



A7

ADMINISTRATIVE REPORT

Report Date: January 25, 2012
Contact: Michael Flanigan
Contact No.: 604.873.7422
RTS No.: 9438
VanRIMS No.: 08-2000-21
Meeting Date: February 28, 2012

TO: Vancouver City Council

FROM: Director of Real Estate Services In Consultation with the General Manager of Engineering Services and the Director of Legal Services

SUBJECT: 1450 SW Marine Drive (the Fraser Arms Hotel) - Modification of Encroachment Agreement

*RECOMMENDATION **

THAT Council authorize the Director of Legal Services in consultation with the Director of Real Estate Services and the General Manager of Engineering Services to modify the existing encroachment agreement, registered in the Land Title Office on April 28, 2003 under number BV145850 against title to the property located at 1450 SW Marine Drive and legally described as PID: 017-379-091 Lot C Block 1 District Lot 318 Plan LMP92 (the "Fraser Arms Hotel") which allows for portions of the hotel improvements to encroach onto SW Marine Drive (the "Encroachment Agreement"), such that:

1. The notice period for termination by the City to be increased from six (6) months to ten (10) years with a further right of the owner of the Fraser Arms Hotel, at its option, to extend the termination period for an additional five (5) years at the end of such ten (10) year period.
2. To amend the description of the permitted works to permit the Owner to construct, locate and maintain a new sign to be installed within the encroachment areas.
3. All other terms and conditions set out in the Encroachment Agreement to remain in full force and effect.

*REPORT SUMMARY **

Portions of the hotel and yard improvements located at the Fraser Arms Hotel encroach onto SW Marine Drive. Pursuant to the Encroachment Agreement, the encroachment fee is adjusted every three (3) years, based upon changes in the CPI

index. The termination clause permits either party to terminate the agreement at any time with six (6) months written notice of termination.

For financing, certainty of term, and security reasons, 3770 Investments Ltd., (a wholly owned subsidiary of the Musqueam First Nation), the owner of the Fraser Arms Hotel (the "Owner"), would like to modify the Encroachment Agreement to increase the notice period for termination by the City from six (6) months to ten (10) years with a further right by the Owner, at its option, to extend the termination period for an additional five (5) years at the end of such ten (10) year period and to amend the description of works permitted to encroach on the encroachment area to permit the installation and encroachment of a new sign within the encroachment area.

The current termination provision (6 months) is in accordance with the Encroachment Bylaw, Council authority is required to vary the terms of a Standard Encroachment Agreement to extend the termination provisions.

Signs installations are typically managed under the Sign Bylaw, since the proposed sign is to be located on SW Marine Drive it will need to be included in the Encroachment Agreement. The sign must comply with the Sign Bylaw but for it's location on SW Marine Drive.

COUNCIL AUTHORITY/PREVIOUS DECISIONS *

There is no Council Policy directly related to this matter.

On July 14, 1999 (RTS834) Council approved the current arrangements for the Encroachment Agreement including annual charges and termination provisions.

The Encroachment Bylaw governs encroachments onto City street and lane and establishes criteria for an agreement which the registered owner is required to enter into but does not establish criteria for modifying the requirements of the Bylaw.

CITY MANAGER'S/GENERAL MANAGER'S COMMENTS *

The City Manager and the General Managers of Business Planning & Services and Engineering Services are in agreement with the recommendations.

REPORT

Background/Context *

The Fraser Arms Hotel has been improved with a predominantly two storey building being used as a hotel, lounge and liquor store with ancillary on-site surface parking. The site is rectangular in shape, totalling approximately 53,443 square feet and is split zoned as C-2 (Commercial) and M-1 (Industrial). The property is located within the Marpole Midden, an archaeological site of significant cultural and heritage importance to the Musqueam First Nation.

The Encroachment Agreement permits the owner to construct, locate and maintain encroachments in two portions of SW Marine Drive. The first encroachment area, comprising of 175.8 m² (1,892 square feet) contains a portion of a one storey building, the eaves of a two storey building, newspaper dispensers, cans recycling machine, a bicycle rack, portions of planters, table with umbrella and benches, metal pole and concrete barriers acting as wheel stops. The second encroachment area is approximately 258.8 m² (2,786 square feet) and contains portions of an advertising sign and portions of parking stalls. The total encroachment area is 434.6 m² (4,678 square feet). See the survey plan marginally noted as L^F 11718 attached as Appendix A (the "Encroachment Area"). The Encroachment Agreement allows either party to terminate the agreement on six (6) months prior written notice.

The Owner currently pays the City an encroachment fee of \$23,318.52 plus HST per year, which is adjusted every three (3) years based upon changes in the CPI index.

The Owner has approached the City with respect to acquiring the encroached upon lands but due to the City's long-term transportation needs, the City is not supportive of the closure and sale of this portion of SW Marine Drive.

The Owner has leased the property to an operator who has expended a large financial investment into renovating the Fraser Arms Hotel. For financing, certainty of term, and security, the Owner has requested a modification of the Encroachment Agreement to increase the notice period for termination by the City from six (6) months to ten (10) years with a further right by the Owner, at its option, to extend the termination period for an additional five (5) years at the end of such ten (10) year period. This approach is acceptable to the Owner/Musqueam First Nation and is supported by City Staff. A further modification is required to permit the installation of a new sign proposed to be built within the encroached lands. A draft sketch of the proposed new sign is attached as Schedule B, the sign is to be located on the street within the encroachment area but otherwise must comply with the Sign Bylaw.

*Strategic Analysis **

The Owner has leased the Fraser Arms Hotel to an operator who is going to continue to operate the property as a hotel/liquor store and has invested a large amount of capital into upgrading and improving the Fraser Arms Hotel in order to make the business viable at this location. The Fraser Arms Hotel is being extensively renovated and the liquor store will be significantly expanded. The Owner is seeking a modification of the Encroachment Agreement to provide for a longer termination period to provide the necessary certainty for both themselves and the new operator with respect to their financial investment in the Fraser Arms Hotel property and to allow the installation of a new sign within the Encroachment Area.

The General Manager of Engineering Services has determined that the extended termination notice period will not likely have a detrimental impact on the transportation objective for the next fifteen (15) years. The special permission for the sign installation and encroachment continuance provides the Musqueam First Nation with the certainty they need for their business improvements.

*Implications/Related Issues/Risk (if applicable)**Financial **

The financial terms of the modified Encroachment Agreement will not be amended from that of the Encroachment Agreement. Rental payments will continue to be adjusted every three (3) years based upon changes in the CPI index and the encroachment fee will continue to be credited to the Sundry Rental Account.

Other

The subject property has been identified as being part of the major archaeological site known as the Great Fraser Midden or Marpole Midden. It is considered to be the early settlement lands of the Musqueam People dating back 1,500 -2,900 years. Many artifacts from the original Coast Salish village settlement have been discovered and there may still be other artifacts yet to be found. The Heritage Conservation Act protects the site as a midden and does not restrict the development of the site, only how it is developed.

*CONCLUSION **

The Director of Real Estate Services in consultation with the General Manager of Engineering Services and the Director of Legal Services RECOMMENDS approval of the modification to the Encroachment Agreement.

* * * * *

