



DISTRICT OF WEST VANCOUVER
750 17TH STREET, WEST VANCOUVER BC V7V 3T3

6.

COUNCIL REPORT

Attachments for item 6.
provided under separate cover

Date:	April 9, 2018
From:	Lisa Berg, Senior Community Planner
Subject:	Development Application for 303 Marine Drive
File:	1010-20-17-077

RECOMMENDATION

THAT

1. Proposed "Zoning Bylaw No. 4662, 2010, Amendment Bylaw No. 4962, 2018" be read a first time;
2. Proposed "Housing Agreement Authorization Bylaw No. 4964, 2018" be read a first time;
3. Proposed "Zoning Bylaw No. 4662, 2010, Amendment Bylaw No. 4962, 2018" be presented at a public hearing on May 14, 2018 at 6:00 p.m. in the Municipal Hall Council Chamber, and that notice be given of the scheduled public hearing;
4. Proposed "Development Permit No. 17-077" be presented at a public meeting scheduled for May 14, 2018 at 6:00 p.m. in the Municipal Hall Council Chamber, to be held concurrently with the public hearing scheduled for May 14, 2018 at 6:00 p.m. in the Municipal Hall Council Chamber, and that notice be given of the scheduled public meeting; and
5. A proposed section 219 development covenant and a statutory right-of-way to secure public access to the land attached as Appendix H to the report by the Senior Community Planner dated April 9, 2018, be presented as part of the development package.

1.0 Purpose

This report outlines an application to rezone 303 Marine Drive (**Appendix A**) to Comprehensive Development Zone 55 (CD55) to allow for the construction of a 26-storey residential tower and detached townhouses containing a total of 133 residential units. Presented as part of the development package are:

- a bylaw serving to amend the Zoning Bylaw;
- a Housing Agreement (implemented by bylaw) to secure 42 purpose-built rental housing units in perpetuity;
- a development permit to regulate the form and character of the proposed development;
- a covenant to deliver appropriate utility infrastructure to service the development; and
- a statutory right-of-way to secure public access to the land.

2.0 Executive Summary

Darwin Properties (303 Marine Drive) Ltd. has applied for a rezoning of its property from commercial to multifamily residential and a development permit to implement the goals and objectives of the Marine Drive Local Area Plan (LAP) for this site.

The application has been assessed in context of the broad objectives of the Official Community Plan (OCP) and the local policy directions set out in the LAP. It has been considered by the Design Review Committee (DRC), the North Shore Accessibility Committee on Disability Issues (ACDI), and the Public Art Advisory Committee (PAAC), all of which expressed support for the application.

In summary, staff recommends support of the proposal. The application appropriately responds to area context, is aligned with the LAP, and delivers public benefits including purpose-built rental housing and public realm improvements. In addition to these benefits, the development will also provide a financial contribution that will advance other community amenity objectives of the LAP as determined by Council.

Staff recommends that the application be referred to a public hearing and concurrent public meeting on May 14, 2018. Prior to the public hearing, the applicant will be required to host a public information meeting.

3.0 Legislation/Bylaw/Policy

Provincial Legislation

The *Local Government Act* requires that a public hearing be held on the proposed rezoning bylaw and authorizes the District to enter into a Housing Agreement.

Official Community Plan (OCP)

The OCP identifies the site as part of the Marine Drive Local Area Plan (LAP) and within the Lions Gate – Klahanie Sub-Area. The proposal is consistent with the LAP.

Zoning Bylaw

The site is currently zoned C1 (Commercial 1) and therefore a rezoning is required.

4.0 Background

4.1 Previous Decisions – Not applicable.

4.2 History

The Marine Drive Local Area Plan (LAP) provides the policy at the neighbourhood scale to guide land use and development. Included are design guidelines to provide direction on the form, height, massing and character of buildings as well as the public spaces and landscape between.

The site is identified as being within the *Lions Gate – Klahanie Sub Area* of the LAP. The LAP prioritizes residential use to meet housing objectives, generate less traffic than commercial uses, and not dissipate the planned commercial core in the adjacent Lions Gate Town Centre within the District of North Vancouver. For this site, the LAP calls for:

- density between 2.5 and 3.25 Floor Area Ratio (FAR);
- built form to be a single, slender tower with a small floor plate up to 7,500 square feet;
- building height between 24 to 26 storeys; and
- public realm and open spaces that enhance pedestrian connections to the commercial core, Klahanie Park, amenities, and transit.

At the June 19, 2017 Council meeting Council adopted the Marine Drive Local Area Plan.

5.0 Analysis

5.1 Discussion

Physical and Site Context

The site is located at the most eastern point of West Vancouver at Marine Drive, and is bounded by the District of North Vancouver (DNV) along the eastern property line. It is accessed through DNV from Klahanie Court via Curling Road and Capilano Road. To the west of the site is a BC Housing development, consisting of three storey apartment buildings. Earls Restaurant currently occupies the site and will be vacating in early 2018 to relocate to a new development in Ambleside (see Figure 1).



Figure 1: Site Context (approximate jurisdictional boundary lines shown dashed)

Positioned within close proximity to Klahanie Park and the emerging Lions Gate Town Centre, the site will be part of a transit-oriented community that is close to commercial services and public amenities, and includes a range of housing types.

The Proposal

The applicant proposes to rezone the site and construct a 26-storey residential tower and four townhouses. Key features of the proposal are:

- a FAR of 3.25;
- 133 units:
 - 26 storey building with:
 - 129 residential units comprised of:
 - 87 condo units; and
 - 42 rental units (secured via a Housing Agreement).
 - 4 townhouses.
- public realm additions including pedestrian connections and a plaza, a multi-use pathway, and new landscaping;
- common resident amenity areas including children's play equipment, an open lawn area and a water feature;
- resident amenity building including recreation and fitness facilities and a guest suite;
- 201 underground parking spaces;
- 209 underground bike storage spaces; and
- 12.1% site coverage.

The proposal complies with the Marine Drive Local Area Plan (LAP). See **Appendix B** for the Project Profile and **Appendix I** for the proposed Development Permit (with the development booklet attached as Schedule A). The site plan is shown in Figure 2.

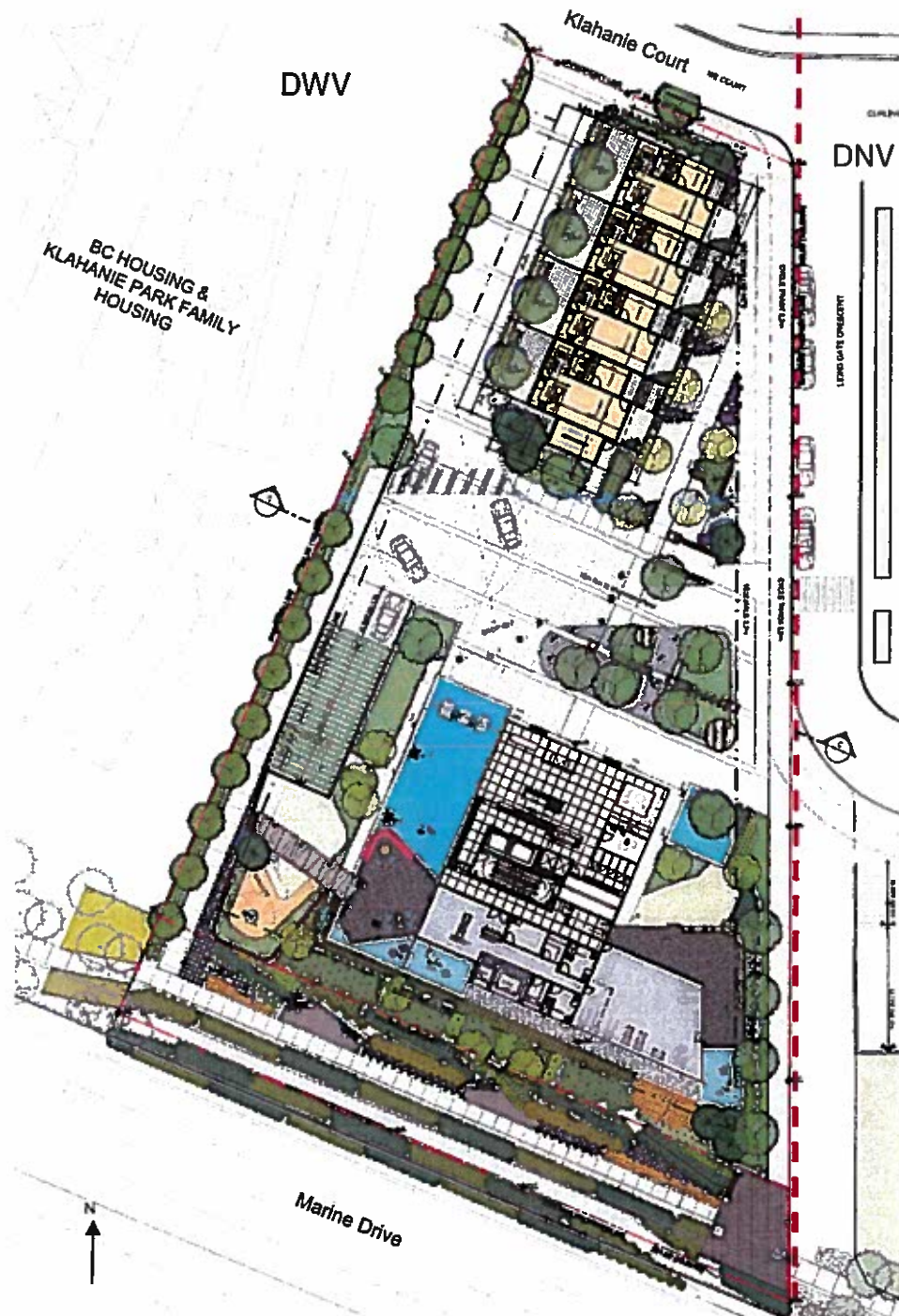


Figure 2: Site Plan

Project Evaluation

1. Overall

The proposal aligns with the objectives of the Marine Drive Local Area Plan (LAP) and guidelines and will contribute to a vibrant development in the Lions Gate Town Centre with an enhanced public realm, purpose-built rental housing, and other improvements including generous pedestrian connections, a multi-use pathway and public art.

The proposed tower incorporates elements of West Coast modernism that fits within the natural setting and announces itself as a signature building along Marine Drive. The building will serve as a gateway element moving east from West Vancouver and the Lions Gate Bridge into the emerging Lions Gate Village Centre in the District of North Vancouver. Design inspiration for the building was taken from its North Shore setting including forests, mountains and significant views in an almost 360 degree pattern. Materials such as stone and simulated wood soffits are utilized with a nod to the unique setting of the building. The basic building floor plate is approximately 662.4 square metres (7,130 square feet) and the massing is split into two distinct elements each expressed as slender elements using differentiating materials and colours. Scalloped curving balconies on the entire west elevation of the building play on the West Coast modernism architecture and add a whimsical character compared with the contrasting formal expression of the other elevations. A series of four townhouses to the north of the main building complete the site arrangement and provide a transitional scale to the adjacent Klahanie BC Housing site to the west. They have a West Coast architectural expression that is coordinated with the tower and are focused to the street.

The condo units and the purpose-built rental units contain a range of unit sizes in addition to ground-oriented townhouses that will introduce a variety of housing options that respond to and fit contextually within the emerging Lions Gate Town Centre in North Vancouver. This housing direction is consistent with the LAP as it prioritizes residential use, generates less traffic than commercial uses and will not dissipate the planned commercial core in the adjacent town centre.

2. Density, Height and Built Form

The project is designed in specific response to its contextual setting as part of North Vancouver's emerging urban centre focused at Capilano Road and Marine Drive. The built form, density and height are compatible with the development pattern of the area. Ultimately, the vision for this project is to read as part of this broader development, without a conspicuous delineation between jurisdictions through a coordinated public realm streetscape including a landscaped boulevard, sidewalk, and separated bicycle lanes.

The LAP established a building hierarchy and arrangement of building heights derived from an urban design analysis where heights are stepped down northward from International Plaza, with taller buildings arranged on Marine Drive. Reflecting this, the proposed building is a single tower fronting Marine Drive similar in height to International Plaza.

The new building will create the western 'bookend' of buildings along Marine Drive, creating a balance of building forms and masses. The tower rests upon a two-storey amenity building that incorporates an angled, green roof. This angularity gives a sense of dynamic movement in the amenity building street wall along Marine Drive, creating a visually interesting building form at the pedestrian level.

Lower scaled townhouses on the north of the site provide a smaller scale to the pedestrian environment and create compatibility between the Klahanie site to the west and similar-scaled development planned for the northern portion of the town centre. The proposed density, height and built form of the proposal complies with the LAP.



Figure 3: Perspective rendering at Marine Drive (looking northeast)

3. Urban Design and Public Realm

The overall urban design approach and the public realm intent is to integrate the proposal within both its immediate natural environment and the evolving context of the Lions Gate Town Centre. Both the natural and built environments are integrated through artistic elements, connections and materials. The ground plane design responds to the streets, the arrival sequence, and the common amenity areas while being integrated with public connections that flow to the adjacent streets, neighbouring developments and the recreation network.

The public realm will benefit from unrestricted public access through the site on pedestrian walkways that will connect it with Marine Drive, Curling Road and beyond.

- a. **Pedestrian Connections:** Pedestrian connections are planned that will connect the site to its surroundings:

North and South: a multi-use pathway will connect the site from Klahanie Court/Curling Road¹ to Marine Drive. It will run the full length of the east property line (also the municipal boundary line between DWV and DNV) that will serve as the primary sidewalk and cycling connection, complete with boulevard street trees and landscaping. The width of the multi-user pathway ranges from 5.2 metres (17 feet) in front of the townhouses to 4.2 metres (13.8 feet) at the south end. The south end of the multi-user pathway will be twinned with a similar-width pathway in DNV as part of a planned development to the east.

For a portion of the west property line, a sidewalk will give a secondary pedestrian option giving residents an alternative route to connect to Marine Drive and public transit. This secondary route could also connect to the adjacent Klahanie housing next door in the future.

East and West: Along the southern edge of the site, a widened sidewalk, a new separated bike lane and a seamless boulevard transition between West and North Vancouver will be created. At the north of the site, there will be a refreshed sidewalk along the Klahanie Court frontage. Lastly, a sidewalk to the centre of the site will complete its connectivity and sense of transparency to the surrounding neighbourhood.

The pedestrian connection network is shown in Figure 4.

¹ At the municipal boundary, Klahanie Court changes into Curling Road heading east.

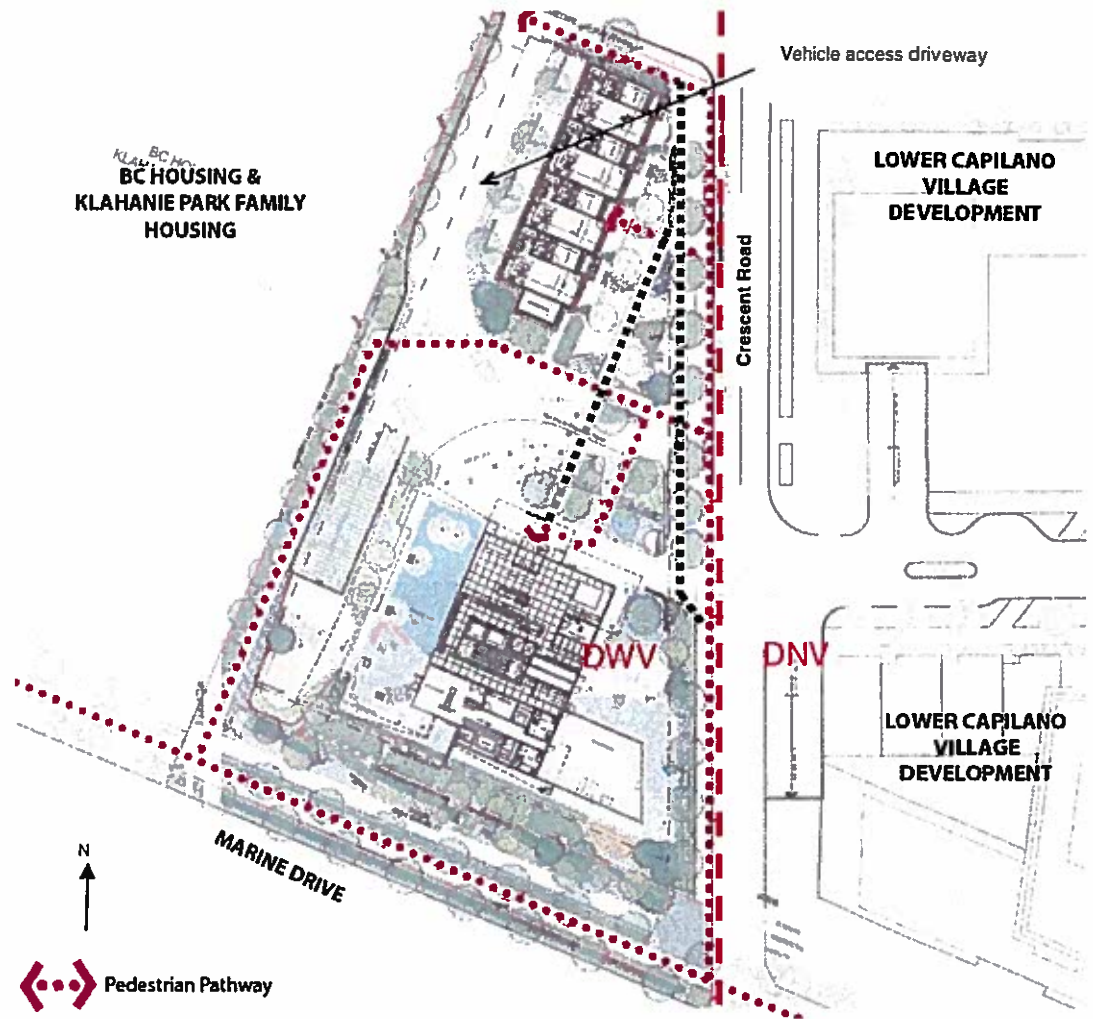


Figure 4: Pedestrian connections (public and residents)

- b. **Central Plaza:** Serving to emphasize the pedestrian and open the site to the surrounding area, a central plaza functions as the heart of the project. It connects the site to its residents, open spaces and the neighbourhood beyond. With landscaped elements and patterned pavers, it will prioritize pedestrian activities and be a place to pause or for residents to wait to be picked up, as well as serve as a visual amenity.
- c. **Open Space:** The ground floor of the building is composed of a sequence of common spaces including social gathering spaces, meeting rooms and fitness facilities for residents of the development. At the southwest corner is an open lawn area surrounded by garden areas, a children's play area and a central common terrace. The open space wraps around the south of the building and blends in with the public realm along Marine Drive. At the southeast corner of the site, the resident amenity building opens out to a second common patio and lawn area, which will animate the space and will be visually connected to the multi-use pathway along the east side that connects to Marine Drive.

- d. **Building Design Elements:** Artistic design elements will be incorporated within the building that include the light and water, bringing animation and interest to the public realm. The southwest corner of the building is supported by 'tuning fork' style columns. Underneath will be a soffit fit with LED panels that could have changing patterns of light and colour, acting as an artistic canvas for images. A reflecting pond will be located underneath to playfully mirror the lights above. The applicant will be working with an artist to carry the theme of light up the tower. Backlit LED metal perforated panels will convey an artistic image, as exemplified in Figure 5, which could be viewed from greater distances such as the Lions Gate Bridge, Capilano Road, and various other strategic points. These lights can also have varying colour to coordinate with seasons or special events.



Figure 5: Building Design Elements

4. Housing

Planning for and providing a variety of housing options contributes to healthy, complete communities. West Vancouver's supply of purpose-built rental housing is made up of approximately 1,900 units most of which were built during the 1960s and 1970s. This stock is now 40 to 50 years old. While the District has taken measures to help prevent the loss of rental housing to strata ownership, the District has no legal authority to prevent demolition of a rental apartment building or require that a redeveloping property remain rental, and has limited incentives that compete with the market that would create new rental housing.

Only 91 units have been approved or built to the rental housing inventory since the 1970s. These units have been secured through major rezoning applications². The proposal would add 42 new units (representing 31.8% of the total units in the project) to the District's ageing rental stock, making this a significant contribution.

The proposed 42 rental units are to be provided in the tower and secured in perpetuity through a Housing Agreement (**Appendix G**). The units are located on floors 3 to 8 and offer a variety of unit sizes including 1 and 2 bedroom units.

5. Advisory Committees

a. *Design Review Committee (DRC)*

The DRC considered the proposal at its November 16, 2017 meeting and recommended support of the application, subject to further design development with staff of specified items as noted in the DRC minutes attached as **Appendix C**.

b. *Accessibility Committee on Disability Issues (ACDI)*

The ACDI considered the proposal at its January 11, 2018 meeting and was supportive of the application. A report from the ACDI is attached as **Appendix D**.

c. *Public Art Advisory Committee (PAAC)*

The PAAC considered the proposal at its February 14, 2018 meeting and was supportive of the application. Excerpts from the PAAC meeting are attached as **Appendix E**.

6. Transportation

Parking, Loading and Access

The proposed access is from Klahanie Court. Early versions of the project arranged access from a new road extension in North Vancouver to the east. However, this placed a heavy focus on vehicles at the ground plane and visually severed the townhouses from the tower. Further, the construction timing of the new road extension in North Vancouver is uncertain. To address these points, access was relocated to Klahanie Court. This created opportunity to enhance the public realm with a pedestrian-oriented plaza and a multi-use pathway down the east property line that is not interrupted by vehicles entering and exiting the site.

² 16 units ("Water's Edge") in perpetuity; 4 units ("Dundarave Landing/IGA") but only for 10 years and expired in 2017. A further 30 units ("Onni") and 41 units ("Hollyburn Gardens") are secured via Housing Agreements, but are not yet constructed.

The applicant proposes two levels of underground parking providing a total of 201 parking spaces and 209 bicycle storage spaces. The proposed amount of parking is consistent with the provision of the Marine Drive LAP. A small portion of surface parking is provided for temporary and short-term resident convenience (e.g. drop off, pick up, service vehicles, loading/moving, etc.) and is integrated into the plaza design in order to minimize its presence.

Of the 201 parking spaces, 30 spaces are provided for the rental units, 166 spaces for the market condominium units, and 5 visitor spaces. No on-street parking is proposed.

Promoting Transportation Goals

To promote regional transportation goals a 10-metre (33 feet) wide portion of the property along Marine Drive will be dedicated to the District to accommodate future improvements. This road dedication will accommodate future bike lanes, utilities, and sidewalks. The design intent is to create a seamless public realm interface between the municipal jurisdictions.

Transportation Impact Assessment

A transportation study was conducted and submitted as part of the rezoning application to assess the transportation impacts of the development. Access to the site is a key planning consideration given the site's location along Marine Drive. The area benefits from nearby transit service that connects directly to downtown Vancouver and to Park Royal to the west, providing an efficient transit option for residents. This service is enhanced during peak travel times to Vancouver – e.g. morning and afternoon rush hour times – service is increased to deal with additional demand.

When Earls restaurant vacates the site, the two existing driveways to Marine Drive will be permanently closed. All traffic to the site thereafter will be from the internal road network, via Capilano Road, Curling Road and Klahanie Court. With the removal of the restaurant and the anticipated road improvements planned for the Lions Gate Town Centre, including coordinated intersection signaling and a new local road network, capacities on the Capilano corridor are expected to be adequate, with minor overages in delay and volume-to-capacity ratio for some movements. Removal of the access driveways on Marine Drive will decrease interruption to traffic flow as well as improve general traffic, bicycle, bus and pedestrian movements.

Construction Parking Management

During construction, efforts will be made to minimize traffic impacts on the surrounding area as the neighbourhood is undergoing transformation with the development of the Lions Gate Town Centre. Specifically, minimization of interruptions to the BC Housing site to the west and Klahanie Park will be priority. The applicant will be asked to explore strategies to reduce disruptions such as coordinating construction material hours to non-peak traffic hours, encouraging workers to take transit, sourcing available parking lots in the area, and coordinating with the District of West and North Vancouver for any off-site vehicle staging (i.e. large concrete pours).

A Traffic Management Plan (TMP) will be required as part of the building permit and all construction must comply with the District of West Vancouver's Noise Bylaw. Lastly, the applicant has been requested by North Vancouver to ensure that its construction parking management is coordinated with the greater area, given the amount of concurrent projects that are under development.

7. Sustainability

The proposal is aligned with the Marine Drive LAP expectations for high-performance buildings, including Step 2 of the BC Energy Step Code. Council recently adopted the highest community-wide minimum Step Code requirements in the province, effective July 1, 2018. The applicant's commitment meets the existing West Vancouver minimum expectations and they are exploring options for attaining excellence in sustainable design and energy efficiency, including:

- building design that is District Energy (DE) compatible;
- LEED Gold certification;
- Passive House³ certification for the four townhouses; and
- compliance with Step 2 of the BC Energy Step Code.

The applicant is working to implement measures to facilitate low carbon energy infrastructure within buildings, including investment in better mechanical systems and sub-metering of each residential suite to reduce carbon emissions beyond what is encompassed by LEED. This approach uses technology and user-behaviour to manage energy use within the building. Further, the applicant is committed to Passive House construction for the four townhouse units. Passive House buildings consume up to 90 percent less heating and cooling energy than conventional buildings⁴.

³ Passive House (Pasivhaus) is a voluntary energy-based construction standard.

⁴ <http://www.passivehousecanada.com/about-passive-house/>

Specifics to meet these green building requirements include:

- Heat Recovery Ventilators (HRVs) in each suite;
- individual energy-use sub-metering in each unit, demonstrated to significantly reduce energy use through occupant behaviour;
- centralized heat-pump technology to utilize ambient outdoor air temperatures to reduce the input energy requirement to heat or cool indoor spaces;
- water-based high efficiency radiator technology to heat and cool interior spaces;
- Electric Vehicle (EV) and bicycle charging facilities (or provisions for future installation for all of the residential suites);
- occupancy sensors on all common area and parkade lighting; and
- reduced lighting levels in common areas and suites.

Sustainability commitments are secured via the development permit attached as **Appendix I**.

8. Community Amenities

New developments provided for in the Marine Drive LAP are to deliver community amenities related to the impacts of new development. The value of the amenity is proportional to the increased potential of land use under the LAP in comparison with existing zoning. District policy defines a range of appropriate amenities, including housing affordability and diversity, child care and cultural facilities, heritage preservation, public art, and public space, parks and the environment. The principal amenity focus of the LAP is the delivery of housing affordability and diversity to ensure that housing stock continues to meet the needs of District residents including families with children, working professionals, youth and seniors.

The applicant proposes a voluntary Community Amenity Contribution (CAC) in an attempt to address the growth related impacts to rezoning the site. CAC offers typically include either the provision of on-site amenities (if appropriate) or a cash contribution that can be put toward other public benefits. CAC offers take into consideration community needs, area deficiencies and the impact of the proposed development on District services.

Through a negotiated approach with the District, the applicant offers a total voluntary cash CAC of \$7,344,140. District staff have reviewed the applicant's development proforma, with confirmation by third party consultants, and conclude that the CAC offered is appropriate and recommend that the offer be accepted.

It is proposed that the CAC be used toward:

- public realm improvements such as connections over Capilano River, trail improvements, bicycling, etc.;
- public art; and
- other District projects and initiatives that advance the community amenity goals of the Marine Drive Local Area Plan.

Payment of the CAC is required prior to adoption of the rezoning bylaw. Approval of specific projects will be brought forward as part of the Capital Plan and Budget process at Council's discretion.

9. Servicing

Storm Water

The existing site consists of entirely impervious surface area (e.g. fully paved) with the exception of some small planted areas. The redevelopment of the site will require an onsite storm water management plan, including but not limited to storm water management features such as a green roof with growing mediums, increased gardens and planted areas (i.e.: absorbent landscapes), and a bio swale feature, to help mitigate storm water runoff and improve runoff quality and watershed health.

Sewer

The site is serviced directly by a District of North Vancouver (DNV) sewer trunk main that feeds into a regional main. It is anticipated that the DNV portion of the sewer trunk will require an upgrade on Marine Drive to accept the additional flow from the proposed development. The applicant will need to work with DNV to confirm this and secure a new connection as required.

Water

The site is serviced by a District of West Vancouver (DWV) water main directly from Marine Drive. It is anticipated that the existing water main is capable of servicing the proposed development and providing adequate fire flows. Prior to rezoning approval, the applicant and their civil engineering consultant will need to confirm water infrastructure requirements for provision of adequate service levels for the site.

All servicing costs associated with the development are the responsibility of the developer. A covenant is proposed to establish the appropriate service levels and design criteria to service the development. Servicing costs are in addition to any CAC's and Development Cost Charges (DCC's). DCC's are payable at the time of building permitting.

Implementing the Project

In order to implement the project, a number of items require completion including:

- approval of the rezoning bylaw and a Housing Agreement (to secure the 42 rental housing units);
- registration of a covenant regarding utility servicing; and
- registration of a statutory right-of-way to secure public access.

Rezoning Bylaw

The proposed Comprehensive Development Zone (CD55 – 300 Block Marine Drive) is a site-specific zone that reflects the development proposal and would regulate the land use based on it (**Appendix F**).

Housing Agreement

This agreement serves to secure and protect 42 units for rental purposes for the life of the building and is implemented by bylaw. The proposed Housing Agreement Authorization Bylaw (with the agreement attached) is attached as **Appendix G**.

Covenant & Statutory ROW (Legal Agreements) (Appendix H)

One covenant and one statutory right-of-way (ROW) are proposed:

1. Section 219 Covenant: This covenant sets out the developer's obligation to deliver appropriate utility infrastructure to service the development. Detailing of the works is required prior to adoption of the rezoning bylaw.
2. Statutory Right-Of-Way: The ROW secures public access through the site and for the owner to maintain the public areas in good condition.

The covenant and right-of-way presented as part of the development package are substantially completed, pending acceptance for registration at Land Titles Office.

6.0 The Process of Bylaw Consideration

6.1 Public Information Meetings

In accordance with the Development Procedures Bylaw, the applicant has hosted two information meetings prior to Council consideration of the proposal. The first meeting was on February 25, 2015 on an initial version of the proposal (and prior to the adoption of the LAP). A meeting was held on October 11, 2017 on the current proposal in order to give the public an opportunity to learn about the development.

Should Council give the proposed bylaws first reading and forward the proposal to a public hearing, the applicant will be required to organize and publicize a third information meeting to be held prior to the public hearing. The purpose of this meeting is to give residents an opportunity to learn about the proposal in advance of the public hearing.

6.2 Consideration of Bylaws and Development Permit

Following first reading of the bylaws and scheduling of a public hearing by Council, District staff will give notification of the public hearing consistent with District policy and legislated requirements. Concurrently with the public hearing (at the same meeting) Council provides an opportunity for those who consider they are affected by the proposed development permit to make written and/or oral representations to Council.

After the close of the public hearing (on the same day or a different day) Council may give second and third readings to the bylaws. After second and third readings of the bylaws and at a subsequent Council meeting, Council may adopt the bylaws once District staff confirm any conditions precedent to adoption have been met (see section 6.3 below).

6.3 Conditions Precedent to Adoption

Prior to adoption of the bylaws and approval of the development permit, the following requirements must be met:

- registration of the covenant, with the details of the required servicing works to be completed prior to bylaw enactment (the right-of-way forms a schedule to this covenant and will be registered at a later date);
- payment of the voluntary community amenity contribution;
- dedication of the frontage of the lands for road; and
- Ministry approval on the proposed rezoning bylaw.

The Housing Agreement is registered as notice on title after the Housing Agreement bylaw is adopted.

6.4 Public Engagement and Outreach

A public information meeting was held on the initial version of the proposal, prior to the adoption of the LAP. The application was put on hold during the creation of the Marine Drive Local Area Plan, and after significant community input and Council consideration, what began as a study became the first LAP for the District as part of the ongoing OCP review.

6.5 Other Communication, Consultation, and Research

Planning staff has consulted with District staff from various departments including: Engineering; Land Development; Permits and Inspections; and Parks. The applicant has worked to address each departments noted comments and is satisfied with the proposal, subject to further detail review during the building permit phase, should the proposal be approved. District staff will also continue to work with the District of North Vancouver on shared utility infrastructure, details of the multi-user pathway, and other interjurisdictional matters.

7.0 Options

7.1 Recommended Option

Council give first reading to the proposed bylaws and set the date for a public hearing and concurrent public meeting.

7.2 Considered Options

- a) give first reading to the proposed bylaws and set an alternative date (to be specified) for a public hearing and concurrent public meeting; or
- b) defer consideration of the proposal pending the receipt of additional information (to be specified) to assist in consideration of the application; or
- c) reject the application.

8.0 Conclusion

Staff assessment of this rezoning application has concluded that the proposal is appropriate and supportable. The application is set to deliver appropriate community benefits including purpose-built rental housing, public realm improvements, and diversified housing choices and it will be a positive contribution to the emerging Lions Gate Town Centre. Further, if approved, this application will contribute funds to promote the community amenity objectives of the LAP.

The proposed building and townhouses are designed to respond contextually to the surrounding neighbourhood and will be a signature building at its prominent Marine Drive location. With its West Coast inspired architecture that is thoughtfully integrated with the public realm, it will add visual interest to the skyline and promotes sustainable building technologies and methods.

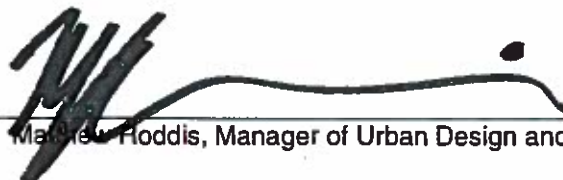
Staff recommend that the application be scheduled for a public hearing and concurrent public meeting, together with the development package including the proposed amending bylaws, legal agreements and development permit.

Author:



Lisa Berg, Senior Community Planner

Concurrence



Matthew Hoddis, Manager of Urban Design and Current Planning

Date: April 9, 2018
From: Lisa Berg, Senior Community Planner
Subject: Development Application for 303 Marine Drive

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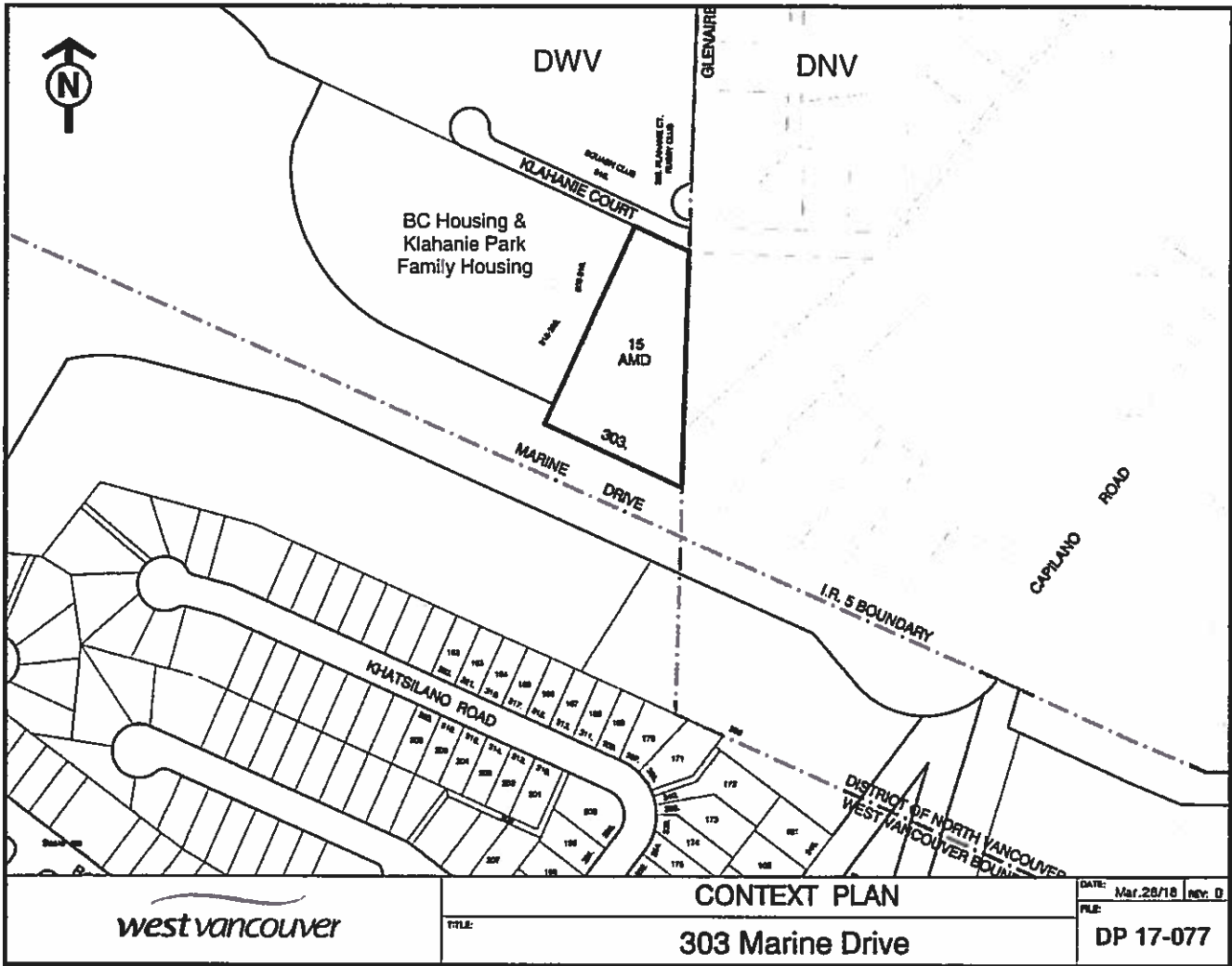
Appendices:

- A. Context Map
- B. Project Profile
- C. DRC Minutes
- D. ACDI Report
- E. PAAC Minutes
- F. Zoning Bylaw No. 4662, 2010, Amendment Bylaw No. 4962, 2018
- G. Housing Agreement Authorization Bylaw No. 4964, 2018
 - Schedule A (Housing Agreement)
- H. Section 219 Covenant
 - Schedule A (Site Plan)
 - Schedule B (SROW)
 - Schedule C (Works and Services)
- I. Development Permit No. 17-077
 - Schedule A (Design Booklet)

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APPENDIX A – CONTEXT MAP



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APPENDIX B – PROJECT PROFILE

at April 9, 2018

Project:	THE SENTINAL
Application:	Development Permit No. 17-077
Applicant:	Darwin Properties (303 Marine Drive) Ltd.
Architect:	Chris Dikeakos Architects Inc.
Landscape Architect:	ETA Landscape Architecture
Address:	303 Marine Drive
Legal Description:	LOT 15 DISTRICGT LOT 790 Plan 4918
PID:	011-279-567
OCP Policy:	Marine Drive Local Area Plan (LAP) & Guidelines
Zoning:	C1
Heritage Register	No
Summary:	To rezone the site to allow for a 26 storey residential building containing 133 residential units.

	BYLAW C1	LAP	PROPOSED ⁵	COMMENTS/NOTES
Site Area				
303 Marine			4,954.6 sq m (53,331 sq ft)	
Floor Area				
• Gross FA			16,923.7 sq m (182,165 sq ft)	Total building area, to calculate FAR
Floor Area Ratio		2.5 – 3.25	3.25	Consistent with LAP
Unit FA & Units				
Residential:				
Total Residential Units:			133	
• Residential Units			• 91	
• Rental			• 42	
Setbacks				
Front Yard (Klahanie Ct)	0 m		3.4 m	As per CD zone
Rear Yard (Marine Dr)	0 m		3.0 m	
Side Yard (East)	0 m		5.2 m	
Side Yard (West)	0 m		5.2 m	
Site Coverage				
Total area:			12.1%	
Height & Storeys				
Residential Tower:				
Building Height	7.6 m		85 m	
No. of Storeys	2	24 - 26	26	Consistent with LAP
Townhouses:				
Building Height	7.6 m		10.1 m	Includes +1.0 m for Passive House construction methods
No. of Storeys	2		3	
Parking				
Total:	1/18.6 sq m	191	201	Consistent with LAP
• Residential Units		• 159	• 166	
• Rental Units		• 32	• 30	
• Visitor		• n/a	• 5	
Bike Storage				
Total:			209	

⁵ Source: Information provided by applicant

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APPENDIX C – DRC

Excerpts of the November 16, 2017 Minutes

SENTINEL TOWER (EARLS SITE), 303 MARINE DRIVE

Background:

Senior Community Planner Lisa Berg gave an overview of proposal. Single 26-storey residential tower containing 117 units, plus four detached townhouse units (total of 121 units⁶). The proposal generally aligns with the design and development policies of the Marine Drive Local Area Plan (LAP).

Project Presentation:

Richard Bernstein Principal of Chris Dikeakos Architects provided an overview of context, design guidelines and rationale.

- Site Context – an overview was provided on the proximity to Lions Gate Bridge, access and the surrounding area.
- Site Analysis – provided an overview of how this is a triangulated site and how the site responds to the LAP, and its North Vancouver - Capilano River context.
- Land Use Plan and Policy – tower is supported by proximity to two urban centres linked by open space and green connections, and supported by transit.
- Policy:
 - *Part of Emerging Community* - The Lions Gate - Klahanie Sub-Area is envisioned as a transit-oriented community that is close to amenities and with a wide range of housing choice.
 - *Land Use* - residential tower that compliments Lions Gate Village guidelines and keeps within the policy framework. Residential tower with 24 rental units and keeps within policy units of 3.25 FAR.
 - *Public Realm and Built Form* - lower scale building form fronting Marine Drive reinforcing a mixed-use node at Capilano Road and Marine Drive. A north/south public space connection between Marine Drive and Klahanie Park is created to punctuate pedestrian mobility and to increase the visibility between the park and Marine Drive.
 - *Respond to Context* – tower orientation/position and tower street-wall building form along Marine Drive relate strongly to the towers and street wall along Marine Drive in the Lions Gate Village plan. Tower massing is articulated into two different expressions which thin the appearance of the overall tower. The tower height book-ends Lions Gate Village by closely matching the height of International Plaza.
 - *Exemplary Design* – consideration given to surrounding area skyline and view lines. Residential use is prioritized and follows guidelines through distinguished signature towers that are stacked and have differing heights. Capturing roof terrace views and complimenting skyline views with design of upper portion of tower. Have also incorporated art into design and into south west corner of design.
 - *Redevelop as Residential Use* – residential use has been prioritized with amenities, no commercial and three levels of rental units.
 - *Signature Tower* - 303 Marine Drive will be a signature gateway tower and a visually strong entry to the Lions Gate Town Centre. Tower has four distinct “fronts” to address the surrounding context.

⁶ Revised March 2018

APPENDIX C – DRC

Excerpts of the November 16, 2017 Minutes

-
- *Integration with Nature* - tower adjacent to natural setting at north end of Lions Gate Bridge. Landscape continues along Marine Drive frontage. Further responded to this through application of a perforated metal screen that is backlit by LED lights with tree patterns that will be viewed along the tower.
- *Architectural Expression* – distinctive water features and column expression at southwest corner of the tower will further be highlighted with features such as articulating base by lifting the tower onto two main fork columns. Further distinguished through using two different glass elements. Perforated metal backlit LED panels at the top and side of the tower emphasize the architectural design and location of the tower. Tower entry scaled to a better pedestrian experience with and pattern pavement
- *Massing* – variations in height adhere to these guidelines. Tower and amenity volume align with Marine Drive. Stepped massing forms individually expressed to allow for a slender tower with a small floorplate to mark the western edge of the town center at the same time that breaks down the overall scale. Three-storey townhouses, transitional scale to the BC Housing Site. Lower two/three storey amenity volume expression fronting Marine Drive relates to adjacent Lions Gate Village street wall forms.
- *Built Form* – town houses in keeping with built form, offering transitional scale to Klahanie site. Design has strong architectural design and significant open space. East side and west side reflect and respond to this landscape, natural and urban.
- *Passive Solar Control* – Eight-foot deep balconies and vertical privacy screens on the west facade help mitigate the impact of the sun. Concrete balconies and slab extensions provide solar control over the south and east facades. Concrete overhangs provide passive solar control. Concrete overhangs and slab extensions shade common amenity spaces.
- *Materials and Colors* – Timeless high contrast and high quality materials provide strong contrast and visual interest. Mechanical rooftop equipment screen by proposed art-glass lighting feature. Use of two types of glass. Darker on east side and lighter on west side to further distinguish.
- *Public Realm* - permeability and pedestrian routes - public realm has no car access from Marine Drive but has two major pedestrian route connections.
- Design:
 - *Rationale* - took influence from many successful forms from around the world. Incorporated many design features to express and utilize the location of this site. Roof top areas, indoor amenity features, and lobby. Lighting scheme will be a prominent feature to this building and highly visible from surrounding areas. The lower portion of tower will have lighting features as well as the perforated metal screening which is in keeping with the theme and landscape character of the area being forest and mountains, etc. Materials used have also been inspired from the towers location context.
 - *Landscape* – site is located in the original flood plain of Capilano River and is in synergy with its location, design, use and policies.

APPENDIX C – DRC

Excerpts of the November 16, 2017 Minutes

- *Tower* – tower element with lower street wall volume along Marine Drive. Generate slots to reduce the massing and create a slender shape. Reduce massing toward BC Housing site and free ground space along the amenity building. East portion with roof terraces on west massing to capture views. Split tower form and elevation. Angled south facade and lower volume to capture views and create a distinctive elevation embodying a “sense of movement” in the tower form. Along the southwest facade, a curved form was added to create a signature tower element. Colour further differentiates the massing distribution.
- Site Circulation – its placement in combination of Marine Drive, bus lane, and bicycle lane, pedestrian walk away with buffers in between each. Each buffer area will be landscaped and have seating areas.
- Sustainably – Consistent with the goals set in the Marine Drive Local Area Plan and Design Guidelines, this development will aspire to a high standard of sustainable design and construction. It is intended that this project pursues LEED Gold certification.

Committee Questions:

The Committee went on to question the presenters, with the applicants' response in *italics*:

- What is the balcony detail? East side there is a concrete upstand. West side possibility of glass coming over the slab. Eight-inch glass covering slab of concrete to differentiate. *Face mounted glass. Slab turns into an upstand 18-inches from bottom of slab in front of balcony.*
- Was there a larger traffic impact study conducted? *Engaged with the same traffic consultant and civil engineer who is working on the traffic impact assessment for the Lions Gate Area. Further coordinating this work with District of West Vancouver and North Vancouver to understand future and ongoing traffic management flow.*
- Further information requested surrounding detail of balconies, there is metal screen mesh shading device? *Imprinted metal privacy screens with similar patterns to the perforated metal screens on the Marine Drive side.*
- Seek further clarity surrounding sustainability section of proposal, proposing building will be LEED Gold Certified, has consideration been given to the timeframe of project and being in accordance to the BC Energy Step Code? *Understanding that DWV sustainability planner is considering Step 2 for Part 3 buildings. Step 2 is feasible in current design. Committed to legal registration and as a company take that initiative to become certified and is usually aligned with various municipal policies.*
- Further clarification requested surrounding townhouse units and their design compatibility with tower design? *Compatible elements are on west side of town houses with dominate L-shape echoing Marine Drive side on the top of tower. East side strong horizontal expression echoing tower itself. Accent materials are utilized and featured in townhouses as well as vertical elements.*
- Where do residents go to catch a bus? *Generous plaza sidewalk connection through walkway to Marine Drive, passing the amenity features of building and landscaping.*
- Is there a daycare at the south west? *This is the social space. South west area is an extension to amenity areas with a play area, etc. for residents.*

APPENDIX C – DRC

Excerpts of the November 16, 2017 Minutes

- Further explanation requested surrounding the different materials that are highlighted here. *Used different materials to distinguish separate areas, e.g. cars from pedestrians, however may look at changing these materials. Will ensure material used are distinguishable. Open spaces will have upgraded material to show it is a plaza space as well as entrances. Walkway will have finished concrete.*
- Is there an outdoor kitchen? *A BBQ and counter top will be provided in the outdoor amenity area which is adjacent to indoor amenity area.*
- Parkade goes throughout entire site? *Yes, underground is property line-to-property line.*
- Can you reduce the parkade? *This would be challenging to do with requirements and not going too deep. Aligns with current parking requirements.*

Committee Comments:

Comments from the Committee included:

- Landscape and pedestrian connections as well as relevance to existing LAP are well integrated. Pleased to see connections and setbacks of the pedestrian lanes, etc. Would support opportunity to integrate BC housing site.
- Well thought out proposal that breaks up massing successfully. Many successful integrated design elements. Ground plane does not feel too crowded. Relationship to project and immediate context makes this also successful and commendable. Could not find any provisions for handicapped parking, given that residents may be mobility challenged would like to see more of this. With such a great public space, there is potential for this to be overlooked or missed.
- Proposal adheres to guidelines. Disposition of townhouses to north of building seem somewhat shaded; however, likely a lot quieter than on Marine Drive. Great location for density, close to transit and fortunate location. Articulation (originally concerned about balconies however this is not apparent here).
- Density could be higher given its location. Design is commendable. Concern surrounding public art colored lights and changing light scheme. This is not warranted or appropriate here. Does not require color, these lighting schemes are usually found in more urban areas. People who live in these homes will enjoy the extra balcony space that the District allows.
- South side is a significant pedestrian connection and an extension of the green way. This is the first project redeveloping this side of North Vancouver District. This could potentially be more in line with connecting this adjoining neighborhood who will be using the parks, facilities, community centre, etc. This is a significant connection, same with north – south. Have residents of BC housing been approached who potentially would like access to this walkway? *We spoke with BC Housing and residents however not on this specific topic we are willing to consider this.* No current side walk along southern side of Curling. Opportunity to set a precedent for future development in this area.
- Layby at corner, can small vans park here? *Yes.* Circulations and movement of pedestrian crossing at north bend could be given further consideration.

It was Moved and Seconded:

THAT the Design Review Committee has reviewed the application and recommends SUPPORT of the Sentinel Towers High Rise development at 303 Marine drive;
SUBJECT TO further review by staff of the following items:

- sidewalk of North side of site to be widened and street trees to be added to the boulevard;
- potential access of residents from West onto pedestrian path;

APPENDIX C – DRC

Excerpts of the November 16, 2017 Minutes

- consider overall lighting design in context to neighbourhood;
- overall accessibility of site to be considered in particular to mobility challenged and accessible parking.

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APPENDIX D – ACDI

Development and Inclusion Report – 303 Marine Drive, District of West Vancouver

Report Date: January 25, 2018

Meeting Date: January 11, 2018

Meeting Time: 6pm

Meeting Location: DWV - 750 West 17th St. West Vancouver.

ACDI members in attendance: Amy Amantea, Shayne DeWildt

ACDI Staff in attendance: Stina Hanson, Planning Analyst, DWV

Guests: Kaylen Crosse, Darwin, Grahame Jonston and Richard Bernstein, Architects, Lisa Berg, Senior Planner, District of West Vancouver

Author of Report: Amy Amantea, ACDI Chair

Discussion Topic: Development Project – 303 Marine Drive for Darwin Properties

Discussion Summary and background information on presented project:

Project Details:

The project proposed a 26-storey residential tower. Key features of the proposal are:

- 121 units (93 market condos, 24 rental units and 4 townhouses)⁷;
- 198 underground parking spaces;
- 427 underground bike storage spaces;
- 13.5 per cent site coverage;
- overall building height of approximately 85 meters (278 feet); and
- a Floor Area Ratio (FAR) of 3.25

The site is currently zoned Commercial One (C1) and is currently occupied by Earls Restaurant. The site is at the most eastern point of West Vancouver and is bounded by the District of North Vancouver (DNV) along the eastern property line. Access to the development will be from access roads from DNV. No access to Marine Drive is proposed.

Accessibility Features:

Parking: The District of West Vancouver's Parking Bylaw requires that a total of 3 Accessible Parking stalls are provided: 1 above grade, and 2 in the underground parkade. 303 Marine Drive proposes to exceed this requirement by designing all 3 above-grade parking stalls to be sized to meet accessibility requirements, while one of these 3 will be a designated accessible stall. Below-grade, we propose to provide 3 Accessible Stalls at P2, and 5 Accessible Stalls at P1.

Tower: Unobstructed access to the building entrance from the street and sidewalk will be ensured by way of curb cuts, flush thresholds, automatic door openers, and accessible building enter phone system. Amenity Areas are found on Level 1 and Level 2 of the tower. Both amenity areas will have 1 accessible washroom as well as barrier-free access into, and within, the individual amenity rooms.

303 Marine Drive contains both rental and market housing. We are proposing that on each level of rental and market housing, a minimum of 1 unit per floor will be designed to meet a standard based on the City of North Vancouver's Level 2

⁷ Revised March 2018

APPENDIX D – ACDI

Adaptable Design Guidelines. This equates to approximately 24 units (20% of all units). In addition, we are proposing to include the following in ALL units:

- Solid blocking in walls for backing of future grab bars in bathrooms
- Lowered switches throughout the unit
- Adjustable height shower heads
- Flush threshold to access balcony

Discussion Highlights:

The meeting covered all aspects of the proposed residential tower: parking levels, amenity spaces, the two floor plates of the tower (one rental, one condo) and the public realm. Darwin began the discussion with the number of adaptable units that will be provided: 25 units a total of 20%, including both rental and condo units. They also explained Darwin's corporate policy, which will work potential purchasers to upgrade units to be adaptable at no extra cost. This means there are no additional costs for a person with a disability that wants to purchase one of the non-adaptable units.

The ACDI highlighted the need to understand that "accessible" means universal and that solutions and options must work for everyone, regardless of whether they have vision loss, use a mobility aid or are hard of hearing. It can be a challenge to find systems that will accommodate everyone's needs, but that is the goal the ACDI is working towards.

Parking: ACDI raised the issue of vehicles with side ramps and the need to ensure there is adequate space to the side of each accessible space to allow them to be used by those with side-ramp vehicles. Darwin mentioned there may be opportunities to increase the cross-hatching for some spaces to allow for unencumbered off-loading. The issue of space allocation was raised, as there are often problems with accessible spaces allocated to units that do not need them: Darwin responded that they would include in the strata bylaws references for how the accessible stalls would be allocated to allow stall assignments to match needs.

Amenity Spaces/Mail Room: Currently there are no tactile numbers on the mailboxes and the ACDI felt these should be added in addition to ensuring that accessible units have their mailboxes at level height. The ACDI also recommended the inclusion of a strobe-light alarm system in common spaces for those that are hard of hearing. The ACDI also requested Darwin look into door numbering in stairwells and the use of large format numbers, in yellow, to indicate each floor to aid those with vision loss exiting the building in an emergency.

Unit layout and design: ACDI was supportive of the design that includes level balcony thresholds for all units and how this greatly improves visitability options for every unit. The corporate policy was discussed as it related to the unit floorplates and potential changes that could be accommodated for each unit including adding additional backing in the guest bathrooms for future grab bars and potentially pocket doors in the main bathrooms. Darwin to investigate using a different door latching mechanism (easier to close) that is required on pocket doors in adaptable units in Burnaby.

Public Realm: ACDI commented that concrete pavers should be avoided, with smooth surfaces like flat concrete or asphalt preferred for the public realm. Public art should also not interfere with the ground plane or make it more difficult to navigate through the public realm.

APPENDIX D – ACDI

303 Marine Drive Project Recommendations:

Project title: 303 Marine Drive, West Vancouver

Staff names: Lisa Berg, Senior Planner, District of West Vancouver

Recommendations by ACDI:

Specific Recommendation	Reason for Recommendations
A clause within the strata bylaws that accessible parking stalls must be made available to persons with a disability living within the development and should not be allocated to specific units. A charging space near accessible parking stall means that someone can also park their mobility device, if desired, to charge.	To ensure that the stalls get used by residents with a disability that require and are eligible for accessible parking stalls – as is the intended use. If no residents with a disability require them they should remain vacant until such time as they are needed by a person with a disability who moves in.
A clause within the strata bylaws that mailboxes that are accessible, or lower to the ground, be made available for residents who require the use of a wheelchair or mobility device or have limited mobility.	Reaching a mailbox that is at the top is likely impossible to reach from the level of a person using a mobility device. Having accessible mailboxes is important to residents with a disability.
Installing a VISUAL STROBE LIGHT warning system in ALL the building's common spaces and providing the wiring in the individual units. Also in emergency stairwells, parking, storage lockers, lobby amenity spaces, etc.	An audible alarm will not be heard by people who are deaf or hard of hearing and a visual alarm should be installed in the common spaces. Having the wiring in the individual units would allow for residents who require these devices in their suites to upgrade when/as necessary. This also increases the ability to "age in place"
Residential storage units should be without stairs, well lit. possible strata bylaw accommodations for persons with a disability	Having access to storage is essential and might require that a storage unit be made available that is closer to an entrance for ease of access etc.
Audible floor announcements in all elevators. This can be found standard through many manufacturers	Will announce what floor you are on so that persons with vision loss can identify the difference between the lobby and floors etc. will also allow for easier "aging in place"
Additional backing in guest bathroom to enable easy installation of future grab bars	Provide more flexibility to upgrade units in the future for those using a mobility aid
Addition of pocket doors, with adaptable latching mechanisms as a design solution for bathroom doors	Mitigate potential issue with door clearance and ease of use for those using mobility aids
Limit the use of concrete pavers in the public realm	Challenging for those using mobility aids
Emergency stairwells should have yellow (high contrasting) colours on the bullnose of each stair as well as yellow railings. The floor numbers on the doors should be VERY BOLD in a high contrast (Black on White) and larger than usual (2-3 feet)	This will allow for the best possible visibility for all residents, including those with sight loss, exit more safely in an emergency situation.
Consider braille and tactile markings on Amenity rooms and public spaces and mail boxes.	For people with sight loss to navigate the building and access its common spaces

APPENDIX D – ACDI

Excerpts of the January 11, 2018 Minutes

Motion:

ACDI is very pleased with the efforts undertaken by DARWIN and DWV staff to ensure accessibility to the 303 Marine Drive Development with specific mention to universal access to ALL suite balconies by installing a non-barrier threshold to allow for access with a mobility device and Darwin's internal policy to update accessibility features in any unit to someone who requires it (at no additional cost to the resident/purchaser). ACDI would like to make some additional recommendations to increase the level of universal access outlined in the Development and Inclusion subcommittee report dated January 25, 2018. Further, ACDI would like to see a written confirmation from the District of West Vancouver to share which improvements have/will be made to the project and which ones cannot/will not be included and the reasons for those decisions. ACDI looks forward to hearing back from the District of West Vancouver within 90 days of this report and is happy to look at the project again in future.

APPENDIX E – PAAC

Excerpts of the February 14, 2018 Minutes

Meeting Notes

At the meeting, the Public Art Advisory Committee (PAAC) learned about the proposed development and the applicant's approach to artistic expression as part of the project. The PAAC learned that all projects within the LAP area will contribute funds towards a central art piece located at the Marine Drive and Taylor Way intersection via Community Amenity Contributions. The applicant team reviewed the approach to art and design elements and outlined the opportunity for future PAAC involvement in the process. The PAAC expressed enthusiasm for the project and how it will contribute to the public realm through lighting, design, and water elements. Overall, the Committee supported the project and felt that the architecture and its integrated design elements will strengthen the public realm and will be a success.

Minutes (Excerpt)

Marine Drive development project update (303 Marine Drive)

Darwin Developments and Jan Ballard provided an update on the Marine Drive development public art component:

- The Developer will contribute funding towards a large scale public art project located on another site as well as incorporate public art into its development at 303 Marine Drive.
- The Developer presented a proposal to incorporate a two-story high floating ceiling over a reflecting pool, tied in with a vertical band up the building (which speaks to forest trees/greenery). Public pathways would pass directly by the piece. The vertical band could act as a "beacon" (including changing colors) with a backlit perforated screen.
- The first reading of the proposal goes forward in March 2018. Approval is expected by end of 2018.
- The goal is to have one artist for the integrated light piece and also work with the team to come up with ideas to connect with the vertical band.
- The invitational proposal process for an artist would extend to 30-40 artists invited (non-open call), 18-20 long list candidates with a panel creating the shortlist.
- The panel would consist of approximately two members from the development team and two independents (community members/artists). Darwin is open to having more members on the panel if necessary.
- It will be important that the chosen artist understand light/reflectivity as that is the core concept of the piece.
- The artist should be confirmed before construction (end of the year).
- The vertical concept will be designed by the architect. The underside piece will be designed by an artist.
- The goal is to have a collaborative process with the artist giving input into vertical concept and aiming to integrate that with the underside.

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District of West Vancouver

**Zoning Bylaw No. 4662, 2010,
Amendment Bylaw No. 4962, 2018**
(303 Marine Drive)

Effective Date:

District of West Vancouver

Zoning Bylaw No. 4662, 2010, Amendment Bylaw No. 4962, 2018

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District of West Vancouver

Zoning Bylaw No. 4662, 2010, Amendment Bylaw No. 4962, 2018

A bylaw to rezone certain property at 303 Marine Drive for multifamily residential development.

Previous amendments: Amendment bylaws 4672, 4677, 4678, 4679, 4689, 4701, 4680, 4710, 4697, 4716, 4712, 4737, 4726, 4736, 4757, 4752, 4767, 4787, 4788, 4784, 4772, 4791, 4805, 4809, 4828, 4854, 4873, 4866, 4895, 4839, 4898, 4944, and 4905.

WHEREAS the Council of The Corporation of the District of West Vancouver deems it expedient to provide for an amendment of the Zoning Bylaw;

NOW THEREFORE, the Council of The Corporation of the District of West Vancouver enacts as follows:

Part 1 Citation

- 1.1 This bylaw may be cited as "Zoning Bylaw No. 4662, 2010, Amendment Bylaw No. 4962, 2018".

Part 2 Severability

- 2.1 If a portion of this bylaw is held invalid by a Court of competent jurisdiction, then the invalid portion must be severed and the remainder of this bylaw is deemed to have been adopted without the severed section, subsection, paragraph, subparagraph, clause or phrase.

Part 3 Adds the CD55 Zone & Rezones the Site

- 3.1 Zoning Bylaw No. 4662, 2010, Schedule A, Section 600 (Comprehensive Development Zones) is hereby amended by adding Section 655 as the

CD55 - Comprehensive Development Zone 55 (300 Block Marine Drive), as set out in Schedule A to this bylaw.

- 3.2 The Lands shown shaded on the map in Schedule B to this bylaw are rezoned from C1 (Commercial 1) to CD55 - Comprehensive Development Zone 55 (300 Block Marine Drive).

Part 4 Amends Table of Contents

- 4.1 Zoning Bylaw No. 4662, 2010, Schedule A, Section 100 Table of Contents is amended accordingly.

Part 5 Amends Zoning Maps

- 5.1 Zoning Bylaw No. 4662, 2010, Schedule A, Section 852, Schedule 2, Zoning Maps is hereby amended by changing the zoning of the Lands as shown shaded on the map in Schedule B to this bylaw,

FROM: C1 – Commercial 1

TO: CD55 - Comprehensive Development Zone 55 (300 Block Marine Drive)

Schedules

Schedule A – CD55 - Comprehensive Development Zone 55 (300 Block Marine Drive)

Schedule B – Amendment to Zoning Bylaw No. 4662, 2010, Schedule A, Section 852, Schedule 2, Zoning Maps

READ A FIRST TIME on

PUBLICATION OF NOTICE OF PUBLIC HEARING on

PUBLIC HEARING HELD on

READ A SECOND TIME on

READ A THIRD TIME on

APPROVED by the Minister of Transportation and Infrastructure on

ADOPTED by the Council on

Mayor

Municipal Clerk

Schedule A

655 CD55 (300 Block Marine Drive)

655.01 Permitted Uses

- (1) accessory uses and buildings
- (2) apartment building
- (3) child care
- (4) community care
- (5) home based business
- (6) townhouse

655.02 Floor Area Ratio

- (1) Maximum: 3.25 FAR
- (2) For the purposes of calculating FAR, the site is 4,954.6 square metres, being the size prior to any required highway dedications from the parent parcel.
- (3) For the purposes of this zone, FAR is calculated on the Gross Floor Area (GFA).

655.03 Setbacks

Minimum:

- (1) Front (Klahanie Court): 3.4 metres
- (2) Rear (Marine Drive): 3.0 metres
- (3) Side (East): 5.2 metres
- (4) Side (West): 5.2 metres
- (5) For clarity, no setbacks shall apply for underground parking structures.

655.04 Building Height

- (1) Maximum:
 - (a) Apartment Building: 85 metres
 - (b) Townhouse: 10.1 metres
- (2) Despite Section 120.19, elevator penthouses, solar panels and mechanical equipment and enclosures are excluded from building height.

655.05 Number of Units

- (1) Maximum: 133

655.06 Number of Storeys

- (1) Maximum:
 - (a) Apartment Building: 26
 - (b) Townhouse: 3
 - (c) For clarity, mechanical equipment enclosures are not a storey.

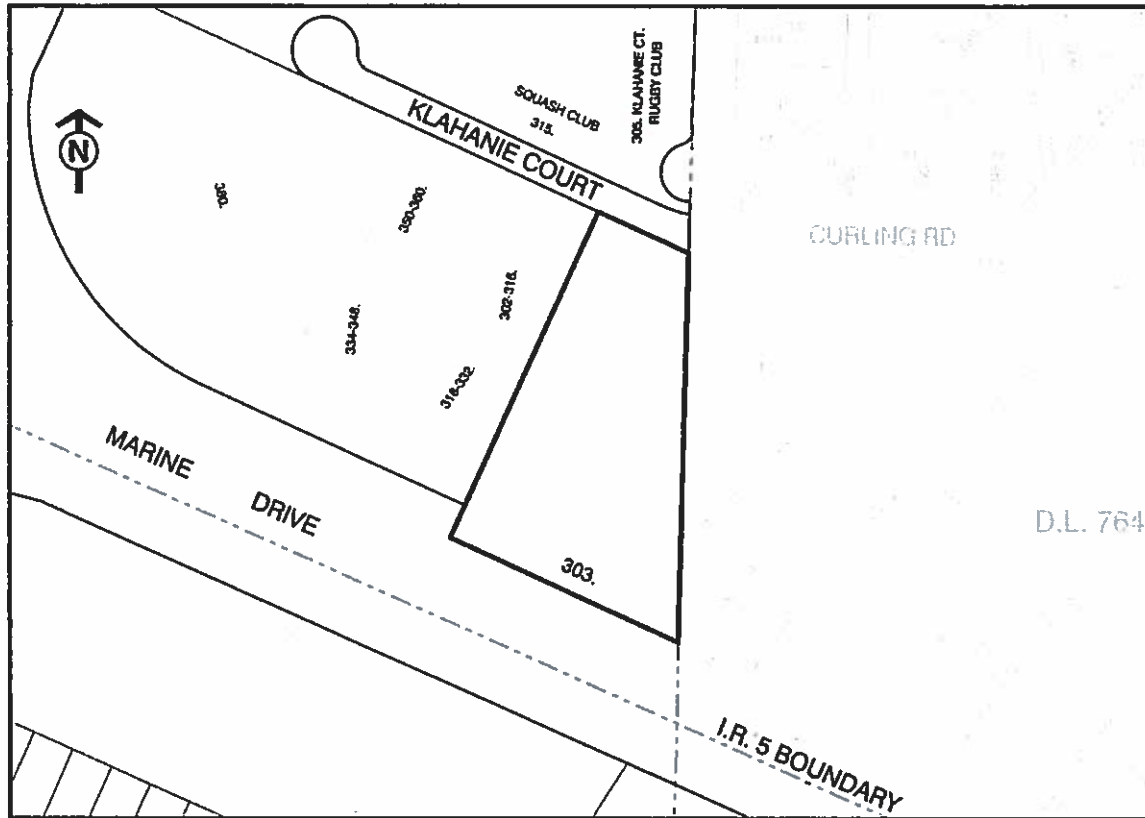
655.07 Off-Street Parking

A maximum of 201 parking spaces shall be provided.

Schedule B

Amendment to Zoning Bylaw No. 4662, 2010, Schedule A, Section 852, Schedule 2, Zoning Maps.

The area shown shaded on the map below rezones the subject site to CD55.



Area to be rezoned from C1 to CD55



District of West Vancouver

APPENDIX G

Housing Agreement Authorization
Bylaw No. 4964, 2018
(303 Marine Drive)

Effective Date:

District of West Vancouver

Housing Agreement Authorization Bylaw No. 4964, 2018

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District of West Vancouver

Housing Agreement Authorization Bylaw No. 4964, 2018

A bylaw to enter into a housing agreement.

WHEREAS the District of West Vancouver and Darwin Properties (303 Marine Drive) Ltd. are to enter into a housing agreement under section 483 of the *Local Government Act* to restrict the use of some of the land; and

NOW THEREFORE, the Council of The Corporation of the District of West Vancouver enacts as follows:

Part 1 Citation

- 1.1 This bylaw may be cited as "Housing Agreement Authorization Bylaw No. 4964, 2018."

Part 2 Severability

- 2.1 If a portion of this bylaw is held invalid by a Court of competent jurisdiction, then the invalid portion must be severed and the remainder of this bylaw is deemed to have been adopted without the severed section, subsection, paragraph, subparagraph, clause or phrase.

Part 3 Housing Agreement

- 3.1 The District of West Vancouver is authorized to enter into a housing agreement under section 483 of the *Local Government Act*, substantially in the form attached to this bylaw as Schedule A, with Darwin Properties (303 Marine Drive) Ltd. or its nominee, in respect of the land located at 303 Marine Drive, West Vancouver, BC and legally described as: PID: 011-279-567, LOT 15 DISTRICT LOT 790 PLAN 4918.
- 3.2 The Mayor and Municipal Clerk are authorized to execute and deliver the housing agreement.

Schedules

Schedule A – Housing Agreement

READ A FIRST TIME on

READ A SECOND TIME on

READ A THIRD TIME on

ADOPTED by the Council on

Mayor

Municipal Clerk

Schedule A – HOUSING AGREEMENT

SCHEDULE A – HOUSING AGREEMENT

PART 2 – TERMS OF INSTRUMENT

HOUSING AGREEMENT AND COVENANT

(Section 483 *Local Government Act* and Section 219 *Land Title Act*)

THIS AGREEMENT dated for reference the ____ day of _____, 2018 is

BETWEEN:

DARWIN PROPERTIES (303 MARINE DRIVE) LTD.
Suite 404 – 197 Forester Street
North Vancouver, BC V7H 0A6
(the "Owner")

AND:

DISTRICT OF WEST VANCOUVER
750 17th Street
West Vancouver, BC V7V 3T3
(the "District")

WHEREAS:

The Owner is the registered owner of land located at 303 Marine Drive in the District of West Vancouver and more particularly described as;

PID: 011-279-567
LOT 15 DISTRICT LOT 790 PLAN 4918

(the "Land");

The Owner wishes to construct a residential development on the Land consisting of one 26-storey building containing approximately 129 Dwelling Units and one (1) townhouse building containing approximately four (4) Dwelling Units (collectively, the "Development"), to a maximum Floor Area Ratio (FAR) of 3.25, and to permit the Development the Owner has applied to the District for an amendment to the District's zoning bylaw;

The Owner has agreed that in order to increase the availability of rental housing in the District the tenure of at least 42 of the Dwelling Units to be constructed on the Land should be restricted to rental, and although those rental units may have individual titles following the deposit of a strata plan, none of them should be sold separately;

Section 483 of the *Local Government Act* permits the District to enter into and note on title to land, housing agreements which may include, without limitation, conditions respecting the form of tenure of housing units and the availability of housing units to classes of persons;

Section 219 of the *Land Title Act* permits the registration of a covenant prohibiting the separate sale of the units that are subject to the covenant; and,

The Owner and the District wish to enter into this Agreement, which shall be a housing agreement and a covenant, to provide long-term market rental housing on the terms and conditions the parties have agreed to.

In consideration of \$10.00 and other good and valuable consideration (the receipt and sufficiency of which is acknowledged by both parties), and in consideration of the promises exchanged below, the Owner and the District covenant and agree pursuant to section 483 of the *Local Government Act* and section 219 of the *Land Title Act* as follows:

1) DEFINITIONS AND INTERPRETATION

i) **Definitions** – In this Agreement, the following words have the following meanings:

- (1) “Daily Amount” means \$500.00 per day as of January 1, 2019 adjusted annually thereafter by adding thereto an amount calculated by multiplying \$500.00 by the percentage change in the CPI since January 1, 2019, to January 1 of the year that a written notice is delivered to the Owner by the District pursuant to section 5.1 of this Agreement. In the absence of obvious error or mistake, any calculation by the District of the Daily Amount in any particular year shall be final and conclusive;
- (2) “Dwelling Unit” means a self-contained area or set of rooms that contains sleeping, cooking and washroom facilities, and is suitable and intended to be used for residential accommodation;
- (3) “Owner” means the party described on page 1 of this Agreement as the Owner and any subsequent owner of the Land or of any part into which the Land is Subdivided, and includes any person who is a registered owner in fee simple of a Dwelling Unit from time to time, and any person who has a legal ownership interest in the entity which is the registered owner in fee simple of a Dwelling Unit or the Land from time to time;
- (4) “Rental Unit” means a Dwelling Unit that is used and occupied only as a permanent residence, by way of a Tenancy Agreement, and only by a person or persons other than the Owner of the Dwelling Unit, pursuant to the terms of this Agreement.
- (5) “Subdivide” means to divide, apportion, consolidate or subdivide the Land or any

building on the Land, or the ownership or right to possession or occupation of the Land or any building on the Land, into two or more lots, strata lots, parcels, parts, portions or shares, whether by plan, descriptive words or otherwise, under the *Land Title Act*, the *Strata Property Act*, or otherwise, and includes the creation, conversion, organization or development of "cooperative interests" or a "shared interest in land" as defined in the *Real Estate Development Marketing Act*;

- (6) "Tenancy Agreement" means a tenancy agreement, lease, license or other agreement granting rights to occupy a Dwelling Unit.

2) RENTAL UNITS

- i) **Use and Occupancy** – The Owner agrees that at least 42 Dwelling Units constructed on the Land as part of the Development shall be Rental Units.
- ii) **Tenancy Agreement** – Every Tenancy Agreement the Owner enters into in respect of a Rental Unit shall:

- (1) include a clause entitling the Owner to terminate the Tenancy Agreement if:

- (a) the Rental Unit is occupied other than as a Rental Unit by a person or persons other than a tenant or tenants under the Tenancy Agreement (a "Tenant" or "Tenants");
- (b) the Rental Unit is occupied by more than the number of people the District's building inspector determines can reside in a Rental Unit given the number and size of bedrooms in the Rental Unit and in light of any relevant standards set by the District in any bylaws of the District;
- (c) the Tenant makes a Rental Unit available to any person or persons for any form of rental with a term of less than 30 days,

and in the case of each breach, the Owner hereby agrees with the District to forthwith provide to the Tenant a notice of termination. The notice of termination shall provide that the termination of the tenancy shall be effective thirty (30) days following the date of the notice of termination; and

- (2) identify all occupants of the Rental Unit and will stipulate that anyone not identified in the Tenancy Agreement will be prohibited from residing at the Rental Unit for more than thirty (30) consecutive days or more than forty-five (45) days total in any calendar year.

- iii) **Annual Verification** – No later than January 15 of each year beginning the year after the District has issued a final occupancy permit for all of the Dwelling Units in the Development the Owner will provide to the District a written statement of the Owner confirming the occupancy of every Rental Unit on the Land complies with section 2.1,

above.

- iv) **No Separate Sale** – The Owner covenants with the District that the Owner will not sell or transfer, or agree to sell or transfer, any Rental Unit, other than a full interest in the fee simple title to all of the Rental Units, and to an agency, third party or individual that will assume the obligations set out in this Agreement.
- v) **Discharge and Amendment of this Agreement** – If the Owner has, pursuant to one or more valid building permits issued by the District, completed the construction of and received occupancy permits for no fewer than 42 Dwelling Units on the Land, then in relation to any Dwelling Units that are not required to be Rental Units, this Agreement, including the Rent Charge set out in Section 4.2 of this Agreement, shall cease to apply, and the Owner may provide to the District a discharge of this Agreement from those Dwelling Units and the common property of the strata corporation (the “Discharge”). If, in addition to the aforementioned discharge, the Owner provides to the District:

- (1) a registrable application to amend this Agreement such that:

- (a) this Agreement, as amended, will be solely registered in the LTO against title to each and every Rental Unit (the “Rental Unit Land”); and,

- (b) every Dwelling Unit on the Rental Unit Land must be a Rental Unit and none of them shall be sold separately

- (the “Amendment”); and,

- (2) an undertaking not to file the Discharge except together with the Amendment,

the District shall execute and return the documents to the Owner within ten business days of the day the District has received both. Notwithstanding the foregoing, once the Owner has confirmed with the District in writing the allocation of at least 42 Rental Units within the Development, the District will provide the Owner with a letter confirming the District’s approval of such allocation.

3) DEMOLITION OF BUILDING CONTAINING DWELLING UNITS

- i) **Demolition** – The Owner will not demolish a Rental Unit unless:
 - (1) the Owner has obtained the written opinion of a professional engineer or architect who is at arm’s length to the Owner and who has been approved in writing by the District, acting in its sole discretion, that it is no longer reasonable or practical to repair or replace any structural component of the building containing the Rental Unit, and the Owner has delivered to the District a copy of the engineer’s or architect’s report; or

- (2) the building containing the Rental Unit is damaged or destroyed, to the extent of 40% or more of its value above its foundations, as determined by the District, in its sole discretion,

and, in each case, a demolition permit for the building containing the Rental Unit has been issued by the District and the building containing the Rental Unit is demolished under that permit.

- ii) **Post-Demolition** – Following demolition, the Owner will use and occupy any replacement building and Rental Unit in compliance with this Agreement to the same extent and in the same manner as this Agreement applies to the original Rental Unit.

4) DEFAULT AND REMEDIES

- i) **Payment of Daily Amount** – The Owner agrees that, in addition to any other remedies available to the District under this Agreement or at law or in equity, if a Rental Unit is used or occupied in breach of this Agreement or the Owner is otherwise in breach of any of its obligations under this Agreement, and the Owner fails to rectify such breach within thirty (30) days of receipt of written notice from the District setting out the details of such breach, the Owner will pay the Daily Amount to the District for every day that the breach continues after receipt of the District's notice. The Daily Amount is due and payable five (5) business days following receipt by the Owner of an invoice from the District for the same.
- ii) **Rent Charge** – The Owner hereby grants to the District a perpetual rent charge against the Land securing payment by the Owner to the District of any amount payable by the Owner pursuant to section 5.1 of this Agreement. The Owner agrees that the District, at its option, may enforce payment of such outstanding amount in a court of competent jurisdiction as a contract debt, by an action for and order for sale, by proceedings for the appointment of a receiver, or in any other method available to the District at law or in equity. This rent charge is created both under section 219(6) of the *Land Title Act* as an integral part of the statutory covenant created by this Agreement and as a fee simple rent charge at common law. Enforcement of this rent charge by the District does not limit, or prevent the District from enforcing, any other remedy or right the District may have against the Owner.

5) MISCELLANEOUS

- i) **Nature of Agreement** – The Owner acknowledges and agrees that this Agreement includes a housing agreement entered into under section 483 of the *Local Government Act* and a covenant under section 219 of the *Land Title Act*;
- ii) **Indemnity** – The Owner will indemnify and save harmless the District and each of its elected officials, officers, directors, and agents, and their heirs, executors, administrators, personal representatives, successors and assigns, from and against all claims, demands,

actions, loss, damage, costs and liabilities, which all or any of them will or may be liable for or suffer or incur or be put to by reason of or arising out of:

- (1) any negligent act or omission of the Owner, or its officers, directors, agents, contractors or other persons for whom at law the Owner is responsible relating to this Agreement;
- (2) the construction, maintenance, repair, ownership, lease, license, operation, management or financing of the Land or any Dwelling Unit or the enforcement of any Tenancy Agreement;

or

- (3) without limitation, any legal or equitable wrong on the part of the Owner or any breach of this Agreement by the Owner.

iii) **Release** – The Owner hereby releases and forever discharges the District and each of its elected officials, officers, directors, and agents, and its and their heirs, executors, administrators, personal representatives, successors and assigns, from and against all claims, demands, damages, actions, or causes of action by reason of or arising out of or which would or could not occur but for the:

- (1) construction, maintenance, repair, ownership, lease, license, operation or management of the Land or any Dwelling Unit under this Agreement; or
- (2) the exercise by the District of any of its rights under this Agreement.

iv) **Survival** – The indemnity and release set out in this Agreement will survive termination or discharge of this Agreement.

v) **Priority** – The Owner will do everything necessary, at the Owner's expense, to ensure that this Agreement will be noted and registered against title to the Land in priority to all financial charges and financial encumbrances which may have been registered or are pending registration against title to the Land save and except those specifically approved in advance in writing by the District or in favour of the District, and that a notice under section 483(5) of the *Local Government Act* will be filed on the title to the Land.

vi) **District's Powers Unaffected** – This Agreement does not:

- (1) affect, fetter or limit the discretion, rights, duties or powers of the District under any enactment or at common law, including in relation to the use or subdivision of the Land;
- (2) impose on the District any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement;

- (3) affect or limit any enactment relating to the use or subdivision of the Land; or
 - (4) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Land.
- vii) **Agreement for Benefit of District Only** – The Owner and the District agree that:
 - (1) this Agreement is entered into only for the benefit of the District;
 - (2) this Agreement is not intended to protect the interests of the Owner, any Tenant, or any future owner, lessee, occupier or user of the Land or the building or any portion thereof, including any Dwelling Unit; and
 - (3) the District may at any time execute a release and discharge of this Agreement, without liability to anyone for doing so, and without obtaining the consent of the Owner.
- viii) **No Public Law Duty** – Where the District is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the Owner agrees that the District is under no public law duty of fairness or natural justice in that regard and agrees that the District may do any of those things in the same manner as if it were a private party and not a public body.
- ix) **Notice** – Any notice required to be served or given to a party herein pursuant to this Agreement will be sufficiently served or given if delivered, to the postal address of the Owner set out on title to the Land in the records at the LTO, and in the case of the District at the address listed above, to the attention of the Director of Planning or to the most recent postal address provided in a written notice given by each of the parties to the other. Any notice which is delivered is to be considered to have been given on the first day after it is dispatched for delivery.
- x) **Enuring Effect** – This Agreement will extend to and be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.
- xi) **Severability** – If any provision of this Agreement is found to be invalid or unenforceable, such provision or any part thereof will be severed from this Agreement and the resultant remainder of this Agreement will remain in full force and effect.
- xii) **Waiver** – All remedies of the District will be cumulative and may be exercised by the District in any order or concurrently in case of any breach and each remedy may be exercised any number of times with respect to each breach. Waiver of or delay in the District exercising any or all remedies will not prevent the later exercise of any remedy for the same breach or any similar or different breach.
- xiii) **Whole Agreement** – This Agreement, and any documents signed by the Owner contemplated by this Agreement, represent the whole agreement between the District

and the Owner respecting the use and occupation of the Dwelling Unit, and there are no warranties, representations, conditions or collateral agreements made by the District except as set forth in or contemplated by this Agreement.

- xiv) **Further Assurance** – Upon request by the District the Owner will forthwith do such acts and execute such documents as may be reasonably necessary in the opinion of the District to give effect to this Agreement.
- xv) **Agreement Runs with Land** – This Agreement burdens and runs with the Land and every parcel into which it is Subdivided in perpetuity. All of the covenants and agreements contained in this Agreement are made by the Owner for itself, its personal administrators, successors and assigns, and all persons who after the date of this Agreement acquire an interest in the Land.
- xvi) **Equitable Remedies** – The Owner acknowledges and agrees that damages would be an inadequate remedy for the District for any 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.
- xvii) **No Joint Venture** – Nothing in this Agreement will constitute the Owner as the agent, joint venturer, or partner of the District or give the Owner any authority to bind the District in any way.
- xviii) **Applicable Law** – The laws of British Columbia (including, without limitation, the *Residential Tenancy Act*) will apply to this Agreement and all statutes referred to herein are enactments of the Province of British Columbia.
- xix) **Deed and Contract** – By executing and delivering this Agreement the Owner intends to create both a contract and a deed executed and delivered under seal.
- xx) **Joint and Several** – If the Owner is comprised of more than one person, firm or body corporate, then the covenants, agreements and obligations of the Owner shall be joint and several.
- xxi) **No liability after transfer** – In accordance with sections 218(4) and 219(8) of the *Land Title Act* (British Columbia), a person is not liable for a breach of this Agreement occurring after that person has ceased to be an owner of the Land.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the *Land Title Act* Form C and D which is attached to and forms part of this Agreement.

CONSENT AND PRIORITY AGREEMENT

WHEREAS Canadian Western Bank (the "Chargeholder") is the holder the following charges all registered in the Vancouver Land Title Office:

Mortgage CA3813258

Assignment of Rents CA3813259

(collectively the "Charge"), which Charge encumbers the lands (the "Lands") described in item 2 of the *Land Title Act* Form C attached hereto.

THEREFORE THIS CONSENT AND PRIORITY AGREEMENT IS EVIDENCE THAT IN CONSIDERATION OF \$1.00 AND OTHER GOOD AND VALUABLE CONSIDERATION PAID BY THE TRANSFEREE TO THE CHARGEHOLDER:

1. The Chargeholder hereby consents to the granting and registration of the Section 219 Covenant and Rent Charge attached hereto (together referred to as the "Covenant") and the Chargeholder hereby agrees that the Covenant shall be binding upon its interest in and to the Lands.
2. The Chargeholder hereby grants to the transferee described in item 6 of the *Land Title Act* Form C attached hereto priority for the Covenant over the Chargeholder's right, title and interest in and to the Lands, and the Chargeholder does hereby postpone the Charge and all of its right, title and interest thereunder to the Covenant as if the Covenant had been executed, delivered and registered prior to the execution, delivery and registration of the Charge.

IN WITNESS WHEREOF, the Chargeholder has executed and delivered this Consent and Priority Agreement by executing the *Land Title Act* Form D above which is attached hereto and forms part of this Agreement.

END OF DOCUMENT

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TERMS OF INSTRUMENT – PART 2

DEVELOPMENT COVENANT

(section 219 *Land Title Act*)

This Agreement dated for reference the 4th day of April, 2018.

BETWEEN:

DISTRICT OF WEST VANCOUVER

750 17th Street
West Vancouver, BC V8V 3T3

(the "District")

AND

DARWIN PROPERTIES (303 MARINE DRIVE) LTD.

Suite 404 – 197 Forester Street
North Vancouver, BC V7H 0A6

(the "Owner")

GIVEN THAT:

- A.** The Owner is the owner of land located at 303 Marine Drive in the District of West Vancouver and more particularly described as:

PID: 011-279-567
LOT 15 DISTRICT LOT 790 PLAN 4918

(the "Land");

- B.** The Owner wishes to construct a residential development on the Land consisting of one 26-storey building containing approximately 129 Dwelling Units and one (1) townhouse building containing approximately four (4) Dwelling Units (collectively, the "Development"), to a maximum Floor Area Ratio (FAR) of 3.25.
- C.** The District's Council is considering an amendment to the District's Zoning Bylaw by way of Zoning Bylaw No. 4662, 2010, Amendment Bylaw No. 4962, 2018 (the "Amendment Bylaw") to permit the Development on the Land;
- D.** The Owner has offered to provide certain amenities to the District in conjunction with the Development, and has promised the District that no portion of the Development shall be constructed or occupied except generally in accordance with the plans submitted to the District in support of the Owner's zoning amendment application;

- E. The Owner has asked the District to consider adopting the Amendment Bylaw before all of the proposed amenities are provided, in exchange for the Owner's agreement to restrict the use and development of the Land until the Owner has provided the promised amenities;
- F. Section 219 of the *Land Title Act* of British Columbia permits the registration of a covenant of a negative or positive nature in favour of a municipality in respect of the use of land, the building on land, the subdivision of land, and the preservation of land or a specific amenity on land; and
- G. The Owner wishes to grant and the District wishes to accept these covenants over the Land restricting the use and subdivision of the Land in the manner herein provided.

THEREFORE in consideration of the mutual promises exchanged in this Agreement, the parties agree pursuant to s. 516 of the *Local Government Act* as follows:

1. DEFINITIONS AND INTERPRETATIONS

1.1 In this Agreement:

"Amenities" means the Pathways and the Works and Services.

"Pathways" means the areas shown outlined in bold on the Site Plan attached to this Agreement as **Schedule A**.

"Works and Services" means all of the infrastructure described in Schedule C.

2. SCHEDULES

2.1 The following Schedules are attached to and form part of this Agreement:

Schedule A - Site Plan (showing location and landscaping of Pathways)

Schedule B – SRW and covenant terms

Schedule C – Works and Services standards and requirements

3. APPLICATION

3.1 This Agreement applies to the Land, and to any parcel of land into which the Land may be subdivided, whether under the *Strata Property Act*, the *Land Title Act* or otherwise.

4. RESTRICTIONS ON USE, DEVELOPMENT AND SUBDIVISION OF THE LAND

- 4.1** The Owner shall not start the construction of any building or structure on the Land, other than the construction of the sales centre for the Development, until the Owner has granted to the District, in priority over any financial charges registered on the title to the Land, a statutory right of way providing public access to the Pathways, together with a covenant to maintain, in perpetuity, the surface treatments and landscaping elements shown in **Schedule A**, which, for certainty, include but are not limited to all hard and soft landscaping features and furnishings and durable all-weather surfacing appropriate for pedestrian, bicycle and wheelchair use, and which right of way and covenant shall be substantially in the form attached to this Agreement as **Schedule B**.
- 4.2** Other than as may be required to construct the Development, including the construction and occupancy of the sales centre for the Development, the Owner shall not use or occupy, nor permit the use or occupancy of, any portion of the Land or any building or structure located on the Land until and unless the Owner has completed, to the satisfaction of the District's Manager of Land Development Engineering (the "District Approval"), the installation of the Works and Services described in **Schedule C**, and provided the District with security in the form of cash or an irrevocable, automatically renewing letter of credit in the amount of \$60,000 (being 10% of the estimated cost of the Works and Services) (the "Letter of Credit"), which security the District may hold for a period of 1 year following the completion of the installation of the Works and Services, to the satisfaction of the District's Manager of Land Development Engineering, and which the District may use during that period to perform maintenance or correct any deficiencies in the Works and Services if the Owner fails to do so.
- 4.3** The District's right to draw down the Letter of Credit:
- (a) The District may draw down the Letter of Credit during the Warranty Period to perform maintenance or correct any deficiencies in the Works and Services if the Owner fails to do so.
 - (b) If the District draws down the Letter of Credit, the District may only hold and use the drawn down amount to maintain or correct any deficiencies in the Works and Services.
- 4.4** Within 15 days after the end of the Warranty Period the District will return the Letter of Credit (or the undrawn-down portion thereof) to the Owner together with any unused drawn down funds, without interest.

5. INDEMNITY AND RELEASE

- 5.1** The Owner shall indemnify and keep indemnified the District from any and all claims, causes of action, suits, demands, fines, penalties, costs, deprivation, expenses or legal

fees whatsoever, whether based in law or equity, whether known or unknown, which anyone has or may have against the District or which the District incurs as a result of any loss, damage or injury arising out of or connected with or any breach by the Owner of this Agreement.

- 5.2 The Owner hereby releases, save harmless and forever discharges the District of and from any claims, causes of action, suits, demands, fines, penalties, costs, deprivation, expenses or legal fees whatsoever which the Owner can or may have against the District, whether based in law or equity, whether known or unknown, for any loss, damage or injury that the Owner may sustain or suffer arising out of or connected with this Agreement, including the restrictions and requirements of this Agreement, the provisions of the Amenities and the development of the Land as contemplated under this Agreement, or any breach by the Owner of any covenant in this Agreement, save and except as a result of any breach by the District of this Agreement.
- 5.3 The indemnity and release provisions of sections 5.1 and 5.2 shall survive the expiry or termination of this Agreement.

6. NOTICE

- 6.1 Any notice permitted or required by this Agreement to be given to either party must be given to that party at the address set out above, or to any other address provided in writing.

7. POWERS PRESERVED

- 7.1 Except as expressly set out in this Agreement, nothing in this Agreement shall prejudice or affect the rights and powers of the District in the exercise of its powers, duties or functions under the *Community Charter* or the *Local Government Act* or any of its bylaws, all of which may be fully and effectively exercised in relation to the Lands as if this Agreement has not been executed and delivered to the Owner, subject only to section 516 of the *Local Government Act*.

8. BINDING EFFECT

- 8.1 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.

9. WAIVER

- 9.1 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.

10. CUMULATIVE REMEDIES

10.1 No remedy for a breach of this Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or in equity.

11. SURVIVAL

11.1 All representations and warranties set forth in this Agreement and all provision of this Agreement, the full performance of which is not required prior to a termination of this Agreement, shall survive any such termination and be fully enforceable thereafter.

12. ENTIRE AGREEMENT

12.1 The whole agreement between the parties is set forth in this document and no representations, warranties or conditions, express or implied, have been made other than those expressed.

13. SEVERABILITY

13.1 Each article of this Agreement shall be severable. If any provision of this Agreement is held to be illegal or invalid by a Court of competent jurisdiction, the provision may be severed and the illegality or invalidity shall not affect the validity of the remainder of this Agreement.

14. COUNTERPARTS

14.1 This Agreement may be executed in counterpart with the same effect as if both 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.

15. LIMITATION ON OWNER'S OBLIGATIONS

15.1 In accordance with Section 219(8) of the *Land Title Act* (British Columbia), a person is not liable for a breach of this Agreement occurring after that person has ceased to be an owner of the Land.

16. DISCHARGE OF THIS AGREEMENT

16.1 If the District's Council does not adopt the Amendment Bylaw by March 31, 2019, this Agreement shall terminate and, if the Owner delivers to the District a signed discharge of this Agreement, the District shall sign the discharge and return it to the Owner within 10 days for filing in the Land Title Office.

16.2 The District shall execute and deliver a discharge of the covenant pursuant to Section 219 of the *Land Title Act*, R.S.B.C. 1996, Chapter 250 contained in Section 2.1 of this

Agreement from title to any lot upon which a building is situated, upon the later of (i) an occupancy permit or permits for the whole of such approved building(s) having been issued and (ii) the completion of the installation of the Works and Services, to the satisfaction of the District's General Manager of Engineering, on the following basis:

- a) The District shall have no obligation to execute and deliver such discharge until a written request for it from the Owner has been received by the District, which request shall include the form of discharge, in registrable form;
- b) The cost of preparation of the discharge, and the cost of registration of the same shall be paid by the Owner; and
- c) The District shall have a reasonable time within which to execute the discharge and return it to the Owner for registration.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the *Land Title Act* Form C and D which is attached to and forms part of this Agreement.

SCHEDULE A

SITE PLAN



SCHEDULE B

STATUTORY RIGHT OF WAY and SECTION 219 COVENANT

TERMS OF INSTRUMENT – PART 2

STATUTORY RIGHT OF WAY and SECTION 219 COVENANT

THIS AGREEMENT, dated for reference the _____ day of _____, 2018, is

BETWEEN:

DARWIN PROPERTIES (303 MARINE DRIVE) LTD.

Suite 404 – 197 Forester Street

North Vancouver, BC V7H 0A6

(the "Grantor")

AND:

DISTRICT OF WEST VANCOUVER

750 17th Street

West Vancouver, BC V8V 3T3

(the "District")

GIVEN THAT:

- A. Darwin is the registered owner in fee simple of certain lands and premises located at 303 Marine Drive, West Vancouver, British Columbia, and more particularly described as:

PID: 011-279-567

LOT 15 DISTRICT LOT 790 PLAN 4918

(the "Land");

- B. The Grantor intends to construct a residential development on the Land consisting of one 26-storey building containing approximately 129 dwelling units (the "Residential Tower") and one (1) townhouse building containing approximately four (4) dwelling units (collectively, the "Development"), together with certain public realm amenities and landscaping improvements, including pathways on the Land open to the public for non-motorized transportation and recreation purposes (the "Pathways");
- C. The Grantor, as part of and in connection with the Development on the Land, has agreed to construct the Pathways and maintain them in perpetuity;

- D. The Grantor has agreed to grant to the District a statutory right of way for the operation and use of the Pathways as areas open to the public in perpetuity, and this Statutory Right Of Way is necessary for the operation and maintenance of the District's undertaking; and
- E. Section 219 of the *Land Title Act* authorizes the registration of a covenant, whether of a negative or positive nature, in respect of the use of land, in favour of the District, as a charge against the title to that land, which covenant is enforceable against the owner and its successors in title, even if the covenant is not annexed to land owned by the District;

THIS AGREEMENT is evidence that, pursuant to ss. 218 and 219 of the *Land Title Act*, and in consideration of ONE DOLLAR (\$1.00) paid by the District to the Grantor and other good and valuable consideration (the receipt and sufficiency of which the Grantor hereby acknowledges), the Grantor grants to and covenants with the District as follows:

1. **Statutory Right of Way for Pathways** – The Grantor hereby grants, conveys and confirms to the District in perpetuity the full, free and uninterrupted right, liberty, easement and Statutory Right Of Way (the "Statutory Right of Way") on, over and across that portion of the Land which is shown outlined in a heavy black line on the Statutory Right of Way Plan prepared by ● and certified correct on the ● day of ●, 2018, a reduced copy of which is attached hereto as Schedule "A" (the "Right of Way Area") at all times after final occupancy permit or permits for the whole of the Residential Tower constructed on the Land has been issued by the District for the following purposes:
- (a) to permit all members of the public, at their will and pleasure, 24 hours a day, 7 days a week, to pass, be or remain on, and repass along and across the surface of the Right of Way Area, or any portion thereof, for recreation and to provide public access to and from the streets, sidewalks and parks adjacent to the Land:
 - (i) on foot;
 - (ii) in wheelchairs or similar devices which afford mobility to injured or disabled pedestrians;
 - (iii) using baby carriages, children's strollers, or similar devices which afford mobility to young people and their parents/guardians; or
 - (iv) by bicycle, skateboard or similar non-motorized device or vehicle;
 - (b) to permit the District and the District's elected and appointed officials, officers, employees, and contractors ("District Personnel"), to enter on the Right of Way Area with works, vehicles, equipment, tools and materials for the purpose of inspecting the Right of Way Area and remove such structures, improvements, fixtures, and other obstructions as may be necessary to ensure safe and effective use and enjoyment of the Pathways; and
 - (c) to do all other things on the Right of Way Area as may be necessary, desirable or incidental to the ongoing use, operation, and enjoyment of the Pathways.

2. **Rights of Grantor – Notwithstanding the foregoing the Grantor and those claiming authority through the Grantor, and their respective agents may eject from the Land, including the Right of Way Area, any member of the public who:**
 - (a) acts in a disorderly or offensive manner, or interferes with, threatens or obstructs any other person, appears intoxicated or commits or appears to commit an illegal act;
 - (b) presents an apparent threat to the safety of others or to the security of any landscaping or any improvements on the Right of Way Area or the Land;
 - (c) takes up abode at any time by erecting a tent, shelter or other type of structure or accommodation in the Right of Way Area;
 - (d) lights any fires or burns any material in the Right of Way Area; or
 - (e) otherwise creates a nuisance.

3. **Section 219 Covenant to Construct and Maintain – Notwithstanding the grant to the District of the rights enumerated in section 1, the Grantor further covenants and agrees as follows:**
 - (a) the Grantor shall, at is own cost and as required by and pursuant to Development Permit No. 17-077 issued by the District, complete the design, construction, and installation of the Pathways, in a good and workmanlike manner;
 - (b) the Grantor will, at its own cost and in perpetuity, keep clean, repair, and maintain the Pathways in good, safe and sufficient repair and condition, to the satisfaction of the District;
 - (c) if the Grantor fails to keep, repair, and maintain the Pathways in good, safe and sufficient repair to the satisfaction of the District’s Director of Engineering, acting reasonably, the District shall be entitled to do such work after giving 20 days’ prior written notice to the Grantor (except in the case of an emergency, in which case no notice is required) specifying the default and requiring it to be remedied and the Grantor fails to carry out such work within such 20 day period, or if the work requires longer than 20 days to carry out, the Grantor has failed to commence carrying out the work and to diligently proceed with the work thereafter, and the Grantor shall pay the costs to the District incurred in doing such work forthwith upon receipt of an invoice from the District; and
 - (d) the Grantor agrees that the District is entitled to obtain an order for specific performance or a prohibitory or mandatory injunction in respect of any breach by the Grantor of this section 3. The Grantor agrees that this section is reasonable given the public interest in the need for effective maintenance and protection of the Pathways from breaches of this section 3;

4. Grantor's Obligations – The Grantor must:

- (a) not do or permit to be done anything in the Right of Way Area which in the opinion of the District, acting reasonably, may interfere with, injure or impair the operating efficiency of, or obstruct access to or the use of the Right of Way Area, the Pathways, or the rights granted under this Statutory Right of Way;
- (b) permit the District to peaceably hold and enjoy the rights hereby granted;
- (c) permit the District to do all other things in the Right of Way Area which in the opinion of the District are reasonably necessary for the safe use and preservation of the Right of Way Area for the purposes of the Pathways and the Statutory Right of Way;
- (d) not deposit or place garbage, debris or other material in the Right of Way Area, other than the parkade of the Development which will be constructed below the Right of Way Area; and
- (e) at its own expense, do or execute or cause to be done or executed all such further and other lawful acts, deeds, things, conveyances and assurances whatsoever for better assuring to the District the rights, liberties, and right of way hereby granted.

5. District's Obligations – The District must do all things hereby authorized to be done by it over, through, and upon the Right of Way Area in a good and workmanlike manner so as to cause no unnecessary damage or disturbance to the Grantor, the Development (including any portions of the parkade of the Development, including the membrane to such parkade) the Land, or the Right of Way Area or to any improvements thereon.

6. District's Rights – The District:

- (a) is entitled to peaceably hold and enjoy the rights, liberties and Statutory Right of Way hereby granted without hindrance, molestation or interruption by the Grantor or any person, firm or corporation claiming by, through, under or in trust for the Grantor;
- (b) may remove anything placed on the Right of Way Area by the Grantor which may interfere with, injure or impair the operating efficiency of, or obstruct access to or the use of the Pathways or the rights granted by the Statutory Right of Way, but must promptly restore the Right of Way Area to substantially its original condition, but for the Pathways, so far as is reasonably practical; and
- (c) on default by the Grantor of any of its obligations under this Agreement, the District may, but is not obliged to, rectify the default, provided that, except in the case of an emergency (in which case no notice is required), the District must first give 20 days' prior notice to the Grantor specifying the default and requiring it to be remedied and the Grantor fails to carry out such work within such 20 day

period, or if the work requires longer than 20 days to carry out, the Grantor has failed to commence carrying out the work and to diligently proceed with the work thereafter. The Grantor shall, forthwith upon receiving an invoice from the District, reimburse District for its reasonable, out of pocket expenses incurred in remedying such a default.

7. **Release** – The Grantor will not make any claims against the District or District Personnel and the Grantor hereby release and discharge the District and District Personnel from and against all damages, losses, costs, actions, causes of action, claims, demands, judgements, builders liens, liabilities, expenses, indirect or consequential damages (including loss of profits and loss of use and damages arising out of delays) and injuries (including personal injury and death) (collectively, “Losses”) which may, at any time, arise or accrue to the Grantor, in connection with this Agreement including, without limitation:

- (a) by reason of the District or District Personnel:
 - (i) review, accepting or approving the design, specifications, materials and methods for construction of the Pathways;
 - (ii) inspecting the Pathways;
 - (iii) performing any work in accordance with the terms of this Agreement or requiring the Grantor to perform any work pursuant to this Agreement;
 - (iv) exercising any of its rights under any statutory right of way granted to the District pursuant to this Agreement; or
 - (v) withholding any permits pursuant to this Agreement.
- (b) that arise out of, or would not have been incurred but for:
 - (i) the design, construction or installation (including any defective materials or faulty workmanship) of the Pathways;
 - (ii) this Agreement;

except to the extent such Losses are the result of the negligent acts or omissions on the part of the District or District Personnel. The release set out in this Section 7 will survive the expiration or earlier termination of this Agreement.

8. **Indemnity** –

- (a) The Grantor hereby covenants and agrees with the District to indemnify and save harmless and reimburse the District and District Personnel from and against all Losses which may arise or accrue to the Grantor any person, firm or corporation against the District or District Personnel or which the District or District Personnel

may pay, incur, sustain or be put to by reason of or which would not or could not have been sustained "but for" any of the following:

- (i) the construction, installation, existence, maintenance, repair, replacement, removal, use or occupation of the Pathways or the Right of Way Area;
- (ii) this Agreement, including the withholding of any permits by the District pursuant to this Agreement;
- (iii) any personal injury, property damage or death occurring in or upon the Right of Way Area in whole or part from the exercise of the statutory right of way in this Agreement by any party; or
- (iv) the release by the District of any or all of the District's rights under this Agreement or the loss of any rights purported to be granted hereby,
- (v) the District or District Personnel:
 - (A) reviewing, accepting or approving the design, specifications, materials and methods for construction of the Pathways;
 - (B) inspecting the Pathways;
 - (C) performing any work in accordance with the terms of this Agreement or requiring the Grantor to perform any work pursuant to this Agreement; or
 - (D) exercising any of its rights under any statutory right of way granted to the District pursuant to this Agreement; or
- (vi) any and all Losses which may arise or accrue to any person, firm or corporation including a member of the public against the District or any District Personnel or which the District or any District Personnel may, incur, sustain or be put to, by reason of:
 - (A) any negligent act or omission or wilful misconduct of the Grantor or any of their contractors, subcontractors, employees, agents, licensees, invitees and permittees in connection with the exercise of the obligations or responsibilities of the Grantor under this Agreement; or
 - (B) any default in the due observance and performance of the obligations or responsibilities of the Grantor under this Agreement,

except to the extent such Losses are the result of the negligent acts or omissions on the part of the District or District Personnel. This indemnity is both a personal covenant of the Grantor and an integral part of this Section 219 Covenant and will survive the expiration or earlier termination of this Agreement.

9. **No Waiver** – No waiver of default by either party is effective unless expressed in writing by the party waiving default, and no condoning, overlooking or excusing by either party of a previous default of the other is to be taken to operate as a waiver of any subsequent default or continuing default, or to in any way defeat or affect the rights and remedies of the non-defaulting party.
10. **Discretion** – Wherever in this Agreement the approval of the District is required, some act or thing is to be done to the District’s satisfaction, the District is entitled to form an opinion, or the District is given a sole discretion:
 - (a) the relevant provision is not deemed to have been fulfilled or waived unless the approval, opinion or expression of satisfaction is in writing signed by the District’s Director of Planning or any other person duly authorized by the Council of the District of West Vancouver to perform the functions of the Director of Planning;
 - (b) the approval, opinion or satisfaction is in the discretion of the Director of Planning acting reasonably in accordance with municipal engineering practice.
11. **No Effect on Powers** – This Agreement does not:
 - (a) affect or limit the discretion, rights, duties or powers of the District under the common law or any statute, bylaw, or other enactment;
 - (b) affect or limit the common law or any statute, bylaw or other enactment applying to the Lands; or
 - (c) relieve the Grantor from complying with the common law or any statute, bylaw or other enactment.
12. **Notice** – Any notice to be given pursuant to this Agreement must be in writing and must be delivered personally. The addresses of the parties for the purpose of notice are the addresses hereinbefore set out. Notice may be left at the relevant address in the same manner as ordinary mail is left by Canada Post and is to be deemed to have been given when delivered. Any party may at any time give notice in writing to the other of any change of address and from and after the receipt of notice the address therein specified is to be deemed to be the address of such party for the giving of notice.
13. **Severance** – If any section, subsection, sentence, clause or phrase in this Agreement is for any reason held to be invalid by the decision of a court of competent jurisdiction, the invalid portion is to be severed and the decision that it is invalid does not affect the

validity of the remainder of this Agreement, the parties hereby agreeing that they would have entered into the Agreement without the severed provision.

14. **Entire Agreement** – No amendment of this Agreement, is valid or binding unless in writing and executed by the parties.
15. **Assumption by Strata Corporation** – If, as and when the Grantor subdivides the Lands or any building on the Lands by a strata plan under the *Strata Property Act* (British Columbia) the Grantor will forthwith, and in any event before the first conveyance of any strata lot, cause the strata corporation then created (the “Strata Corporation”) to assume the Grantor’s obligations hereunder to the same extent as if the Strata Corporation had been an original party to this Agreement by executing and delivering to the District an assumption agreement in all material respects in the form attached hereto as Schedule “B”. If the Grantor fails to comply with this section 15, the Grantor will remain liable for the performance of the obligations hereunder notwithstanding the strata subdivision of the Lands or any building on the Lands and notwithstanding the transfer of any portion of the Lands or any building on the Lands, including any strata lot, to a third party transferee. This section 15 does not limit or restrict the intent and meaning of section 18 herein.
16. **Joint and Several** - if there is more than one owner of the Lands then those owners are jointly and severally responsible for performance of the obligations in this Agreement.
17. **Schedules** – Schedule A being a statutory right of way plan showing the Statutory Right of Way Area and Schedule B being the assumption agreement, form part of this Agreement.
18. **Interest In Land and Enurement** – This Agreement runs with the Lands and each and every part into which the Lands may be subdivided or consolidated by any means (including subdivision plan, reference or explanatory plan, strata plan, bare land strata plan or lease), but no part of the fee of the Lands passes to or is vested in the District under or by this Agreement and the Grantor may fully use the Right of Way Area and Lands subject only to the common law and the rights, obligations and restrictions expressly set out in this Agreement. This Agreement enures to the benefit of and is binding on the parties notwithstanding any rule of law or equity to the contrary.
19. **Temporary Interruption** – The Grantor may, upon reasonable written notice to the District, temporarily interrupt the exercise of the rights of the District and its officers, employees, contractors, licensees and invitees (including members of the general public), during the course of construction of the Development and the Pathways, and for such temporary periods as are necessary from time to time to maintain or repair the Development or the Pathways, provided that any such interruption shall be as short as reasonably possible.

20. **No liability after transfer** – In accordance with sections 218(4) and 219(8) of the *Land Title Act* (British Columbia), a person is not liable for a breach of this Agreement occurring after that person has ceased to be an owner of the Lands.

As evidence of their agreement to be bound by the above terms, the parties each have executed and delivered this Agreement by executing Part 1 of the *Land Title Act* Form C and D to which this Agreement is attached and which forms part of this Agreement.

CONSENT AND PRIORITY AGREEMENT

WHEREAS Canadian Western Bank (the "Chargeholder") is the holder of a Mortgage and Assignment of Rents (collectively, the "Charges") encumbering the lands (the "Lands") described in item 2 of the *Land Title Act* Form C attached hereto, which were registered in the Vancouver Land Title Office under numbers CA3813258 and CA3813259 respectively.

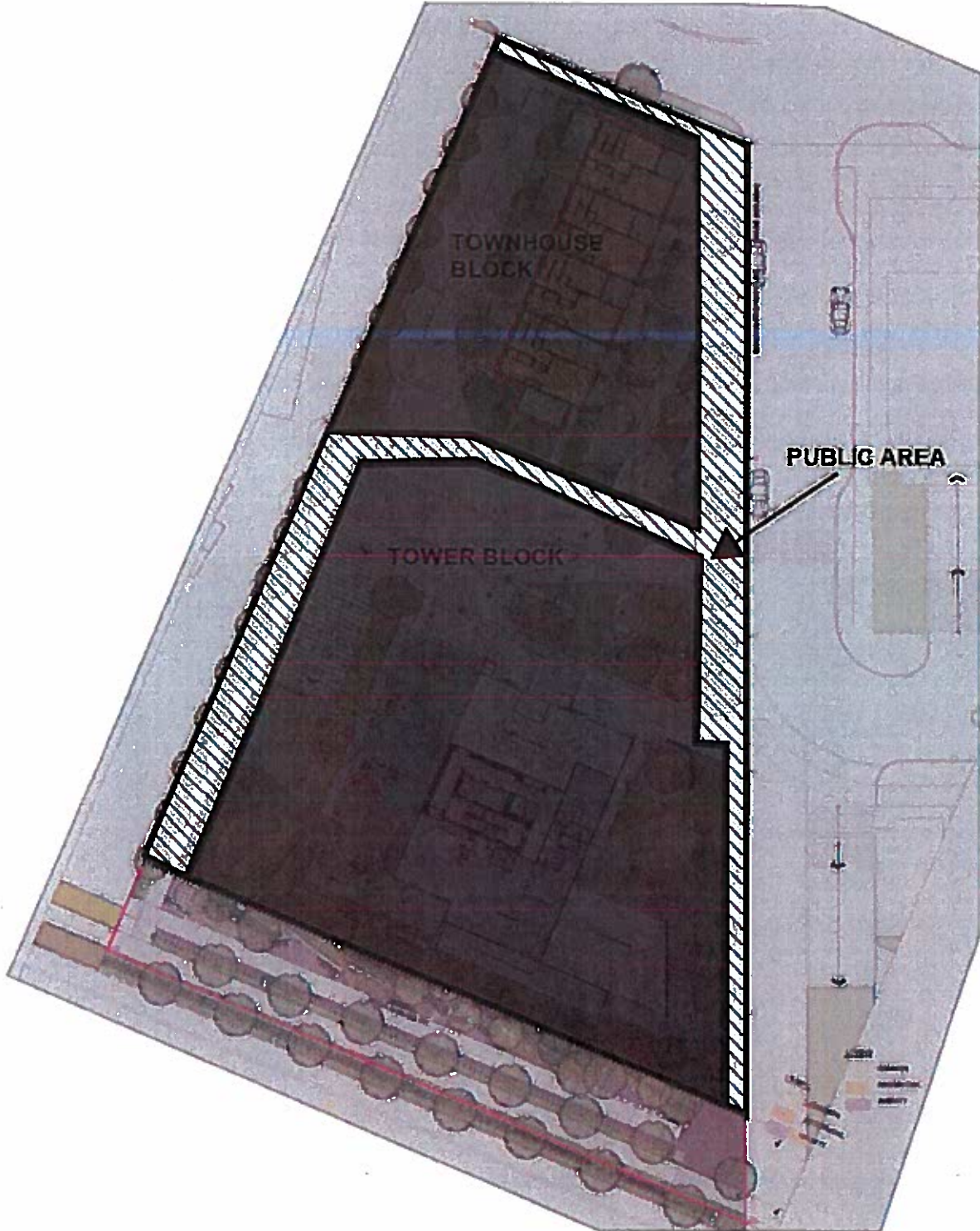
THEREFORE THIS CONSENT AND PRIORITY AGREEMENT IS EVIDENCE THAT IN CONSIDERATION OF \$1.00 AND OTHER GOOD AND VALUABLE CONSIDERATION PAID BY THE TRANSFEREE TO THE CHARGEHOLDER:

1. The Chargeholder hereby consents to the granting and registration of the Section 219 Covenant and Statutory Right of Way attached hereto (the "Covenant and SRW") and the Chargeholder hereby agrees that the Covenant and SRW shall be binding upon its interest in and to the Lands.
2. The Chargeholder hereby grants to the transferee described in item 6 of the *Land Title Act* Form C attached hereto priority for the Covenant and SRW over the Chargeholder's right, title and interest in and to the Lands, and the Chargeholder does hereby postpone the Charges and all of its right, title and interest thereunder to the Covenant and SRW as if the Covenant and SRW had been executed, delivered and registered prior to the execution, delivery and registration of the Charges.

IN WITNESS WHEREOF, the Chargeholder has executed and delivered this Consent and Priority Agreement by executing the *Land Title Act* Form D above which is attached hereto and forms part of this Agreement.

SCHEDULE "A"

STATUTORY RIGHT OF WAY AREA



SCHEDULE "B"

ASSUMPTION AGREEMENT

THIS AGREEMENT is dated for reference _____

BETWEEN:

THE OWNERS, STRATA PLAN _____

(the "Strata Corporation")

AND:

DISTRICT OF WEST VANCOUVER

(the "District")

AND:

DARWIN PROPERTIES (303 MARINE DRIVE) LTD.

(the Owner)

WHEREAS:

- A. On the date that application was made to the New Westminster Land Title Office for deposit of Strata Plan ____, the Owner was the registered owner of the freehold estate in the Land shown on the Strata Plan (the "Lands");
- B. The Owner has granted to the District a Statutory Right of Way and Section 219 Covenant for construction and maintenance of certain works, which agreement is registered in the New Westminster Land Title Office under numbers _____ and _____ (the "Charges");
- C. It is a condition of the Charges that the Strata Corporation enter into this Assumption Agreement in respect of the Charges,

NOW THEREFORE IN CONSIDERATION of the premises and the sum of \$10.00 paid by each of the Owner and the District to the Strata Corporation and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by the Strata Corporation), the Strata Corporation hereby covenants and agrees as follows:

1. The Strata Corporation covenants and agrees that the Strata Corporation will be bound by and will observe and perform all of the covenants, restrictions and agreements contained in the Charges, including without limitation the covenant to indemnify the District and the covenant to construct and maintain the Pathways (as defined in the Charges).

2. The Strata Corporation agrees that the District is entitled to obtain an order for specific performance or a prohibitory or mandatory injunction in respect of any breach by the Strata Corporation of the Charges. The Strata Corporation agrees that this section is reasonable given the public interest in the need for effective maintenance and protection of the access from breaches of the Charges.
3. This Agreement will enure to the benefit of and will be binding upon the parties hereto and their heirs, executors, administrators, successor and assigns.
4. To evidence its agreement, the Strata Corporation has executed this Assumption Agreement as of the date set out above.

THE OWNERS, STRATA PLAN ____ by its)
 authorized signatory:)
)
) C/S
 _____)
 Authorized Signatory)
)

SCHEDULE C

WORKS AND SERVICES STANDARDS AND REQUIREMENTS

To be determined.

CONSENT AND PRIORITY AGREEMENT

WHEREAS Canadian Western Bank (the "Chargeholder") is the holder the following charges all registered in the Vancouver Land Title Office:

Mortgage CA3813258

Assignment of Rents CA3813259

(collectively the "Charge"), which Charge encumbers the lands (the "Lands") described in item 2 of the *Land Title Act* Form C attached hereto.

THEREFORE THIS CONSENT AND PRIORITY AGREEMENT IS EVIDENCE THAT IN CONSIDERATION OF \$1.00 AND OTHER GOOD AND VALUABLE CONSIDERATION PAID BY THE TRANSFEREE TO THE CHARGEHOLDER:

1. The Chargeholder hereby consents to the granting and registration of the Section 219 Covenant and Rent Charge attached hereto (together referred to as the "Covenant") and the Chargeholder hereby agrees that the Covenant shall be binding upon its interest in and to the Lands.
2. The Chargeholder hereby grants to the transferee described in item 6 of the *Land Title Act* Form C attached hereto priority for the Covenant over the Chargeholder's right, title and interest in and to the Lands, and the Chargeholder does hereby postpone the Charge and all of its right, title and interest thereunder to the Covenant as if the Covenant had been executed, delivered and registered prior to the execution, delivery and registration of the Charge.

IN WITNESS WHEREOF, the Chargeholder has executed and delivered this Consent and Priority Agreement by executing the *Land Title Act* Form D above which is attached hereto and forms part of this Agreement.

END OF DOCUMENT



District of West Vancouver
Proposed
Development Permit No. 17-077

CURRENT OWNER: DARWIN PROPERTIES (303 MARINE DRIVE) LTD.

THIS DEVELOPMENT PERMIT APPLIES TO:

CIVIC ADDRESS: 303 MARINE DRIVE
LEGAL DESCRIPTION: 011-279-567
LOT 15 DISTRICT LOT 790 PLAN 4918
(the 'LANDS')

1.0 This Development Permit:

- (a) imposes requirements and conditions for the development of the Lands, which are designated by the Marine Drive Local Area Plan as within the Lions Gate – Klahanie Sub-Area which is envisioned as a transit-oriented community that is close to amenities and with a wide range of housing choice that will support the adjacent Lions Gate Town Centre in North Vancouver with complementary development; and
- (b) is issued subject to the Owner's compliance with all of the Bylaws of the District applicable to the Lands, except as varied or supplemented by this Permit.

2.0 The following requirements and conditions shall apply to the Lands:

- 2.1 Building, structures, on-site parking, driveways and site development shall take place in accordance with the attached **Schedule A**.
- 2.2 Sprinklers must be installed in all areas as required under the Fire Protection and Emergency Response Bylaw No. 4366, 2004.
- 2.3 No wood burning fireplaces shall be installed, constructed or otherwise permitted on the Lands or in any building on the lands.
- 2.4 On-site landscaping shall be installed at the cost of the Owner in accordance with the attached **Schedule A**.
- 2.5 Sustainability measures and commitments shall take place in accordance with the attached **Schedule A**.
- 2.6 All balconies decks and patios are to remain fully open and unenclosed and the weather wall must remain intact.
- 2.7 Notwithstanding conditions 2.1 to 2.6 above, the Director of Planning and Development Services may determine that minor changes to the proposal still comply with the Development Permit plans where proposed changes do not materially affect the intent of the plans attached to this Development Permit.

3.0 Prior to commencing site work or Building Permit issuance, whichever occurs first, the Owner must:

- 3.1 Provide and implement a plan for traffic management during construction to the satisfaction of the District's Manager of Land Development.
- 3.2 Install tree, vegetation and/or hedge protection measures as required to the satisfaction of the District's Environmental Protection Officer.
- 3.3 Submit a "Sediment and Erosion Plan" to the District's Environmental Protection Officer for approval, which the Owner shall comply with and be responsible for maintaining, repairing and implementing the sediment control measures.

4.0 Prior to Building Permit issuance:

- 4.1 Provide engineering civil drawings detailing works, including but not limited to:
 - (a) storm water management measures;
 - (b) site service connections;
 - (c) offsite servicing upgrades;
 - (d) new boulevard plan along the frontage of the site including curbs, gutters, sidewalk and a grading plan; and
 - (e) repaving along the frontage of the Lands,which must be submitted for acceptance, and security provided for the due and proper completion of the engineering works, all to the satisfaction of the District's Manager of Land Development.

5.0 Security for Landscaping

- 5.1 Prior to building permit issuance, security for the due and proper completion of the landscaping set forth in section 2.4 of this Development Permit (the "Landscaping Works") shall be provided in the amount of \$250,000 (the "Landscape Deposit") to the District in the form of cash or unconditional, irrevocable auto-renewing letter of credit issued by a Canadian chartered bank or credit union.
- 5.2 Release of the Landscape Deposit:
 - (a) Following installation of the Landscaping Works and upon receipt of a certified letter or report by a Landscape Architect in good standing with the British Columbia Society of Landscape Architects to the District stating that:
 - a. the Landscaping Works have been installed substantially in accordance with Schedule A; and
 - b. any variations that may have been undertaken to the Landscaping Works are clearly identified, including but not limited to:

- i. any adjustments to retaining walls,
- ii. changes to the mixture or sizes of any plant materials or trees,
- iii. completion of any off-site or boulevard works,
- iv. any areas that received alternative treatment,
- v. any paving changes, or
- vi. any other additional or omitted plantings or alterations,

together with a clear rationale and explanation thereof and stating

- c. that a final review with the landscape contractor or consultant of record has been completed, including provision of the date when this final review was completed on,
- d. whether there are any outstanding Landscape Works which are outstanding or which need attention, and
- e. notwithstanding outstanding works in 5.2(a)(a.) to (d.) above, that the Landscaping Works are complete,

then District will release 75% of the initial value of the Landscape Deposit. The remaining 25% of the initial value of the Landscape Deposit shall be retained by the District as a warranty deposit (the "Warranty Deposit") to ensure successful installation of the Landscaping Works.

- (b) After a one-year period following certification that the Landscaping Works have been completed, and upon final certification by a Landscape Architect in good standing with the British Columbia Society of Landscape Architects that the Landscaping Works are successful, the District will release the Warranty Deposit.

5.3 Additional Landscape Security

- (a) No occupancy shall be issued nor will any other final approvals be given as shown in Schedule A, until:
 - a. all of the Landscaping Works are completed, or
 - b. the Owner provides security in addition to and separate from the Landscape Deposit, and in the amount of 110% of the value of the uncompleted Landscaping Works (the "Additional Security Deposit") for the due and proper completion of the uncompleted or deficient Landscape Works, as determined and certified by the consultant of record; and
 - c. the Additional Security Deposit will be released upon final certification by a Landscape Architect in good standing with the British Columbia Society of Landscape Architects following certification that all of the Landscaping Works have been completed.

5.4 In the event that the Landscaping Works are not completed as provided for in this Permit, the District may, at its option, enter upon, carry out and complete the Landscaping Works so as to satisfy the terms of the Development Permit, and recover the costs of doing so from the security deposited or recover any costs incurred over and above the amount of the security deposited, including the costs of administration and supervision.

6.0 This Development Permit lapses if the work authorized herein is not commenced within 24 months of the date this permit is issued.

In the event the Owner is delayed or interrupted or prevented from commencing or continuing the development by reason of any Act of God, labour unrest (including strike and lockouts), weather conditions or any similar cause reasonably beyond the control of the Owner, the time for the completion of the work shall be extended for a period equal to the duration of the contingency that occasioned the delay, interruption or prevention, provided that the commercial or financial circumstances of the Owner shall not be viewed as a cause beyond the control of the Owner.

THE COUNCIL OF WEST VANCOUVER APPROVED THIS PERMIT BY RESOLUTION PASSED ON _____.

MAYOR

MUNICIPAL CLERK

THE REQUIREMENTS AND CONDITIONS UPON WHICH THIS PERMIT IS ISSUED ARE ACKNOWLEDGED AND AGREED TO. IT IS UNDERSTOOD THAT OTHER PERMITS / APPROVALS MAY BE REQUIRED INCLUDING PERMITS / APPROVALS FOR BUILDING CONSTRUCTION, SOIL AND ROCK REMOVAL OR DEPOSIT, BOULEVARD WORKS, AND SUBDIVISION.

Owner: Signature

Owner: Print Name above

Date

FOR THE PURPOSES OF SECTION 6.0, THIS PERMIT IS ISSUED ON _____.

Schedules:

A. Architectural plans, landscaping, and sustainability initiatives