB287633 is required prior to construction of the two towers on the western portion of the lands and not prior to construction of the eastern portion of the development.
- d. Modification CA8431402 – This is a City of Nanaimo Covenant Modification to Covenant FB226410 specifying that the eastern portion of Lot 4 can be developed into a 6-storey multi-family residential building.

Updated Development Proposal & Rationale

The residential housing market in Nanaimo has significantly evolved and matured in recent years. What was once a community dominated by low-density single-family homes is seeing increased demand and need for density and significant growth in multi-family medium density housing options.

Nearly all of the City's taller multi-story buildings (7 storeys+) are located in the general vicinity of downtown Nanaimo. There are currently not any buildings taller than six (6) storeys located in the

Woodgrove area. The 20-storey tower proposal was always going to be a very unique project at this location. While the City's new OCP does now generally support the construction of buildings up to 12 storeys in height in the Woodgrove area, the majority of the multi-family development in this area is anticipated to be in the 4-6 storey range. We believe that the reduction to two six-story buildings is supportable for a number of reasons, including:

- The City's new OCP does not explicitly support the construction of 20-story towers in the Woodgrove area;
- The 4-6 storey building model is the predominant building form throughout the plan for the nearby and recently approved Bowers District, reinforcing a template and strong rationale for this building form in the area;
- The directly adjoining properties also provide an important comparison and context for the most suitable form of development on this particular site. The nearby surrounding developments are a mix of patio homes and 4-6 storey buildings (previously constructed or approved for construction). While the excess height was previously deemed to be an acceptable building form for this site, the two six (6) storey buildings will be much more consistent and in keeping with the existing neighbourhood character; and,
- The costs associated with constructing Part 3 buildings above 6-storeys (maximum wood-frame building height under the British Columbia Building Code) increase significantly due to the need for steel and concrete construction.

The updated development concept would result in the construction of 266 residential units, representing a reduction of 42 units (or approximately 14%) when compared to the 308 unit 20-story tower proposal. As currently presented, the new 6-story proposal would fit within the existing parameters of the existing R9 zoning and therefore does not require any amendment to the current zoning, nor are any variances anticipated to be required at the Development Permit stage.

The design continues to provide for two separate and roughly equal-sized buildings which will help to break up the massing on the site (see attached Schedule A for updated Site Plan). Significantly decreasing the building height while maintaining a similar overall unit count means that the building footprints will need to be expanded. This will necessitate the removal of the 17.0 m setback from the northern property boundary. This increased setback was established specifically in response to the significant building height associated with the 15/20 storey tower proposals.

With the proposed reduction to 6-storeys, we believe that the default setback in the R9 zone (7.5 m setback for all property boundaries) is more than adequate. We also propose to set back the upper (6th) floor on the northern face of the western building in Phase 2 by an additional 2.5 m (10.0 m from the property line) in order to reduce the massing impact on existing properties to the north.

For reference, please see attached Schedule B, which provides for a cross-section of the site through to the north property line and the units located on Pachena Place. Although closer to the property line with the existing units on Pachena Place, the 6-storey building is clearly far less imposing and impactful than the 20-storey tower would be for those existing units. For information purposes, we

R E C E I V E D

CA17/DP1260 Page 3 of 6

2023-SEP-13

Current Planning

have also provided a copy of the proposed northern building elevation (see attached Schedule C) in order to illustrate the anticipated building form and character (to be confirmed through the Development Permit process).

The reduced building height also has a significant beneficial impact on shadow effect / shading for existing surrounding developments. Schedule D illustrates the anticipated shadowing generated by the 20-storey as well as the 6-storey proposals. Shadowing was calculated for each of the four seasons (spring, summer, fall and winter), and at various times during the day (10:00 a.m., Noon, 2:00 p.m. and 6:00 p.m.).

The updated development proposal continues to provide for direct access to underground parking from Calinda Street for Phase 2, with no parkade access via Sentinel Drive. This will alleviate neighbourhood concerns raised about the use of Sentinel Drive, which is a private shared road. Proposed traffic on Sentinel Drive for Phase 2 is limited to loading and unloading, and emergency services only. There are no proposed surface parking stalls for Phase 2.

Community Amenity Contribution

Phase 1 of the project will provide \$68,880, as identified in the existing covenants. This is a condition of the building permit currently being processed for Phase 1 (DP1130).

Phase 2 of the project initially proposed 308 units and a negotiated contribution of \$175,000 was agreed upon for that density. The current design will actually *decrease* the total unit count for this portion of the site by 42 units to 266 units. We are not, however, proposing to change or decrease the previously negotiated \$175,000 amenity contribution, thus the total contribution for Phases 1 and 2 will be \$243,880 (\$68,880 + \$175,000) based on the updated proposal. In the event that Phase 2 is constructed in two separate phases (two buildings), it is anticipated that the community amenity contribution would be split proportionally based on unit count between the two building permits.

Proposed Covenant Amendments

Given the significant passage of time and the complexity of the existing charges registered against the title of this property, we believe the preferable course of action for all parties at this stage would be to discharge all of the existing covenant charges and register a new single charge against the title that will outline the updated conditions of development.

This approach also acknowledges that the current updated development proposal differs significantly from the development contemplated through previous rezonings and current covenant restrictions and helps to create increased clarity for everyone moving forward.

To this end, and in addition to attaching a new and updated conceptual site plan to the new covenant charge (see attached Schedule A), we would propose the following language (subject to further refinement and discussion with staff) to be used in an updated (new) covenant charge:

1. Restrictions on Development and Community Contribution

The Owner covenants and agrees that the Lands shall only be built upon and used generally in accordance with the Site Plan attached hereto as Schedule A, which development includes:

1.1 Restrictions on Development – Phase 1

- a. *Phase 1 on the easterly portion of the Lands shall be used to construct a six-storey multi-family residential building with a maximum total of 66 units;*

1.2 Restrictions on Development – Phase 2

- a. *Phase 2 on the central and westerly portion of the Lands shall be used to construct two six-storey multi-family residential buildings with a maximum total of 266 units;*
- b. *The maximum building height for all buildings within Phase 2 shall be 20.5 meters and 6-storeys;*
- c. *The upper (6th) floor on the western-most building in Phase 2 shall be setback 10.0 metres from the northern property boundary;*
- d. *Vehicular access to the underground parking for Phase 2 shall be located with direct access to Calinda Street via the existing registered easement associated within Reference Plan VIP85142. No vehicular access to the underground parking shall be permitted from Sentinel Drive;*
- e. *Provision for underground vehicle parking to accommodate not less than 95% of the vehicle parking stalls for the Lands; and,*
- f. *No more than 5% of the required parking shall be in the form of surface parking (i.e. above ground), in addition to any required emergency access or short term loading areas required as a condition of Development Permit.*

1.3 Community Amenity Contribution – Phase 1

The Owner further covenants and agrees that Phase 1 of the Lands (Phase 1 Lands) shall not be built upon, no building permit in respect of the Phase 1 Lands may be issued and the City is not obliged to issue any Building Permit in respect of the Phase 1 Lands until the owner has paid the community amenity contribution it has offered and committed, being the sum of Sixty-Eight thousand, Eight Hundred and Eighty Dollars (\$68,880.00) without expectation of credit towards other fees, charges, dedication or other requirements of the Transferee or local authority.

1.4 Community Amenity Contribution – Phase 2

The Owner further covenants and agrees that Phase 2 of the Lands (Phase 2 Lands) shall not be built upon, no building permit in respect of the Phase 2 Lands may be issued and the City is not obliged to issue any Building Permit in respect of the Phase 2 Lands until the owner has paid the community amenity contribution it has offered and committed, being the sum of one hundred and seventy-five thousand Dollars (\$175,000.00) without expectation of credit towards other fees, charges, dedication or

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CA17/DP1260 Page 5 of 6

2023-SEP-13

Current Planning

other requirements of the Transferee or local authority. In the event that Phase 2 is constructed in two separate phases, the community amenity contribution shall be paid on a proportional per unit basis with each separate building permit.

Community Engagement

As per the City's recommendation to engage with the existing neighbourhood prior to moving forward with an updated proposal for the western portion of the lands (Phase 2), the owner engaged Townsite Planning Inc. to meet with neighbouring property owners and residents in order to provide them with an opportunity to view applications drawings and information and ask questions related to the updated development proposal. A more detailed summary of this engagement is provided under separate cover, however, the predominant theme coming out of those discussions was a general agreement that two six-storey buildings were strongly preferred and supported rather than the original 20-storey tower proposal.

Closing

In summary, we believe that the updated proposal outlined herein represents a project that better aligns with the City's new OCP. Based on public feedback at the open houses, the updated proposal also has stronger support from the existing neighbourhood. The 6-storey buildings also better align with the owner's business model and are well-suited to the Nanaimo market.

Overall, we believe the updated proposal represents a positive outcome for all parties.

We are happy to continue to engage and refine the proposal with staff in order to gain support prior to seeing our application move forward to Council for formal consideration. Please do not hesitate to contact the undersigned either by phone or email if you have any questions or concerns.

Sincere Regards,



Scott W. Mack, M.Arch., B.Sc. (PLAN), MCIP, RPP
Managing Partner | Registered Professional Planner

ec: Ahmet Nishori, MINT Developments
Reza Salehi, Salehi Architects
Tyler Hansen, Williamson & Associates

Attachments:

Schedule A – Updated Site Plan (December 2022)

Schedule B – Site Cross-Section

Schedule C – Proposed Building Elevation (example of proposed Form and Character)

Schedule D1-4 – Shadow Studies – Spring, Summer, Fall, Winter @ 10:00 a.m., Noon, 2:00 p.m. and 6:00 p.m.

R E C E I V E D

CA17/DP1260

Page 6 of 6

2023-SEP-13

Current Planning