



IN CAMERA

ADMINISTRATIVE REPORT

Report Date: March 22, 2016
Contact: David Currie
Contact No.: 604.871.6656
RTS No.: 11388
VanRIMS No.: 08-2000-21
Meeting Date: April 19, 2016

TO: Vancouver City Council
FROM: General Manager of Engineering Services
SUBJECT: Statutory Right of Way on 1390 Thurlow Street

IN CAMERA RATIONALE

This report is recommended for consideration by Council on the In Camera agenda as it relates to Section 165.2(1) of the *Vancouver Charter*: (e) the acquisition, disposition or expropriation of land or improvements, if the Council considers that disclosure could reasonably be expected to harm the interests of the city.

RECOMMENDATION

- A. THAT Council authorize the Director of Legal Services to execute a Statutory Right of Way agreement (the "SRW") to be registered in the Land Title Office and in a form satisfactory to the General Manager of Engineering Services and the Director of Legal Services for the purposes of installing and maintaining soil anchors, a shotcrete wall and related retaining wall support works (the "Works") on the property with a civic address at 1390 Thurlow Street and legally described as: PID: 008-172-498, Lot C (Reference Plan 706) of Lot 10 Block 13 District Lot 185 Plan 92 (the "Property").
- B. THAT Council authorize the Director of Real Estate Services to execute a further (unregistered) agreement with the owners of the Property (the "Agreement") providing for compensation to and coverage of costs incurred by the owners, to a maximum of s.17(1) [REDACTED], related to the granting of the SRW and the encroachment of the Works.

REPORT SUMMARY

The City requires the SRW to permit and facilitate the construction of a portion of the Burrard and Pacific Intersection Safety Improvement Project. This report explains the negotiation process to date, and seeks Council's authorization for the Director of Legal Services to execute the SRW and for the Director of Real Estate Services to execute the Agreement.

COUNCIL AUTHORITY/PREVIOUS DECISIONS

Council has provided the General Manager of Engineering Services with limited authority to enter into agreements, including statutory right of ways, with private property owners for the purposes of installing anchor rods and related equipment required for carrying out improvements on City lands (per Administrative Report considered by Council on July 11, 2006), but that authority limits the payment to the land owner for compensation and costs to a maximum of \$1,000.00 (plus an amount for inflation since 2006).

REPORT

Background/Context

As part of the Burrard and Pacific Intersection Safety Improvement Project, a separated AAA bike facility will be built on the north side of the 1000 block Pacific Street (from Burrard Street to Thurlow Street). At the southwest end of this block there is a sloped bank adjacent to 1390 Thurlow Street. The removal of the sloped bank and the construction of a new retaining wall on City Street is required to provide sufficient width and grade for the new bike facility. The proposed retaining wall will be constructed along the entire southwest property line of the Property (Pacific Street flankage). The anticipated area of the Property that will be required for the Works is illustrated in Appendix 1. See Appendix 2 and 3 for a cross section and location of the proposal.

The City's geotechnical consultant has advised that the proposed retaining wall on the City Street cannot be safely constructed until the Property is stabilized. The consultant has recommended that a system of underground anchor rods and a shotcrete retaining wall be constructed on the Property to stabilize the foundation of the existing house during construction of the retaining wall.

The City requires the execution of the SRW and the Agreement prior to the start of construction that is currently scheduled for May.

Strategic Analysis

The City's Engineering and Real Estate staff have met with the owner to explain the purpose of the project and to negotiate compensation for the owner agreeing to grant the SRW. The owner is generally supportive of the proposed improvements on Pacific Street. s.17(1)

s.17(1)

s.17(1)

The City is proposing the following compensation to the owner in exchange for the grant of the SRW:

- Compensation for Anchor Rod Encroachment: The City's Encroachment By-law requires that property owners pay a rate of **s.17(1)** per square foot of the vertical area of an excavation for private anchor rods that extend underneath City streets. The current design plans for the project estimate approximately 500 square feet of excavation face along the frontage of the Property adjacent to Pacific Street. Since the impact of a registered encumbrance on privately held land is generally considered in terms of the horizontal area of the proposed SRW, City staff have provided an initial offer to the property owner of roughly **s.17(1)**, based approximately on the estimated horizontal area (1056 square feet) of the Property that would be directly encumbered by the anchor rods, times the Encroachment Bylaw rate. The final area will be determined based on the as-built area of all of the encroachments. This compensation will be subject to negotiation between the City and the owner, provided that the maximum aggregate compensation payable to the owner (including the costs noted below) will not exceed **s.17(1)**.
- Compensation for cost of future anchor rod removal as part of a future redevelopment: **s.17(1)**
- Compensation for Legal Fees: **s.17(1)** to cover legal fees incurred by the owner to review the SRW on behalf of the owner. If the owner spends less than **s.17(1)** on legal fees the owner may keep the balance.

The City has provided the compensation for legal fees (**s.17(1)**) concurrently with the delivery of the Agreement as the property owner has advised that they must engage a lawyer for advice of the legal consequences of the SRW. The total compensation remains subject to negotiations with the owner. The project budget includes up to **s.17(1)** for compensation to the owner.

The outcome of negotiations for compensation with the owner will be documented in the Agreement.

The main points of the SRW are:

- The SRW will be registered against the entirety of the Property to facilitate registration as soon as possible, but will contain a provision providing for limitation of the SRW area upon completion of the Works and a preparation of the registrable survey plan thereof
- The SRW will be registered against title to the Property in the Land Title Office and will permit the City to construct, maintain, remove and reconstruct the Works within the Property until redevelopment of the Property
- The SRW will be in place until the owner redevelops the Property and removes the Works in accordance with the terms of the SRW
- City will restore the Property to its previous condition following construction of the retaining wall
- The City will ensure that the Works do not interfere with the owner's utilities and any improvements on the Property
- The owner will not be required to monitor or maintain the Works once they are installed in the Property

- City will be liable to the owner for any damage to the existing improvements on the Property caused by the installation of the Works.
- The owner will not increase the ground elevation (within the SRW area) or increase the structural loading of the Property (within the SRW area) without the approval of the City. This criteria is to ensure the stability of the retaining wall that will be constructed by the City
- Upon redevelopment, the owner will be permitted to remove the Works provided that the City Engineer has approved the owner's plans for the removal of the Works and any shoring required to redevelop the Property. Removal will be at the owner's cost (however, the City is offering s.17(1) to the owner to cover any incremental cost incurred by the owner in removing the Works in the course of the redevelopment of the Property)
- Any new development on the Property must be independently supported on the Property and not rely on the City retaining wall for any support (the City retaining wall will not be designed to provide support for any additional loads on the Property other than the existing improvements)
- The SRW will be discharged by the City at the City's cost when the owner obtains an occupancy permit for a redevelopment project

In addition, the City would complete physical mitigative works on the Property including, but not limited to:

- Replacement of the existing trees and shrubs with a cedar hedge on the south side of the Property
- Install soil and grass on the remaining area of the Property that will be disturbed during the retaining wall construction
- Install drainage system to collect groundwater from the southern portion of the Property

The SRW will be drawn to the satisfaction of the General Manager of Engineering Services and the Director of Legal Services and the Agreement will be drawn to the satisfaction of the Director of Real Estate Services, the General Manager of Engineering Services and the Director of Legal Services, and no legal rights or obligations will be created and none shall arise until the SRW and the Agreement are fully executed by all applicable parties.

Implications/Related Issues/Risk (if applicable)

Financial

It is appropriate to compensate the owner for the impact of the SRW. Funding for the proposed compensation and mitigation works is available in the Burrard and Pacific Intersection Safety Improvement project budget. Total compensation to the owner is not to exceed s.17(1) .

Staff do not anticipate any ongoing operational costs related to the Works. The City would incur a minor cost to discharge the SRW from the title of the Property (if the Property is redeveloped).

Legal

If the owner insists, the SRW may include an indemnification by the City for any damages, costs, liabilities, and expenses arising from the SRW or the construction of Works by the City on the Property contemplated thereunder. The wording of any indemnity given by the City in the SRW will be drawn to the satisfaction of the Director of Legal Services and will not expose the City to risks greater than would be acceptable to prudent property owners in similar circumstances.

Other

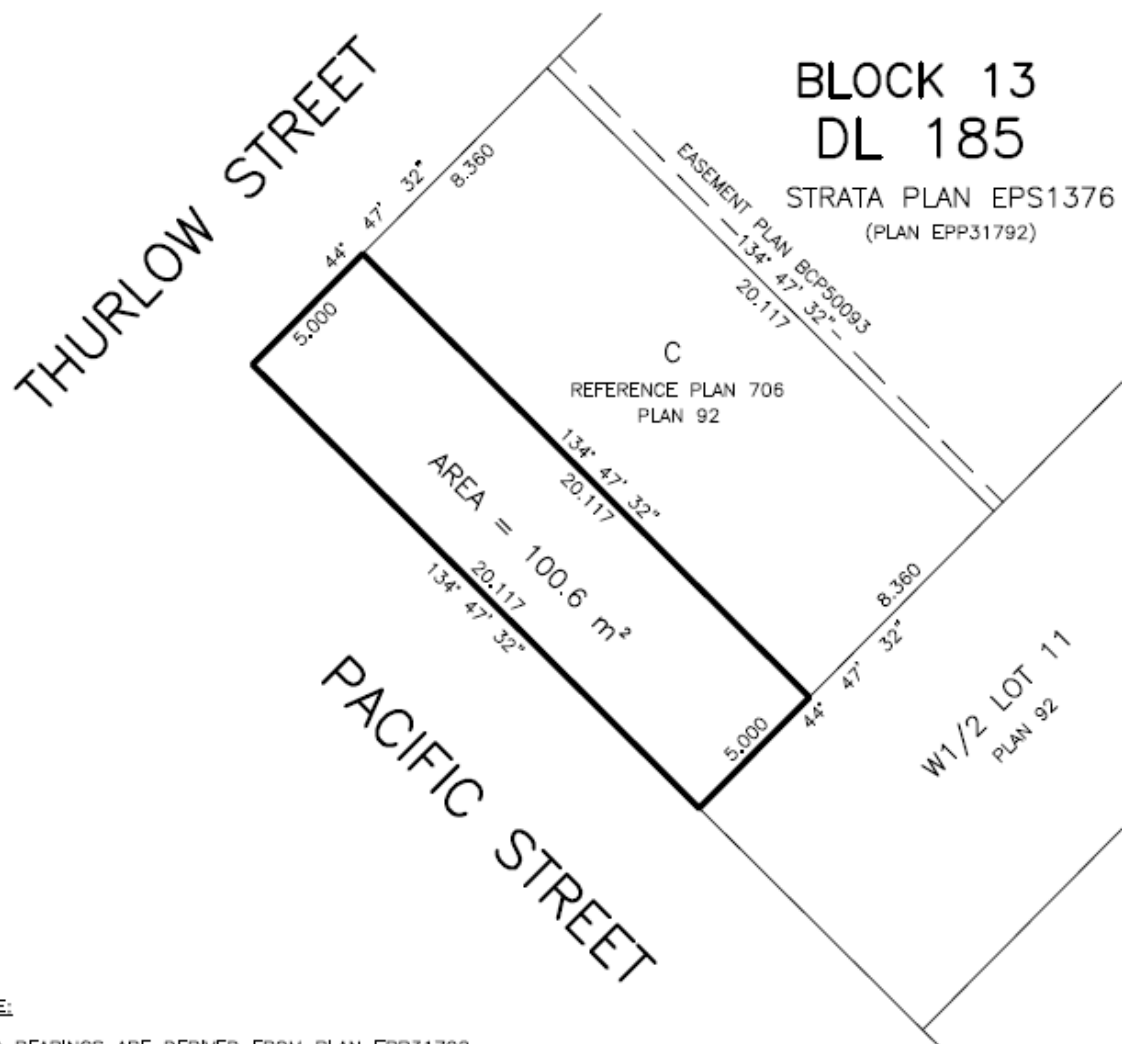
The provision of the SRW is required prior to construction beginning on this portion of Pacific Street. Should the provision of the SRW on 1390 Thurlow be delayed, the City would need to delay construction in this portion of the project to later in 2016. This would have a minor impact on the 2016 construction schedule, and no impact on the overall construction schedule.

CONCLUSION

The SRW is required for the construction of a portion of the Burrard and Pacific Intersection Safety Improvement Project. The General Manager of Engineering Services, in consultation with the General Manager of Real Estate and Facilities Management and the Director of Legal Services, recommends that Council approve recommendations A and B, above.

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SKETCH PLAN TO ACCOMPANY STATUTORY RIGHT OF WAY AGREEMENT OVER A PORTION OF LOT C (REFERENCE PLAN 706) OF LOT 10, BLOCK 13, DISTRICT LOT 185, PLAN 92, GROUP 1, NEW WESTMINSTER DISTRICT



NOTE:

GRID BEARINGS ARE DERIVED FROM PLAN EPP31792



**CITY OF VANCOUVER
ENGINEERING SERVICES**

THE CITY OF VANCOUVER ASSUMES NO RESPONSIBILITY FOR THE CORRECTNESS OF INFORMATION SHOWN ON THIS MAP

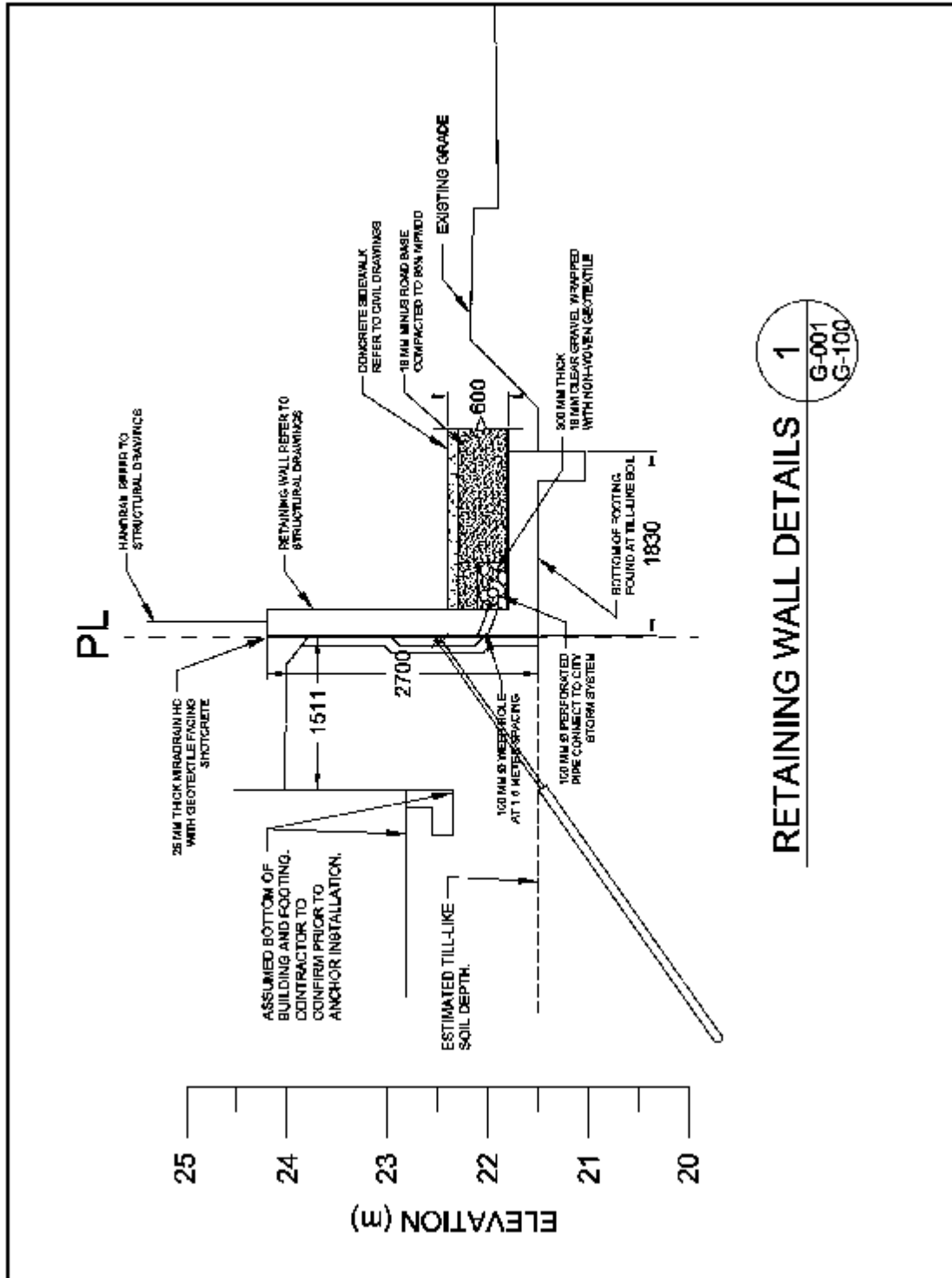


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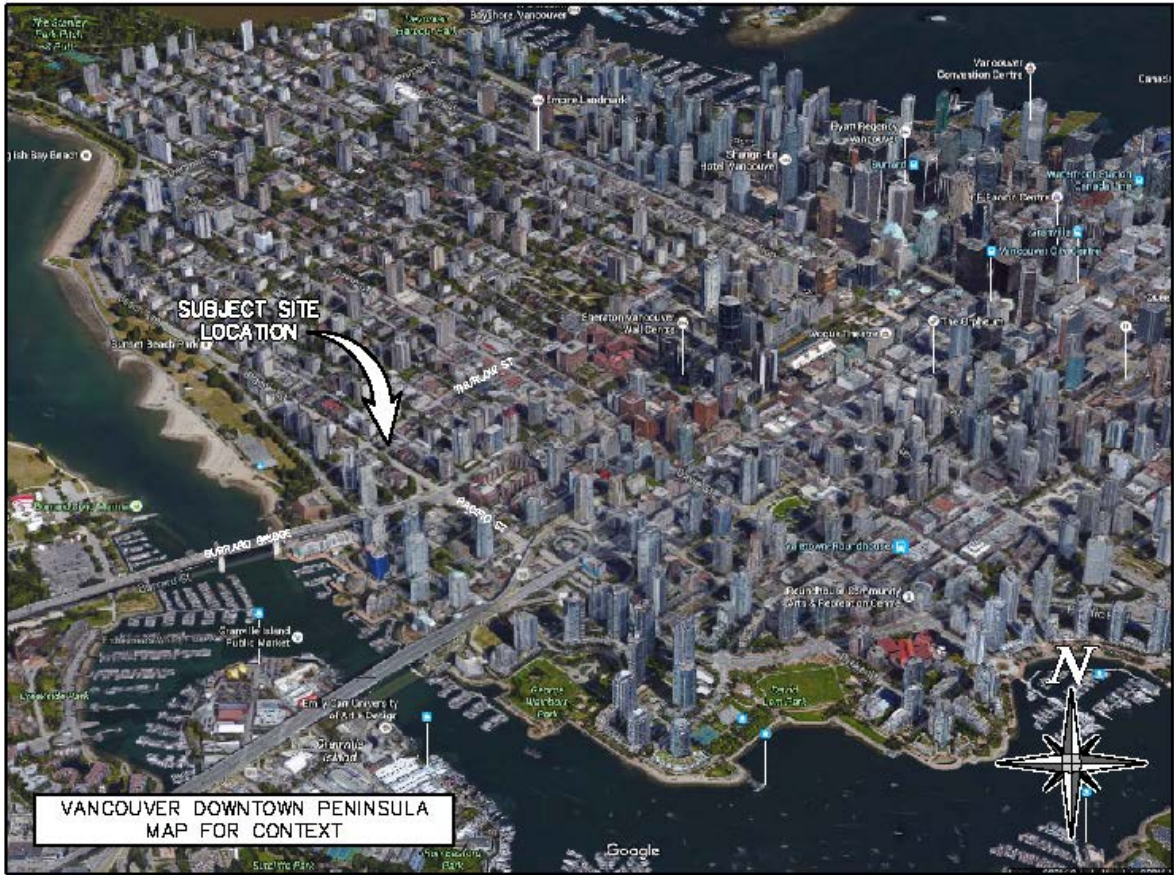
DATE
16-MAR-2016

1390 THURLOW STREET
PLAN NO. LF12031
THIS DIGITAL MAP WAS PRODUCED BY THE LAND SURVEY BRANCH



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G-001
G-100

RETAINING WALL DETAILS



APPENDIX '3'