



CITY OF VANCOUVER

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ADMINISTRATIVE REPORT

Date: May 26, 2006
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Meeting Date: June 13, 2006

TO: Vancouver City Council

FROM: The General Manager of Engineering Services in Consultation with the Director of Legal Services

SUBJECT: 535/565 Smithe Street - Bridges over Lane - Proposed Amendments to Terms of Encroachment Agreement

RECOMMENDATION

THAT Council authorize the Director of Legal Services in consultation with the General Manager of Engineering Services to vary the terms of a standard Encroachment Agreement to be entered into for four above-grade stacked bridges over the lane easterly of Seymour Street, northerly from Smithe Street to connect above-grade parking to be built pursuant to Development Permit Applications DE409900 for 535 Smithe Street (PID: 026-392-216 Lot C Block 64, District Lot 541, Group 1 New Westminster District Plan BCP 19308 ("Lot C")) and DE409895 for 565 Smithe Street (PID: 026-392-194 Lot B Block 64, District Lot 541 Group 1 New Westminster District Plan BCP19308 ("Lot B")) such that:

1. Termination of the Encroachment Agreement to include a minimum one (1) year's notice if the area is required for municipal purposes, and only once Council has approved such termination;
2. In the event of termination of the Encroachment Agreement by Council, the Owners will, at their own expense, and within 18 months from the date of such termination, or such shorter period as may be specified by Council, remove the bridges to the satisfaction of the City Engineer; and
3. In the event that the bridges are not completed and installed within sixty (60) months from the date of the Encroachment Agreement, the City will have the right to terminate the Encroachment Agreement, which will become null and void, and all rights and privileges will be revoked.

COUNCIL POLICY

There is no Council Policy directly related to this matter.

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.

On July 14, 2005 Council approved the rezoning of Lot B at 565 Smithe Street and Lot C at 535 Smithe Street from DD to CD-1.

PURPOSE

The purpose of this report is to seek Council authority for the Director of Legal Services to enter into an Encroachment Agreement for four stacked bridges over City lane pursuant to the Encroachment Bylaw but with terms and conditions relating to termination, removal and completion of construction modified from the standard Encroachment Agreement.

BACKGROUND

On July 14, 2005 Council approved the rezoning of the lands at 535 Smithe Street (Lot C) and 565 Smithe Street (Lot B) from DD (Downtown District) to CD-1 (Comprehensive Development District) so as to permit the construction of residential towers of approximately 31 storeys (535 Smithe Street) and 28 storeys (565 Smithe Street) over four storey podia containing retail and service uses at grade, three storeys of micro office above, live/work townhouses along Richards Street and public parking (approximately 201 spaces) above grade with entrance from Seymour Street. (The lands that were subject to rezoning were, at that time, referred to as 872-898 Seymour Street and 887-897 Richards Street.)

The above-grade parking being provided is intended to help meet the needs of the Granville Street entertainment district, and in particular to sustain the viability of the Orpheum Theatre.

The rezoning application included three levels of bridges over the lane easterly of Seymour Street, northerly from Smithe Street to connect the levels of above-grade parking in the then developments (see Appendix "A").

The Owner has made two development permit applications, DE409900 for Lot C at 535 Smithe Street and DE409895 for Lot B at 565 Smithe Street. The applications were granted approval, subject to conditions, by the Development Permit Board (DPB) on May 8, 2006.

The rezoning approval contained conditions related to the bridging over the lane including:

"BRIDGING OVER LANE

- (iii) the design and construction of the bridges over the lane providing vehicle and pedestrian circulation within the parkade to be to the approval of the General Manager of

Engineering Services. The bridges are also to be subject to legal arrangements, to the satisfaction of the Director of Legal Services and the General Manager of Engineering Services;

Note to Applicant: the bridge design to be revised to be of minimal dimensions to provide the intended vehicle and pedestrian circulation within the parkade and to provide open, demountable bridges with a minimum clearance to grade as established by the General Manager of Engineering Services upon review before approval of any development permit, and such other design criteria as established by the General Manager of Engineering Services."

The design details have generally been resolved. The bridges now include a fourth level. They are stacked, open, uncovered and demountable, of minimal width and provide a 16.5 foot minimum clearance to the grade of the lane. The applicant has also added open demountable glass screens to the Smithe Street facade of the bridges for reasons of urban design interface to the public realm.

The City's standard Encroachment Agreement contains terms and conditions defining annual fees, indemnities and releases and security for the owners' obligations. The standard agreement contains clauses for immediate termination, with six months to remove the encroachment and typically allows a period of 12 months from the date of the agreement for construction of the encroachment to be completed.

The owner has expressed concern that as the only access to the above-grade parking within Lot C (535 Smithe Street) is over the lane bridges, that the provisions of the standard agreement are punitive.

DISCUSSION

The General Manager of Engineering Services acknowledges, as did Council through the rezoning, the public benefits that will be provided by the presence of public parking in the developments. Noting that we would not be prepared to limit the City's use of the lane in perpetuity, discussions with the applicant have resulted in staff's recommendation for modified terms for the required Encroachment Agreement as follows:

1. Amend the standard termination clause to include a minimum one (1) year's notice, if the area is required for municipal purposes and only once Council has approved such termination;
2. In the event of termination of the Encroachment Agreement by Council, the owners will, at their own expense, and within 18 months from the date of such termination, or such shorter period as may be specified by Council, remove the bridges to the satisfaction of the City Engineer; and
3. In the event that the bridges are not completed and installed within sixty (60) months from the date of the Encroachment Agreement, the City will

have the right to terminate the Encroachment Agreement, which will become null and void, and all rights and privileges will be revoked.

These modifications to the standard Encroachment Agreement will allow the City to retain ultimate control over the street and lane system and also provide the owner with security and risk abatement he requires to allow the above-grade parking to be developed.

The General Manager of Engineering Services makes the recommendations to support the provision of public parking in this parking-deficient area of the Downtown District.

CONCLUSION

The General Manager of Engineering Services in consultation with the Director of Legal Services RECOMMENDS approval of the foregoing.

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PLAN TO ACCOMPANY ENCROACHMENT AGREEMENT
OVER LOTS B AND C, BLOCK 64, D.L. 541,
PLAN BCP 19308.

SCALE 1:1000

