



## CITY OF VANCOUVER

### Administrative Report

Date: December 6, 2005  
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Dept. File No. 000 185  
RTS No.: 05599  
CC File No.: 11-3600-03  
Meeting Date: January 17, 2006

TO: Vancouver City Council

FROM: General Manager, Engineering Services in Consultation with  
Director of Current Planning and Director of Legal Services

SUBJECT: 1277 Melville Street - (formerly 1280 West Pender Street) - Proposed  
Cancellation of a Portion of the Pender Street Building Line and Grant of a  
Volumetric Easement

#### RECOMMENDATION

- A. THAT the Director of Current Planning be instructed to make application to amend Schedule E, Building Lines, of the Zoning & Development By-law, to delete the building line on the south side of that portion of Pender Street lying between Jarvis Street and the easterly limit of Parcel G, Block 30, District Lot 185, Group 1, New Westminster District, Plan BCP18632 ("Parcel G") generally in accordance with Appendix "A", and that the application be referred to a Public Hearing; and

Further THAT the Director of Legal Services be instructed to prepare the necessary amending bylaw generally in accordance with Appendix "A", for consideration at the Public Hearing.

- B. THAT Council authorize the Director of Legal Services to sign, on behalf of the City, a Reference Plan attested to by Patrick Korabek, B.C.L.S. on the 23<sup>rd</sup> day of November, 2005, marginally numbered "Drawing: 2" (a reduced copy of which is attached as Appendix "C") and apply to raise title to the portions of Pender Street defined on the said Reference Plan, in the name of the City of Vancouver.
- C. THAT all that volumetric portion of Pender Street included within the heavy outline and illustrated isometrically on a plan of survey, certified correct (or attested to) on the 23<sup>rd</sup> day of November, 2005, by Patrick Korabek, B.C.L.S. and marginally numbered "Drawing: 4" (a reduced copy of which is attached as Appendix "D"), be closed, stopped-up and that an easement be granted to the owner of the abutting lands, No. 249

Cathedral Ventures Ltd., (Inc. No. 712755) (the "Owner") at 1277 Melville Street, to contain the portions of the building proposed to encroach pursuant to Development Permit Application DE408652.

1. The easement to be for the life of the encroaching portion of the proposed building.
  2. The easement to be granted on terms and conditions to the satisfaction of the General Manager of Engineering Services and the Director of Legal Services, including that the fees for document preparation, registration and use of the easement are to be in accordance with those charged for in an agreement prepared pursuant to the Encroachment By-law.
  3. The abutting owners to be responsible for any plans, documents and Land Title Office fees.
- D. THAT no legal rights shall arise and no consents, or permissions are granted hereby and none shall arise or be granted hereafter, unless and until all contemplated legal documentation and plans have been executed, delivered by all parties, and registered in the Land Title Office where applicable.
- E. THAT all agreements are to be drawn to the satisfaction of the General Manager of Engineering Services and the Director of Legal Services on the terms and conditions outlined in this report and such other terms and conditions as are acceptable to the Director of Legal Services in consultation with the General Manager of Engineering Services.
- F. THAT once the form of all legal documentation and plans has been approved by the General Manager of Engineering Services and the Director of Legal Services, that the Director of Legal Services be authorized to execute and deliver such documentation and Plans on behalf of the City.

If Council approves this report, the formal resolution will be before Council later this day for approval.

#### COUNCIL POLICY

The authority for closing and disposing of street and lanes is set out in the Vancouver Charter.

Transportation corridors in the City are protected from development by means of building lines. Building lines are identified and described in Schedule E of the Zoning and Development Bylaw.

The Encroachment By-law provides for the regulation of encroachments upon, under and over streets within the City, including establishing fees.

## PURPOSE

The purpose of this report is to:

1. cancel a portion of the Pender Street building line, east of Jervis Street; and
2. obtain Council authority to grant an easement to contain the encroaching elements from the proposed building to be located at 1277 Melville Street.

## BACKGROUND

The lands at 1277 Melville Street, (formerly 1280 West Pender Street), currently Parcel G, are the subject of a Development Permit Application number DE408652. The application to permit the construction of a 28-storey mixed-use (retail/residential) building containing a total of 52 dwelling units, including 4 townhouses on Melville Street and retail uses at grade was granted approval, subject to conditions, by the Development Permit Board on November 8, 2004. The proposal includes the townhouse/commercial podium base over 5 levels of underground parking. The application incorporates a 10% heritage density transfer, for a total FSR of 6.60.

The site is a very small wedge shaped parcel upon which an acceptable massing has been difficult to achieve. The size and shape of the parcel, in combination with constraints imposed by the approved tower location, have made it difficult to design a parking layout that is both efficient in its use of the floor plate, yet still provides acceptable vehicle manoeuvring and flow.

The Pender Street frontage of the site is covered by a seven-foot (2.13 metre) wide building line. This area is required for enhanced public realm, primarily improved pedestrian and bicycle circulation.

The City will acquire, as a condition of the development permit, dedication as road of the 7-foot (2.13 metre) area needed for an improved public realm. The applicant has made an application to the Approving Officer to complete this dedication and this report assumes the dedication will complete shortly. Upon completion of the dedication the site will be legally described as Lot A, Block 30, District Lot 185, Group 1, New Westminster District, Plan BCP \_\_\_\_\_ ("Lot A").

The applicant has sought to use a below-grade portion of Pender Street within the building line to ensure an efficient and functional design of their underground parking. The subject area will contain garbage and recycling facilities and portions of the north-east stair in addition to the underground parking area, collectively the "Parkade".

## DISCUSSION

After a thorough review and acknowledging the constrained site, the General Manager of Engineering Services has concluded that use of a volumetric portion of Pender Street from a point 4 feet (1.219 metres) below building grade can be supported. The Development Permit Board as part of its November 8, 2004 decision, confirmed their support for use of the below grade portion of Pender Street within the building line.

In a meeting of the Development Permit Board on June 20, 2005 on a subsequent application for these same lands (DE409236) the Development Permit Board modified their November 8, 2004 resolution regarding this matter to be as follows:

“arrangements shall be made, to the satisfaction of the General Manager of Engineering Services and Director of Legal Services, for the establishment/dedication as road of the area of the 2.13 m (7 foot) building line area measured from a minimum depth of 1.2 m (4 feet) below grade and upwards;

Note to Applicant: This can be achieved by obtaining Council and Board of Variance approval for the portion of the underground parking proposed beyond the building line *or Council approval only and, if necessary, by-law amendments with respect to the building line. (emphasis added)* The minimum 1.2 m (4 foot) depth to be measured from the building grade and is required to allow sufficient depth for tree planting. The applicant is advised to contact the City Surveyor to ensure arrangements are achievable.”

The Zoning and Development By-law, through the establishment of building lines, restricts construction of improvements within those areas designated for future public realm improvements. The Pender Street building line, like all building lines, is described in Schedule E to the Zoning & Development Bylaw. The intent is to create an 80-foot wide public realm through the original 66-foot road width by 7 feet on each side of Pender Street, between Burrard Street and Nelson Street (see bylaw 4174 of May 4, 1965). Construction beyond the building line generally requires the approval of the Board of Variance.

The Owner has indicated that they would prefer to resolve this outstanding condition without opening the project to the Board of Variance process. Staff supports the Owner’s position. Staff have determined that as soon as the dedication (as road) of the area covered by the building line occurs the building line no longer applies. Notwithstanding this opinion staff recommend amending the Zoning and Development By-law to ensure clarity. Thus, to allow the use of the below grade portion of the Pender Street building line for the Parkade, it is recommended Council amend the Pender Street building line by deleting the portion fronting the subject site at 1277 Melville Street, as illustrated in Appendix B. Recommendation A instructs the Director of Current Planning to make application to amend the Zoning & Development By-law for consideration of this change at a Public Hearing.

The Owner intends to strata title their 52 residential unit development and seeks to control the area containing the full extent of the Parkade. This is reasonable. The methodology to achieve resolution of the Development Permit Board’s condition is as follows:

1. The Owner applies to the Approving Officer (application currently being processed) for approval to subdivide Parcel G so as to dedicate as road the north 7 feet (2.134 metres) as covered by the Pender Street building line, and to create Lot A. The subdivision plan is registered in the Land Title Office;
2. The Director of Legal Services makes application to the Registrar of Titles to raise a title, in the name of the City for the portions of Pender Street containing the Parkade, as designed;

3. The City grants a volumetric easement over the portion of the proposed Parkade encroaching under Pender Street from a point 4 feet (1.219 metres) below building grade to just below the bottom of the development site excavation.

This is consistent with the position taken by the Registrar of Land Titles that to satisfy the Strata Property Act, the strata corporation must have control of the portion of street or lane affected by the building encroachment, for the life of the building. To accomplish this, the volumetric portion of the street or lane containing the encroachments must be closed, stopped-up and an easement granted for the Parkade. It will be necessary to raise a title for the portion of Pender Street encroached upon.

We are recommending that fees and annual rentals be charged as per the Encroachment By-law. This is consistent with past Council direction. The Encroachment By-law would prescribe a fee of \$1500 for preparation of the easement and annual fees of approximately \$6000 per year.

The grant of the easement to use City street, while unusual, has been part of a complex package approved by the DP Board. The development proposal provides a number of benefits to the City, helping to meet our overall planning objectives including optimum use of the land at this extremely difficult development site.

The permission to use the area below grade covered by the building line is unusual and is recommended only to support the development of a unique site. These actions are not to be seen as precedent setting and are a one-time only situation, and supportable purely on the basis of the site being extremely small in depth.

## CONCLUSION

The General Manager of Engineering Services in consultation with the Director of Current Planning and the Director of Legal Services, recommends approval of Recommendations A to F inclusive, thereby allowing the construction of the building approved by the Development Permit Board, subject to conditions on November 8, 2004, under Development Application Number DE408652, as amended as described in this report.

\* \* \* \* \*

Draft Amendments to Schedule E, Building Lines  
of the Zoning & Development By-law

A by-law will be prepared generally in accordance with the provisions listed below, subject to change and refinement prior to posting.

New wording shown in italics:

**Pender Street, south side, from Burrard Street to Nicola Street**

A building line on the southerly side of that portion of Pender Street extending from the westerly limit of Burrard Street to the easterly limit of Nicola Street, which building line is more particularly described as follows:

Commencing at a point on the westerly limit of Burrard Street, distant 10 feet southerly measured along the said westerly limit from its intersection with the southerly limit of Pender Street; thence westerly along a line parallel to the said southerly limit to a point distant 78.61 feet, measured westerly along the said line from its intersection with the said westerly limit of Burrard Street; thence westerly in the arc of a tangential curve to the left of radius 235.26 feet to a point tangential with a line drawn parallel to and 80 feet perpendicularly distant southerly from the corresponding building line hereinbefore described for that section of the northerly side of Pender Street lying between Thurlow Street and the westerly boundary of Lot 18, Block 1, District Lot 185, Group 1, New Westminster District; thence westerly parallel to and 80 feet perpendicularly distant southerly from the corresponding building line hereinbefore described for the northerly side of Pender Street to the easterly limit of Nicola Street, *save and except that portion lying between the easterly limit of Parcel G, Block 30, District Lot 185, Group 1, New Westminster District, Plan BCP18632 and the westerly limit of said Parcel G.*

MGT/mfd

1277buildingline.doc  
November 29, 2005 6:31 AM

PLAN SHOWING PORTION OF WEST PENDER STREET  
BUILDING LINE TO BE DELETED.

NOT TO SCALE







