



ADMINISTRATIVE REPORT

Report Date: February 9, 2011
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Meeting Date: March 1, 2011

TO: Vancouver City Council

FROM: Managing Director of Social Development in Consultation with the Director of Real Estate Services and the Director of Legal Services

SUBJECT: 27 & 31 West Pender Street - Legal Agreements to Facilitate the Construction of Social Housing

RECOMMENDATION

- A. THAT Council authorize the City to enter into legal agreements, including releases and indemnities, to ensure the social housing project being constructed at 31 West Pender and the existing social housing project at 27 West Pender are developed and maintained, in a manner compliant with all applicable City by-laws, policies and other requirements.
- B. THAT the legal agreements described above be prepared, registered and given priority to the satisfaction of the Director of Legal Services in consultation with the Director of Real Estate Services and the Chief Building Official.
- C. THAT no legal rights or obligations will be created or arise by Council's adoption of Recommendations A and B above unless and until such legal agreements are executed and registered to the satisfaction of by the Director of Legal Services.

GENERAL MANAGER OF COMMUNITY SERVICES COMMENTS

The Housing and Homeless Strategy presented to Council on February 1, 2011 identified Council's priorities regarding Housing and Homelessness in Vancouver including ending street homelessness by 2015 and increasing rental housing stock to allow greater affordability.

This report concerns two adjacent properties: 31 West Pender Street owned by BC Housing and the 27 West Pender Street owned by the City. Both properties are involved in long term leases with Vancouver Native Housing Society (VNHS) to provide social housing. The proposed building design at 31 West Pender Street includes window openings dependant on daylight access provided by the west side inner courtyard on the City owned property at 27 West

Pender Street. The proposed design however, does not meet Vancouver Building By-law spatial separation requirements unless the existing courtyard is preserved in perpetuity through a legal agreement. Without such an agreement, Vancouver Native Housing Society (VNHS) would have to redesign their building to significantly reduce window openings or put in fire-rated glass or other measures incurring additional costs (estimated to be at least \$100,000) in the building design, which would further delay the development schedule.

Due to the long term lease with VNHS, the City is highly unlikely to redevelop that site in the near future. Legal agreements therefore are required to secure a “no-build no-alter zone” on both sites to ensure current designs comply with the Vancouver Building By-law and allow daylight access and the open space from the courtyard on 27 West Pender Street.

While this may affect redevelopment of the City's property in future, any additional costs or constraints incurred are warranted to further the City's priority to provide social housing especially for homeless aboriginals who make up approximately one third of Vancouver's homeless.

Should this recommendation be approved, this social housing project will proceed as designed, on time, on budget, and will demonstrate the City's flexibility and commitment to its partnership with service providers such as Vancouver Native Housing Society and BC Housing, to ensure affordable housing is developed in Vancouver.

The General Manager of Community Services RECOMMENDS approval of A, B and C.

COUNCIL POLICY

Council's priorities for social housing are to maintain and expand housing opportunities in Vancouver for low and modest income households with priority being given to families with children, seniors on fixed incomes or in need of support, SRO residents, and the mentally ill, the physically disabled and others at risk of homelessness.

Indemnity agreements of the kind proposed require Council approval.

SUMMARY AND PURPOSE

To facilitate the construction of proposed social housing at 31 West Pender on property owned by BC Housing, and to meet the intent of the requirements of the Vancouver Building By-law for spatial separation between buildings, legal agreements establishing a volumetric area between the two buildings in which no building or alteration will be permitted, are needed to permit the proposed number of balcony and window openings at 31 West Pender facing the City owned building at 27 West Pender.

With legal agreements registered on title to both properties, the present and future owners of either property will not be able to build within a quantified volumetric space (a draft of which space is attached as Appendix A) between the existing building and the proposed building, nor alter the existing exterior wall openings or size of fire compartments facing this space, thereby meeting the intent of the Vancouver Building By-law spatial separation requirements, and allowing the proposed social housing at 31 West Pender to proceed quickly as designed. The proposed indemnities will enhance enforceability.

BACKGROUND

The site at 31 West Pender, registered in the name of Provincial Rental Housing Corporation and legally described as PID 009-432-736, Lot B (See 363856L) of Lot 31 Block 29 District Lot 541 Plan 210, and 27 West Pender, registered in the name of the City of Vancouver and legally described as PID 024-210-510, Lot L block 29 District Lot 541 Group 1 New Westminster District Plan LMP38899, are both social housing sites to be operated by Vancouver Native Housing Society. Vancouver Native Housing Society owns and operates 15 housing complexes in the Mount Pleasant and eastside areas of Vancouver, providing housing for urban aboriginals.

27 West Pender is a City owned site currently developed with 98 units of social housing operating under the Low Income Urban Singles Program and has been operating on the site successfully since November 2000, pursuant to a 60 year lease to Vancouver Native Housing Society. There are two outdoor open areas (one on the east side and the other on west side used as an inner courtyard) with grade level retail use on Pender Street.

Redevelopment of the BC Housing owned site at 31 West Pender is currently proposed in order to provide 42 additional units of social housing; 24 studio apartments to be secured as long-term rental at welfare rent levels for the life of the building, and 18 Healing Lodge units. These units help fill the need for a culturally-sensitive medical stay facilities for aboriginal people and their companions who are required to travel to Vancouver for medical treatment. Vancouver Native Housing conducted a needs assessment that revealed that there are over 100,000 aboriginal medical overnight stays in Vancouver every year. The proposal includes a space for ceremonial functions, a smudge room and a seating area for congregating for the guests of the Healing Lodge units.

DISCUSSION

BC Housing has fully committed funding the redevelopment of the Pender Hotel site at 31 West Pender Street with 42 units of social housing. Demolition (with façade retention) and site preparation is currently underway. To meet the intent of the requirements of the Vancouver Building By-law for spatial separation between buildings and to facilitate the timely construction of current plans, legal agreements are needed to permit the proposed amount of window openings at 31 West Pender Street facing the building at 27 West Pender Street.

With the agreements in place on both properties, the present and future owners of either property will not be able to build within the volumetric space between the existing building and the proposed building, nor alter the existing exterior wall openings or size of fire compartments facing this volume of space, thereby meeting the intent of the Vancouver Building by-law spatial separation requirements, and allowing the proposed social housing at 31 West Pender to proceed as designed. To enhance the enforceability of such legal agreements, it is advisable to require each party to agree to indemnify the other(s) for costs incurred resulting from a breach or default. BC Housing has agreed to this indemnification.

The legal agreements proposed will achieve the intent of the Vancouver Building By-law spatial separation requirements but will create encumbrances on both the City and provincially owned properties.

However, the encumbrance on title should be considered in light of the current social housing use on the City owned site together with the City's priority to add to the City's social housing

stock and eliminate homelessness and the fact that the adjacent site is being redeveloped for social housing with the same reputable service provider. The legal agreements will enable construction of the proposed 42 units of social housing on the BC Housing owned site at 31 West Pender Street to proceed, as planned and in a timely fashion.

FINANCIAL IMPLICATIONS

This encumbrance on 27 West Pender will affect the value of this City owned site at the end of the ground lease to Vancouver Native Housing Society, as well as any potential future building design and the market value of the property, assuming such a future use is a non-social housing purpose for the site. It is difficult to estimate the monetary impairment to market value given the significant length of lease term remaining on the original lease to Vancouver Native Housing Society.

Despite the potential financial implication the legal encumbrance will have on the subject property, staff recommend that the encumbrance on title should be considered in light of the current social housing use on the City owned site together with the City's priority to add to the City's social housing stock and eliminate homelessness and the fact that the adjacent site is being redeveloped for social housing.

CONCLUSION

Staff recommend that Council authorize the Director of Legal Services to prepare and register legal agreements, including releases and indemnities, on title at the City owned property at 27 West Pender and the Provincially owned property at 31 West Pender, to facilitate the timely development of additional social housing units at 31 West Pender. The recommended legal agreements will secure the City's interests in ensuring that the buildings on these two adjacent sites remain compliant with the Vancouver Building By-law in perpetuity.

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