



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

COUNCIL REPORT

Date:	June 17, 2021
From:	Lisa Berg, Senior Community Planner
Subject:	Sewell's Landing Housing Agreement
File:	1610-20-5140

RECOMMENDATION

THAT proposed "Housing Agreement Authorization Bylaw No. 5140, 2021" be read a first, second, and third time.

1.0 Purpose

The purpose of this report is to provide Council with information on a proposed Housing Agreement Authorization Bylaw for Sewell's Landing (**Appendix A**). The master development agreement requires that a Housing Agreement be entered into for a period of 99 years to prohibit rental restrictions.

2.0 Legislation/Bylaw/Policy

Section 483 of the *Local Government Act* enables the District to enter into a Housing Agreement.

3.0 Council Strategic Objective(s)/Official Community Plan

2020 – 2021 Council Strategic Goals and Objectives: Not applicable.

Official Community Plan (OCP): Policy 2.1.16 sets out the goals for supporting rental housing and renter households.

4.0 Financial Implications

There are no financial implications for the District.

5.0 Background

5.1 Previous Decisions

At the October 24, 2016 Council meeting, Council approved the Sewell's Landing development. Prior to adoption of the bylaws and approval of the development permit the applicant entered into a master development agreement with the District.

5.2 History – Not applicable.

6.0 Analysis

6.1 Discussion

During the review and approval the Sewell's Landing development project in Horseshoe Bay, the applicant entered into a master development agreement (a Section 219 covenant) with the District. It forms the legal framework that covenants the developer to fulfill certain obligations for the development of the lands, including preventing rental restrictions of the residential units.

Section 23 of the agreement requires the applicant to:

1. File a Rental Disclosure Statement with the Superintendent of Real Estate preserving the right to rent all of the dwelling units for a period of not less than 99 years; and
2. Enter into a Housing Agreement with the District to ensure that no restrictions are placed on the rental or leasing of the dwelling units for a period of not less than 99 years.

The proposed Housing Agreement Authorization Bylaw is attached as **Appendix A**, with the proposed agreement attached to the bylaw as Schedule A.

The applicant is required to enter into a Housing Agreement prior to obtaining occupancy approval for the lands. A public hearing is not required on the proposed bylaw as per the *Local Government Act*. Should Council support the staff recommendation, the bylaw would be scheduled for adoption at a subsequent Council meeting. After the bylaw is adopted, the attached agreement will be registered at the Land Titles Office.

6.2 Sustainability

Not applicable.

6.3 Public Engagement and Outreach

Not applicable.

6.4 Other Communication, Consultation, and Research

Not applicable.

7.0 Options

7.1 Recommended Option

That Council give first, second, and third readings to the proposed Housing Agreement Authorization Bylaw.

7.2 Considered Options

1. Defer consideration of the proposed bylaw pending the receipt of further information (to be specified).

8.0 Conclusion

The proposed Housing Agreement will fulfill the commitment by the applicant to the District to ensure that a future strata corporation will not be able to prohibit owners from the option of renting out their units. Securing home owners ability to rent out their units ensures the long term supply of privately-owned rental housing stock in the community.

Author:



Lisa Berg, Senior Community Planner

Concurrence



Michelle McGuire, Senior Manager of Current Planning and Urban Design

Appendices:

- A. Proposed "Housing Agreement Authorization Bylaw No. 5140, 2021"

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District of West Vancouver

Housing Agreement Authorization
Bylaw No. 5140, 2021
(Sewell's Landing)

Effective Date:

District of West Vancouver

Housing Agreement Authorization Bylaw No. 5140, 2021

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District of West Vancouver

Housing Agreement Authorization Bylaw No. 5140, 2021

A bylaw to enter into a housing agreement.

WHEREAS the Council of The Corporation of the District of West Vancouver and HB Nelson Property Inc. are to enter into a housing agreement under section 483 of the *Local Government Act* to restrict the use of the land;

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. 5140, 2021.

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 HB Nelson Property Inc. or its nominee, in respect of the land located at:
 - 3.1.1 6707, 6687, 6691, 6693, 6697, 6699, and 6709 Nelson Avenue, West Vancouver, BC and legally described as: PID 029-987-009,

Lot 1, District Lots 430 and 3840 Group 1 New Westminster
District Plan EPP64493.

- 3.2 The Mayor and Corporate Officer are authorized to execute and deliver the housing agreement.

Schedule

Schedule A – Housing Agreement

READ A FIRST TIME on [Date]

READ A SECOND TIME on [Date]

READ A THIRD TIME on [Date]

ADOPTED by the Council on [Date].

Mayor

Corporate Officer

Schedule A – Housing Agreement

TERMS OF INSTRUMENT – PART 2

HOUSING AGREEMENT & SECTION 219 COVENANT

NO RENTAL RESTRICTION

WHEREAS:

- A. The Owner is the registered owner of the Lands;
- B. Section 219 of the *Land Title Act* (British Columbia) permits registration of a covenant in favour of a municipality in respect of the use of land or the use of a building on or to be erected on land, that land is or is not to be built on except in accordance with the covenant and that land is not to be subdivided except in accordance with the covenant;
- C. Section 483 of the *Local Government Act* (British Columbia) permits a local government to, by bylaw, enter into a housing agreement that may include terms and conditions regarding the occupancy of the housing units identified in the agreement, including respecting the form of tenure of the housing units, the availability of the housing units to classes of persons, the administration and management of the housing units and the rents and lease, sale or share prices that may be charged;
- D. The District has enacted a bylaw authorizing this Agreement; and
- E. The Owner and the District wish to enter into this Agreement pursuant to section 219 of the *Land Title Act* and section 483 of the *Local Government Act*.

NOW THEREFORE in consideration of the sum of \$10.00 now paid by the District to the Owner and for other good and valuable consideration (the receipt and sufficiency of which the Owner hereby acknowledges), the Owner and the District covenant each with the other as follows:

1. INTERPRETATION

1.1 Definitions

In this Agreement:

- (a) **“Agreement”** means, together, Part 1 and these Terms, including schedules attached hereto.
- (b) **“District”** means the Corporation of the District of West Vancouver.
- (c) **“Claims and Expenses”** means all actions, causes of action, suits, judgments, proceedings, demands and claims, whether at law or in

- equity, losses, damages, expenses and costs (including legal fees and disbursements on an indemnity basis) of any kind or nature whatsoever, at law or in equity, for any damage, loss, injury or death.
- (d) **“Lands”** means those lands and premises legally described in Item 2 of Part 1.
 - (e) **“LTO”** means the Vancouver/New Westminster Land Title Office.
 - (f) **“Owner”** means the person described in Item 5 of Part 1.
 - (g) **“Part 1”** means the General Instrument – Part 1 (*Land Title Act* Form C) to which these Terms of Instrument are attached as Part 2.
 - (h) **“Residential Buildings”** means those 6 mixed commercial and residential buildings and identified as Parcel 1, Parcel 2A and 2B, Parcel 3, Parcel 4a and Parcel 4b intended to be located on the Lands as shown in the Development Master Plan attached hereto as **Schedule “A”**, and **“Residential Building”** means any one of them;
 - (i) **“Residential Strata”** means the Strata Corporation formed upon the deposit of a strata plan under the *Strata Property Act (British Columbia)* in respect of the Residential Buildings;
 - (j) **“Residential Units”** means all residential dwellings in the Residential Buildings.
 - (k) **“Standard Bylaws”** means the Schedule of Standard Bylaws as prescribed under the *Strata Property Act (British Columbia)*;
 - (l) **“Strata Corporation”** means the strata corporation formed upon the deposit of a strata plan under the *Strata Property Act (British Columbia)* in respect of a Residential Strata;
 - (m) **“Section 219 Covenant”** means a covenant pursuant to Section 219 of the *Land Title Act*.

1.2 Interpretation

In this Agreement:

- (a) words importing the singular number include the plural and vice versa and words importing the neuter gender include the masculine and the feminine genders;
- (b) the division of this Agreement into articles and sections and the insertion of headings are for convenience only and will not affect the construction or the interpretation of this Agreement;
- (c) references to any article, section or schedule will, unless the context otherwise requires, mean that article, section or schedule of this

Agreement;

- (d) every reference to each party is deemed to include the heirs, executors, administrators, personal representatives, successors, servants, employees, agents, contractors, officers, licensees and invitees of such party, wherever the context so requires or allows;
- (e) the words “include” and “including” are to be construed as meaning “include without limitation” and “including without limitation”;
- (f) all payments to be made will be deemed to be payments in lawful currency of Canada;
- (g) reference to “business day” means all days other than Saturday, Sunday and statutory holidays in the Province of British Columbia;
- (h) reference to “party” and “parties” means the one or more parties to this Agreement, as the context demands;
- (i) reference to a whole, for example, the “Lands”, includes reference to a portion thereof; and
- (j) unless expressly stated otherwise, the term “enactment” has the same meaning as under the *Interpretation Act* (British Columbia) and reference to a specific enactment shall be to that enactment, as amended or replaced from time to time, unless otherwise expressly provided.

1.3 Acknowledgements

The Owner acknowledges that:

- (a) nothing in this Agreement will relieve the Owner from any obligation or requirement arising under any enactment, including District bylaws, in respect of the use, subdivision and development of the Lands; and
- (b) nothing contained or implied in this Agreement will prejudice or affect the District's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Local Government Act* (British Columbia), the *Community Charter* (British Columbia) or other enactment, including District bylaws.

2. SECTION 219 OF THE LAND TITLE ACT

2.1 Section 219 Covenant

The Owner hereby covenants and agrees with the District, as a covenant in favour of the District pursuant to Section 219 of the *Land Title Act* (British Columbia), it being the intention and agreement of the Owner that the provisions in this Agreement be annexed to, and run with and be a charge upon the Lands and the Lands shall be used only in strict compliance with the terms and conditions of this

Agreement.

2.2 Section 219 Indemnity

As an indemnity pursuant to section 219(6) of the *Land Title Act* (British Columbia), the Owner shall indemnify the District against all Claims and Expenses arising out or, in any way related to or that would not or could not be sustained but for, this Agreement, including, but not limited to, the exercise by the District of any rights granted in this Agreement, or any restrictions imposed pursuant to this Agreement, except if resulting from a negligent action or omission by the District.

2.3 Release

The Owner hereby releases the District from all Claims and Expenses arising out of or in any way related to this Agreement, including, but not limited to, the exercise by the District of any rights granted in this Agreement, or any restrictions imposed pursuant to this Agreement, except if resulting from a negligent action or omission by the District.

2.4 Survival of release and indemnity

The indemnity and release in this Section 2 will survive any discharge, expiration, termination or cancellation of this Agreement.

3. RESIDENTIAL UNITS

3.1 No Restriction on Rental

For a period of not less than 99 years from the date of registration of this Agreement in the LTO:

- (a) the Owner covenants and agrees not to prohibit or otherwise restrict the rental or leasing of any Residential Unit;
- (b) there shall be no restrictions on the rental or leasing of Residential Units; and
- (c) no Strata Corporation shall endorse, pass or enact any bylaw restricting the rental or leasing of a Residential Unit.

4. DEFAULT AND REMEDIES

4.1 Default and remedies

- (a) If the Owner fails to comply with any of its obligations under this Agreement, the District may notify the Owner in writing (at the address shown on title to the Lands in the LTO at the relevant time) that the Owner is in default, describe the default, and instruct the Owner to correct the default within 15 days of receiving the notice, or such longer period as the District may consider necessary to correct the default given the nature of the default (the "Cure Period").
- (b) Upon receipt of a notice from the District under subsection (a), the Owner will diligently proceed to correct the default within the

Cure Period.

- (c) The Owner agrees that the public interest in ensuring that all of the matters described in this Agreement are complied with strongly favours the award of a prohibitory or mandatory injunction, or an order for specific performance or other specific relief, by the Supreme Court of British Columbia at the instance of the District, in the event of an actual or threatened breach of this Agreement.
- (d) No reference to or exercise of any specific right or remedy by the District, shall prejudice or preclude the District from exercising any other right or remedy, whether allowed at law or in equity or expressly provided for in this Agreement, and no such right or remedy is exclusive or dependent upon any other such remedy and the District may from time to time exercise any one or more of such remedies independently or in combination.

4.2 District may perform Owner's obligations

Without limiting Section 4.1, if, following notice from the District under Section 4.1(a), the Owner fails to correct the default within the Cure Period, the District may (but is not obligated to), upon giving to the Owner 10 days' prior written notice describing the default, or immediately in the case of an emergency, perform such obligations, for and on behalf of and at the sole cost of the Owner.

4.3 Owner will reimburse District for its costs

The Owner will reimburse the District for all costs incurred by the District under Section 4.2, including a 20% administration fee, within 30 days after receipt a written invoice from the District for the same.

5. GENERAL

5.1 Severance

If any portion of this Agreement is held invalid by a court of competent jurisdiction, the invalid portion will be severed and the decision that it is invalid will not affect the validity of the remainder of this Agreement.

5.2 Runs with the Lands

The Section 219 Covenant (including the Rent Charge) herein will run with, and bind the successors in title to, the Lands and each and every part into which the Lands may be divided or subdivided, whether by subdivision plan, strata plan or otherwise.

5.3 Notice of Housing Agreement

This Agreement constitutes both a covenant under section 219 of the *Land Title Act* and a housing agreement entered into under section 483 of the *Local Government*

Act. The Owner acknowledges that the District is required to file a notice of housing agreement in the LTO against title to the Land; and once such a notice is filed, this Agreement binds all persons who acquire an interest in the Land as a housing agreement under section 483 of the *Local Government Act*.

5.4 Limitation on Owner's Obligations

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 Lands or such portion thereof as relates to the breach.

5.5 Further Assurances

The parties will execute and do all such further deeds, acts, things and assurances that may be reasonably required to carry out the intent of this Agreement.

5.6 Waiver

Waiver by the District of a default by the Owner will be in writing and will not be deemed to be a waiver of any subsequent or other default.

5.7 Enurement

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

5.8 Priority

The Owner will take all steps necessary to ensure that this Agreement is registered in the LTO in priority to all charges and encumbrances which may impair the covenants granted in this Agreement and, in any event, in priority to all financial charges.

5.9 Counterparts and Electronic Delivery

This Agreement may be executed in any number of counterparts and delivered via facsimile or e-mail, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument, provided that any party delivering this Agreement via facsimile or e-mail will deliver to the other party an originally executed copy of this Agreement forthwith upon request by the other party.

IN WITNESS OF THIS AGREEMENT the District and the Owner have executed this Agreement by signing the "Form C - General Instrument - Part 1" or "Form D - Executions Continued" attached hereto:

[Signature blocks follow]

(i) THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER

MAYOR

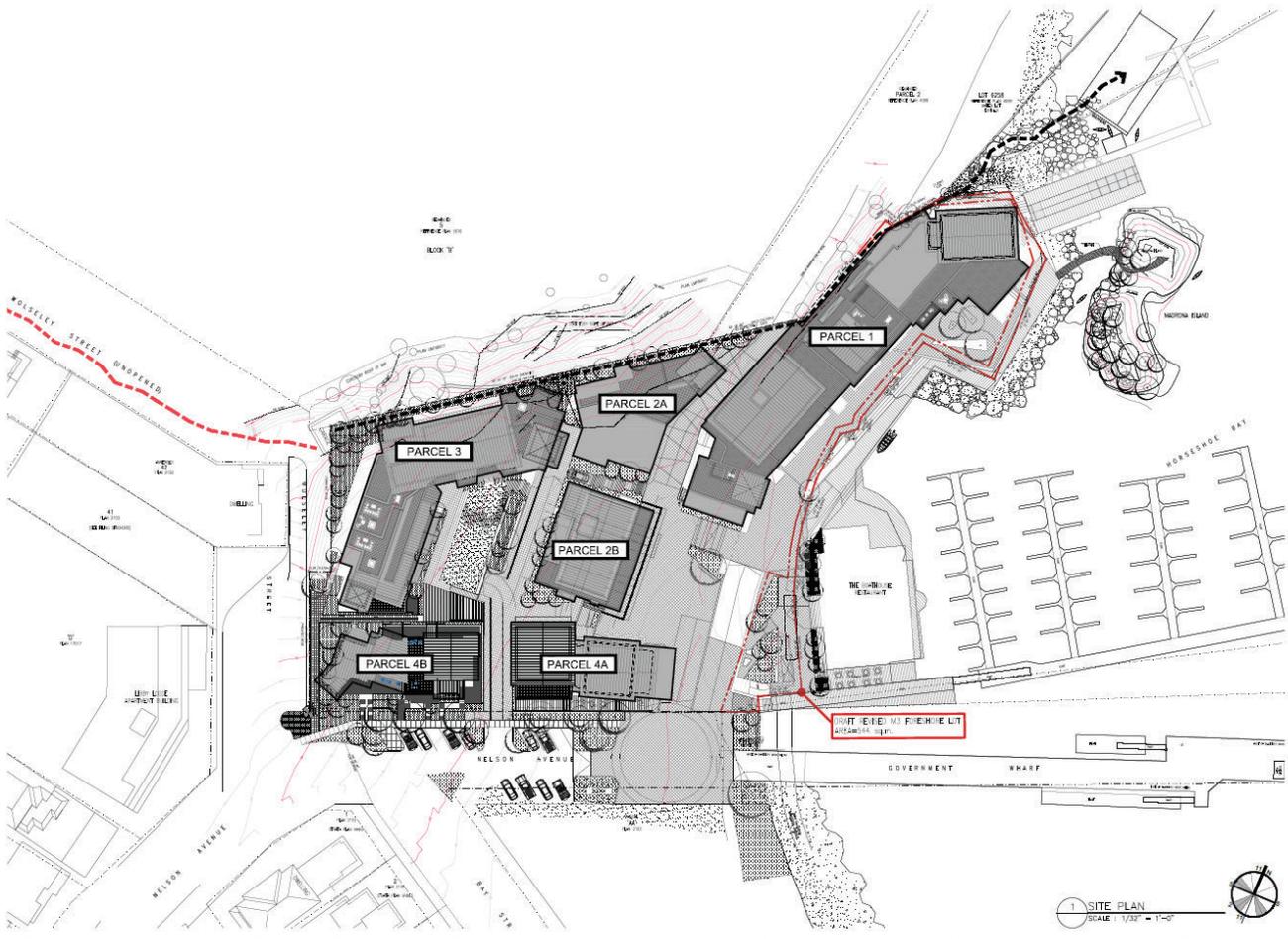
CORPORATE OFFICER

(ii) HB NELSON PROPERTY INC.

Authorized Signatory

Printed Name

Schedule A –Development Master Plan



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Revision No.	Description	Date

Issue	Issue Date
Issue for Rezoning	May 22, 2018
Issue for DP Stage	January 11, 2019

Consultant

Project
Sewell's Landing
 6595 Nelson Avenue
 Horseshoe City, BC
 For
 Westbank

Sheet Title
SITE PLAN

Drawn By	Checked
NC/PM	GB
Project Number	Sheet
1504	A5 NOTED
Revision	Sheet Number

A1.01