

DATE OF MEETING May 7, 2018

AUTHORED BY DAVE STEWART, CURRENT PLANNING AND SUBDIVISION

**SUBJECT COVENANT AMENDMENT APPLICATION NO. CA8 –  
5180 UNIVERSAL PLACE**

## **OVERVIEW**

### **Purpose of Report**

To present for Council's consideration a covenant amendment application to amend the terms of a Section 219 covenant registered on the title of 5180 Universal Place, which pertained to site improvements related to a previous development proposal, in order to reflect the current development concept.

### **Recommendation**

That Council:

1. waive the requirement for Public Hearing for Covenant Amendment Application No. CA8 at 5180 Universal Place; and,
2. approve Covenant Amendment Application No. CA8 in order to amend the terms as proposed for the Section 219 covenant (EJ078164) registered on the title of 5180 Universal Place.

## **BACKGROUND**

The City has received a covenant amendment application, CA8, for 5180 Universal Place from Hammond Bay Developments Ltd., to amend the terms of a Section 219 covenant (EJ078164) in order:

- to remove references to the previous development proposal;
- replace the geotechnical report with an updated report that references the current development proposal; and,
- amend the terms outlining the alignment, connectivity, and standards for trail improvements.

Covenant EJ78164 was registered on the title of the subject property on 1995-JUL-27 as a condition of a rezoning application (RA94-28) for a 29-unit multi-family townhouse development. The covenant limits density to no more than 29 units, includes geotechnical recommendations, and secures community amenity conditions for the future construction of a public pedestrian walkway through the property, including stairs to Lost Lake and Dewar Road. An additional covenant (EK60588) was registered as a condition of a subsequent subdivision application and required works and service conditions, including the construction of Universal Place and servicing to each of the properties. All the required works and services have been completed.

## Subject Property

<i>Zoning</i>	R6- Townhouse Residential
<i>Location</i>	The subject property is a panhandle lot with access from Universal Place and from Lost Lake Road via an unconstructed dedicated walkway and constructed driveway.
<i>Total Area</i>	1.25ha
<i>Official Community Plan</i>	Map 1 – Future Land Use – Neighbourhood; Map 3 – Development Permit Areas- DPA3 Steep Slope Development, DPA9 - Commercial, Industrial, Multiple Family and Mixed Commercial/ Residential Development

The subject property is a large lot, accessed from Universal Place by way of an 83m-long, 7m-wide panhandle. An unconstructed walkway dedication exists which connects the subject property to a common driveway (public road) extension from Lost Lake Road. While the property directly abuts this common driveway, pedestrian access from Lost Lake Road to Universal Place is not currently possible due to steep terrain and lack of developed trail access. Surrounding land uses are predominantly single residential dwellings, many of which are view lots. The property slopes steeply downward (including a 20m grade change in less than 40m) from Lost Lake Road towards Laguna Way to the south and is included within the Steep Slope Development Permit Area.

## DISCUSSION

Since the registration of the covenant, a new ownership group purchased the property and does not wish to be limited by the 1995 development concept plan. The new owners wish to amend the covenant in order to remove or alter some of the terms that were specific to this previous development and to clarify the trail connectivity requirements. The applicant recognizes the importance of community connectivity that is included within the existing covenant, but requests to amend the specifications of the trail standards and alignment to allow for more flexibility for the current development concept of one multi-family building. The covenant will continue to require a paved and soft surface railway system that connects Universal Place with Lost Lake and Dewar Road.

The proposed amendments are as follows:

### **1. Remove reference to former architect and property owner**

**Proposal:** Remove all references and plans listed within the restrictive covenant that refer to Herbert H. Kwan Architect (previous owner's architect) and references to Robert/Brenda Smith (previous landowners).

### **2. Schedule A: "Geotechnical report"**

**Proposal:** Replace the 1995-JAN-09 geotechnical report contained in the covenant that was prepared by C.N. Ryzuk & Associates Ltd. based on the previous development concept, with a more current and comprehensive report done on 2017-SEP-06 by Lewkowich Engineering Associates Ltd. The amended covenant will also require that a storm water management plan be provided as part of a future Development Permit application.

### 3. Schedule D: “bark mulch public walkway”

**Proposal:** The existing covenant requires a 2m-wide, bark mulch-surfaced public walkway, including stairs constructed according to the standards contained within Schedules E1 and E2 of the covenant. The amended covenant will require an Urban Soft Standard trail to connect Dewar Road to the southwest corner of the property to allow access to Lost Lake Road (See Attachment B – Site Plan). Final routing of this path will depend on specific topography that is currently hidden by undergrowth and by the final development plans that have not yet been prepared for the site. The majority of the trail should meet an Urban Soft Surface standard (e.g. gravel) with the potential for short sections of boardwalk or stairs to accommodate large topography changes. The trail will be required to be secured for public use, and will be managed and maintained by the City of Nanaimo.

### 4. Schedule B “paved public walkway”

**Proposal:** The existing covenant requires a paved public pathway within the existing private driveway (panhandle) connecting Universal Place to Lost Lake Road. Due to the steep topography, the applicant has advised that a paved pathway all the way to Lost Lake Road is impractical for cyclists. As such, a soft surface permeable trail would suffice for pedestrian connectivity and allow for storm water infiltration. The applicant is therefore proposing a paved section (1.5m wide) to extend 106m from the existing sidewalk within the panhandle to tie into the proposed Urban Soft Standard trail section, which then ties into Lost Lake Road to the west and Dewar Road to the northwest. The point at which the paved trail becomes a soft surface trail is the location of the future building footprint, so there would be a paved connection from the building to Universal Place.

This trail and the main access driveway may require some slope retention. The final path routing and slope retention plan will be finalized by a qualified professional upon the development permit submittal. The City may consider narrower points along the walkway where it is necessary to minimize cuts into the slope along the south side of the driveway. This trail segment is to be secured for public use and managed and maintained by the City of Nanaimo.

### 5. Schedule G “amenity requirements”

**Proposal:** The existing covenant includes a number of features such as a gazebo, waterfall, and viewing platform that are tied to the previous development plan and would have to be maintained by the City as part of the trail network. The applicant no longer wishes to provide these features and Staff support removing these features from the trail network plan as the City does not typically maintain such amenities within private property. The applicant proposes to remove the amenity requirements as defined within Item No. 6 and Schedule G of the restrictive covenant.

Overall, the intent of the above changes is to allow for more flexibility to address site topography and maintenance while maintaining site connectivity for public trail use within the future development of the property. The existing covenant limits density to no more than 29 units, and the applicants are not requesting this condition be amended.

The OCP's Map 2 – Mobility Plan includes a pedestrian connection from Dewar Road to Universal Place. Both the existing covenant and proposed covenant amendment includes the trail connection required to meet the OCP Mobility Plan objective. It is Staff's opinion that the proposed covenant amendment will meet the connectivity requirements of the OCP. The trail connection will allow increased pedestrian access to parkland near Dewar Road and provide pedestrian access to Hammond Bay Road.

Council's Amendment Process Policy typically requires that an application to amend covenant conditions related to density, use, or a community contribution and secured through rezoning follow the same process as a public hearing, unless otherwise directed by Council. Covenant amendment applications not related to land use, density, or community contribution proceed consistent with the notification requirements for development variance permits, and as such, a Public Hearing is not required.

The trail construction and provision of amenities within the existing covenant are considered a community contribution. However, Staff have reviewed the proposed amendments and determined that the intent of the original covenant terms will be maintained and the covenant does not affect density or land use. Staff recommend that Council waive the requirement for a public hearing and approve the covenant amendment application as proposed.

#### **SUMMARY POINTS**

- A covenant amendment application (CA8) was received to amend the covenant terms related to pedestrian connectivity. The general trail alignment will remain unchanged and meets the OCP Mobility Plan objective.
- The covenant was registered on the subject property as a condition of rezoning in 1995, which rezoned the property to support a 29-unit townhouse development.
- Staff are requesting Council waive the Public Hearing requirement and approve the covenant amendment application as proposed.

#### **ATTACHMENTS**

ATTACHMENT A: Location Plan  
ATTACHMENT B: Site Plan  
ATTACHMENT C: Aerial Photo

#### **Submitted by:**

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#### **Concurrence by:**

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