



ADMINISTRATIVE REPORT

Report Date: June 4, 2013
Contact: Michael Flanigan
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RTS No.: 10171
VanRIMS No.: 08-2000-20
Meeting Date: June 25, 2013

TO: Vancouver City Council

FROM: Director of Real Estate Services and the General Manager of Real Estate and Facilities Management in consultation with the General Manager of Engineering Services and Director of Legal Services

SUBJECT: Funding for Expropriation of 1201 Franklin Street for the Powell Street Grade Separation Project

RECOMMENDATION

THAT given Vancouver City Council, as the approving authority under the Expropriation Act, R.S.B.C.1996, C.125 (“the Act”), has approved the expropriation of a 521.9 square metre (5618 sq. ft.) portion of land located at 1201 Franklin Street for the Powell Street Grade Separation Project, legally described as PID: 002-457-083, Lot 3, Except Part Included in Plan 14071 Block M, District Lot 182, Plan 13917 (the “Subject Property”) as shown on Appendix A. The Subject Property is also shown in bold outline on Plan EPP29002, prepared by Fred Wong, B.C.L.S. , completed on March 7, 2013 and marginally numbered LD 5377, a copy of which is attached as Appendix B, that Council authorize the Director of Real Estate Services, on behalf of the City, as the expropriating authority to pay the following:

- i) Payment of \$574,000 to T.N.T Franklin Holding Ltd., Inc. No. 0791099 (the “Owner”) of the Subject Property as an advance payment under the Act;
- ii) Payment to the Owner and/or T.N.T Garment Manufacturing Ltd., Inc. No. 0512124 of an amount not to exceed \$500,000 for projected business loss;
- iii) Payment of \$100,000 for legal and consultant fees related to the acquisition; and
- iv) Payment of \$17,000 for the rental of a temporary storage yard.

Funding to be provided from CER-00117-11-AA within the approved 2013 Engineering Capital Budget.

COUNCIL AUTHORITY/PREVIOUS DECISIONS

Section 532 of the Vancouver Charter provides that if, in the exercise of any of its powers of acquiring real property, the City fails to come to an agreement with the Owner as to the terms of acquisition, the City may, by by-law or resolution of Council, expropriate such real property.

CITY MANAGER'S/GENERAL MANAGER'S COMMENTS

The City Manager recommends approval of the foregoing.

REPORT

Background/Context

On April 23, 2013 (RTS No. 10068), Council authorized the City, as expropriating authority, to commence expropriation proceedings to acquire the Subject Property for the Powell Street Grade Separation Project.

On May 28, 2013 (RTS No. 10134), Council approved the terms of an agreement with T.N.T Franklin Holding Ltd., Inc. No. 0791099 (the "Owner"), T.N.T Garment Manufacturing Ltd., Inc. No. 0512124 (the "Tenant") and the City, pursuant to Section 3(1) of the Expropriation Act, R.S.B.C. 1966, C.125 in which the City agrees to acquire a 521.9 square metre (5618 sq. ft.) portion of land located at 1201 Franklin Street for the Powell Street Grade Separation Project.

Although the Owner of the Subject Property had indicated that they would enter into a Section 3(1) with the City for the acquisition of the 521.9 square metre portion of land required for the Powell Street Grade Separation Project, on May 31, 2013, the City was notified that the Owner would not sign the Section 3(1) agreement. Accordingly, as explained in a companion report (RTS No. 10170), the City has now commenced expropriation proceedings and has delivered the Owner of the Subject Property, the Expropriation Notices in accordance with the Act.

Strategic Analysis

The Act describes the expropriation procedures for real property as follows:

- (i) where an owner is not entitled to request an inquiry, the Approving Authority must approve the expropriation and notify the Expropriating Authority and each owner of the approval in writing;
- (ii) within 30 days after Council as Approving Authority has approved the expropriation, the City as the Expropriating Authority, must pay the owners the amount the City estimates is or will be payable to the owners as compensation and must serve on the owners a copy of all appraisal and other reports on which the payment is made;

- (iii) within 30 days after it has paid the money and served copies of the appraisal, the Expropriating Authority must file in the Land Title Office, a vesting notice, a copy of which must be served on the owners; and
- (iv) payment to the owner by the Expropriating Authority is without prejudice to the owners right to have the amount determined in the manner provided for in the Act, but the owner must apply to the Court to determine compensation within one year after payment is made.

Payment to Owners

Council, as Approving Authority, has now approved the expropriation of the Subject Property as required by the Act. Accordingly, as explained above, the City, as Expropriating Authority, is required to pay the Owner within 30 days of the date that Council, as Approving Authority, approves the expropriation. The following explains the basis for the payment the City, as Expropriating Authority, is making to the Owner.

The City retained a qualified professional appraiser to provide an appraisal based on the requirements of the Act. The appraiser concluded that as of April 1, 2013 the compensation payable to the Owner was \$574,000. The Owner rejected the City's offer of \$574,000 claiming that it did not recognize the impact that the taking has on the business operations. To address the Owner's concerns, the City has retained the services of Ernst & Young LLP Chartered Accountants to value the impact that the taking has on the business operations and to determine if the Owner and/or the Tenant should be receiving additional compensation for the taking. As the findings of this report are not expected until September 30, 2013, the amount of additional compensation that could be payable to the Owner is not yet known, but it is not expected to exceed \$500,000.

The City will also be responsible for building modifications to the Subject Property as approved at an In Camera Council meeting on April 23, 2013 (RTS 10068). To allow the proposed building modifications to be carried out, the City will rent a temporary storage yard at 1299 Powell Street at a cost of \$17,000 for the relocation of the cargo containers that are stored on the Subject Property. In addition to the above costs, the City will be responsible for the payment of legal and consultant fees related to the acquisition at an estimated cost of \$100,000.

The Director of Real Estate Services is recommending that the City, as Expropriating Authority, make an advance payment to the Owner, pursuant to the Act, in the amount of \$574,000. Under the Act, the Owner has 12 months to contest the amount of compensation paid, by applying to the Court. Accordingly, the \$574,000 value determined by the City's appraisal is subject to revision depending on the outcome of any court proceedings and the business valuation.

Financial

The estimated cost of acquiring the Subject Property is:

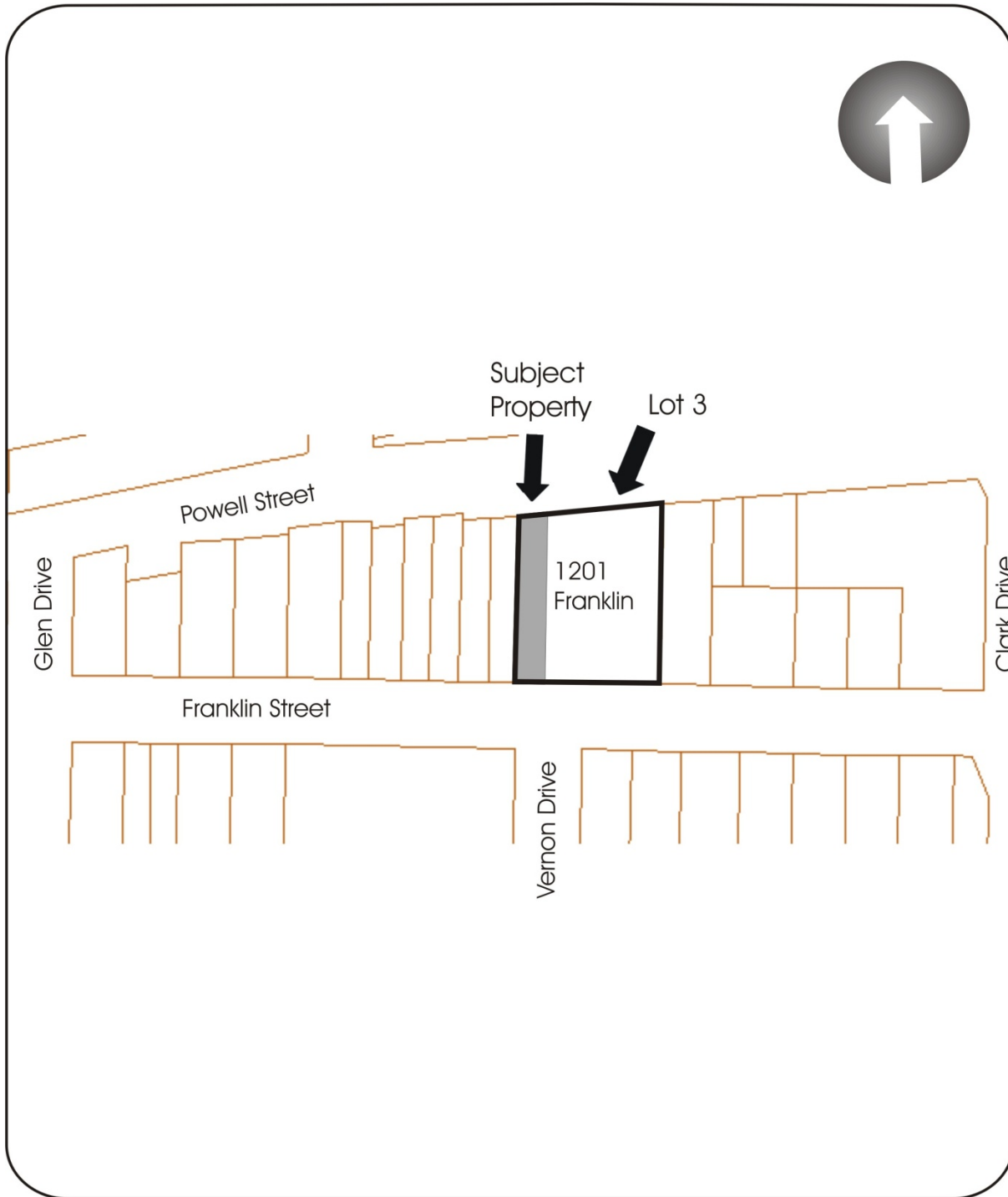
- i. \$574,000 for the advance payment pursuant to the Expropriation Act;
- ii. The estimated business losses not expected to exceed \$500,000;
- iii. \$17,000 for the rental payment for the temporary storage yard; and
- iv. \$100,000 for legal and consultants fees related to the acquisition,
for a total estimated acquisition cost of \$1,191,000.

Property acquisition costs are shareable with Port Metro Vancouver, Canadian Pacific Railway and Translink. The City's net share of these costs are 12%. Funding for the acquisition is available from CER-00117-11-AA within the approved 2013 Engineering Capital Budget.

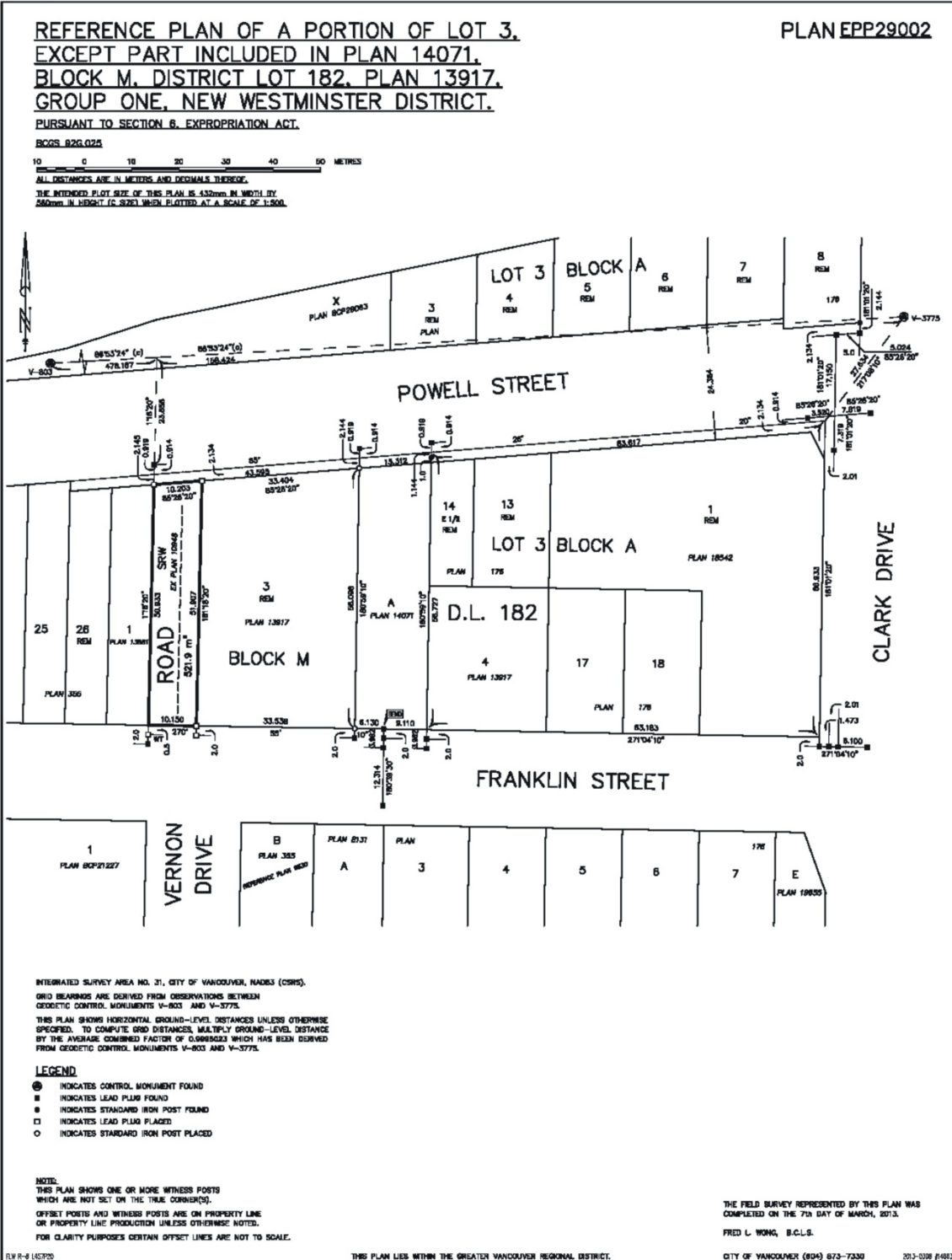
CONCLUSION

Vancouver City Council, as the Approving Authority, has approved the expropriation of the Subject Property. The Director of Real Estate Services recommends the City pay \$574,000 to the Owner of the Subject Property, as an advance payment made under the Act, for the expropriation of the Subject Property.

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LD 5377



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