

Kennett, Bonnie

From: Johnston, Sadhu
Sent: Friday, July 03, 2020 3:43 PM
To: Hardwick, Colleen; Direct to Mayor and Council - DL
Cc: City Manager's Correspondence Group - DL; Kelley, Gil
Subject: RE: Update - RE: Memo: 2538 Birch Street (formerly 1296 West Broadway) - RTS 13730

Dear Mayor and Council,

This is a further response to Councillor Hardwick's email dated June 19, 2020 regarding the referral to public hearing of the proposed development at 2538 Birch Street (the "Development"). The Law Department has been consulted about this matter, and provided feedback on the earlier responses.

It is the Law Department's view that it was not unlawful to refer the Development to public hearing.

A key issue has been whether the Development met the criteria set out in Policy 1 of the "Policy on Consideration of Rezoning Applications and Heritage Revitalization Agreements during Broadway Planning Process" adopted by Council on June 20, 2018 (the "Policy").

Policy 1 reads:

"Policy 1: Where, at the time of adoption of this rezoning policy, there is an active rezoning application or where a recent application for rezoning advice has been received, and the applicant has received a written response stating that a rezoning application would be considered (within the past three years), the application will be considered."

The Planning Department has taken the position that the Development met the requirement of Policy 1 because the applicant sought pre-enquiry zoning advice prior to June 20, 2018. Planning considers this to meet the requirement that "a recent application for rezoning advice has been received". This was not a formal rezoning enquiry, as that was not received until July, 2018. However, Planning's position is that the proposal and pre-enquiry zoning advice sought and the material submitted by the applicant was sufficiently in-stream to meet the Policy. Planning also considers the letter from Dan Garrison dated June 12, 2018, prior to the Policy being adopted, to be a "written response stating that a rezoning application would be considered".

Law does not consider Planning's position to be unreasonable. However, Law does not consider the Policy to be a legally binding instrument. Unlike the Vancouver Charter, it is not a statute and it does not have the same legal effect as a by-law. The Policy should inform, but does not bind Council's deliberations. Council is free to refer a development to public hearing that meets the Policy, but it is equally free to refer a development to public hearing that does not meet the Policy. Conversely, Council could decline to refer a development to public hearing that does meet the Policy.

As noted, Law does not consider the referral of the Development to public hearing to have been unlawful. The issues raised regarding the referral may inform a Councillor about whether the development should be approved following a public hearing, but it is not unlawful to consider the Development at the public hearing. It is ultimately up to Mayor and Council to consider the merits of the Development at the Public Hearing and then following the Public Hearing Council has the power to approve, reject or refer the rezoning application back to Staff whether it fully met the requirements of the Policy or not.

Best,
Sadhu

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Pronouns: he, him, his



The City of Vancouver acknowledges that it is situated on the unceded traditional territories of the Musqueam, Squamish, and Tsleil-Waututh peoples.

From: Hardwick, Colleen
Sent: Friday, June 19, 2020 3:37 PM
To: Johnston, Sadhu; Direct to Mayor and Council - DL
Cc: City Manager's Correspondence Group - DL; Kelley, Gil
Subject: RE: Update - RE: Memo: 2538 Birch Street (formerly 1296 West Broadway) - RTS 13730

Dear Gil, through Sadhu;

Re: 2538 Birch Street (formerly 1296 West Broadway)- RTS # 13730
Timeline of dates and Broadway Plan Interim Rezoning Policy (IRP)

Thank you for today's Memo to Mayor and Council in response to my request for information regarding the timelines of dates for this application for rezoning. While it is very helpful to receive the letters sent to the applicant on March 19, 2018 and June 12, 2018, this only seems to **further confirm** my previous concerns and those raised by the public.

I would appreciate these concerns being fully addressed **before** a public hearing date is established to ensure there are **no legal issues** that could arise from this.

The March 19, 2018 letter to the applicant is in response to a MIRHPP "Pre-Enquiry Application", and **actually rejected the project** from the MIRHPP program prior to the Broadway Plan as per the following from the letter:

*"Thank you for your application to the City of Vancouver's Moderate Income Rental Housing Pilot Program (MIRHPP). Staff have reviewed your proposal against MIRHPP program objectives and other citywide and local policies including Broadway C-3A Guidelines and emerging directions for Broadway Corridor planning. Based on this review, staff note that a proposal under MIRHPP on this site **will not be considered at this time.**"*

*Staff will be reporting to Council prior to the summer break (2018) on emerging directions and work program scoping for Broadway Corridor planning. For C-3A sites that would be included in this study area, MIRHPP proposals **will not be considered at this time** as these individual proposals could **preclude or impact future planning directions** for Broadway Corridor planning. As the work for Broadway Corridor planning **evolves** staff are happy to provide further information and work with you and your consultant team."*

The MIRHPP "Pre-Enquiry Application" was also **not** a Rezoning Enquiry as **required** to be received by the City prior to June 20, 2018 **in order to be considered** under Policy 1 **as an exemption** under the Broadway Plan Interim Rezoning Policy.

Although the June 12, 2018 letter to the applicant does "invite" the applicant "to proceed with submission of a formal application for rezoning advice (a rezoning enquiry)", this does **not meet the test** of Policy 1 exemption requirements under the Interim Rezoning Policy that **very specifically states** that an application for rezoning advice (a rezoning enquiry) **has to already be received** by the City by the June 20, 2018 Council approval date of the Broadway Plan Interim Rezoning Policy. **This clearly did not happen.**

This is of concern to me, as it should be to all of Council and the City generally, in order to make sure there isn't a possibility of judicial review on this project if approved as proposed.

Please clarify why Planning is saying that this rezoning process is in compliance with the Interim Rezoning Policy when the facts do not support this.

Again, I think it is premature to be setting a date for the public hearing prior to these issues being resolved.

Thank you,

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From: Johnston, Sadhu
Sent: Friday, June 19, 2020 9:19 AM
To: Direct to Mayor and Council - DL
Cc: City Manager's Correspondence Group - DL; Kelley, Gil
Subject: Update - RE: Memo: 2538 Birch Street (formerly 1296 West Broadway) - RTS 13730

Dear Mayor and Council,

The following information addresses questions from Councillor Hardwick in an email to Gil Kelley dated June 12, 2020. Further clarification was requested on the Council Memo circulated on June 10, 2020 regarding the application at 2538 Birch Street (formerly 1296 West Broadway) and adherence to timelines described in the Broadway Plan Interim Rezoning Policy (IRP).

A request was also made to provide Council with a copy of the letters sent by staff to the applicant regarding eligibility of this application for the MIRHP Program. The letters dated March 19, 2018 and June 12, 2018 are enclosed with the memo.

Applicability to policy:

- Staff remain satisfied that the application is in compliance with the IRP. Per the Memo to Council dated June 10, 2020, staff invited the property owner to proceed with a rezoning enquiry under the MIRHP

Program on June 12, 2018 which predated Council's approval of the Broadway Planning Program Terms of Reference and Associated Interim Policies on June 20, 2018.

- During the selection process for the MIRHP Program, staff reviewed the material submitted by the property owner on February 16, 2018 against the application's ability to meet the criteria of the MIRHP Program including its ability to yield significant moderate income units and its central location between two future underground transit stations at Granville and Laurel Streets. Staff concluded that the project is strategically located to avail of the improved connectivity through the Broadway Subway project while delivering on purpose-built rental housing targets identified under the *Housing Vancouver Strategy*.
- The application proposes to exceed the minimum 20% below market rental target, required of the MIRHPP policy by proposing 22% of the residential floor area be reserved for households earning a yearly moderate income. Staff are of the opinion that the proposal complies not only with the Broadway Plan IRP provisions but also meets the intent of other policies approved by Council such as the MIRHP Program and the *Housing Vancouver Strategy*.
- It is ultimately the role of Council to consider the merits of this application and to either approve, amend or reject it following a public hearing. Alternatively, Council has the right to refer the application directly back to staff for further refinements and report back to Council at a later date.
- The application is scheduled for a July 9, 2020 public hearing.

Best,
Sadhu

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Pronouns: he, him, his



The City of Vancouver acknowledges that it is situated on the unceded traditional territories of the Musqueam, Squamish, and Tsleil-Waututh peoples.

From: Hardwick, Colleen
Sent: Friday, June 12, 2020 11:44 AM
To: Johnston, Sadhu; Direct to Mayor and Council - DL
Cc: City Manager's Correspondence Group - DL; Kelley, Gil
Subject: RE: Memo: 2538 Birch Street (formerly 1296 West Broadway)

Dear Gil;

The email below suggests that I contact you with further questions.

In your explanation of the applicability of policy, the memo states that:

The correspondence inviting the property owner to participate in the pilot program predated Council's approval on June 20, 2018 of the Broadway Planning Program Terms of Reference and Associated Interim Policies. Therefore, the application is in adherence with the IRP.

However, the memo confirms the IRP states:

*The IRP for Broadway Corridor governs any exceptions that allow consideration of rezonings during the planning process. Policy 1 indicates: "Where, at the time of adoption of this rezoning policy, **there is an active rezoning application or where a recent application for rezoning advice has been received, and the applicant has received a written response stating that a rezoning application would be considered (within the past three years), the application will be considered.**"*

The letters from housing staff on March 19, 2018 and June 12, 2018 to the owner were **not** based on an active rezoning application, **only a response to an inquiry into general participation in the MIRHPP program.**

The March 19, 2018 letter was in fact **a rejection to the MIRHPP application** to be in the first 20 projects under MIRHPP, due to the upcoming Broadway Plan and measures to stop speculation on land during that process. This was confirmed through results of FOI disclosures of discussions of staff.

The June 12, 2018 letter only commented on the possibilities of proceeding under MIRHPP **without comments on specific rezoning issues of height and density.** A rezoning enquiry application was not received by the city until July 9, 2018, after the approval of the IRP. **And response by planning staff to the applicant for the rezoning enquiry was on October 2, 2018, well past the IRP approval date of June 20, 2018.**

From the housing staff letter June 12, 2018 on the MIRHPP to the applicant (attached as provided through FOI):

*As mentioned in that previous letter, City staff will be reporting to Council prior to the summer break on the work program for Broadway Corridor planning. Based on the progress made on that work, the limited wider policy implications of the proposal (e.g. no view corridor implications), the current status of the MIRHPP and the strength of your proposal in regard to key policy objectives and relative to other proposals, **staff are now able to invite you to proceed with submission of a formal application for rezoning advice (a rezoning enquiry).** Please note that there will need to be further conversations with Planning staff to determine a supportable height and form of development subject to urban design analysis.*

All applicants are reminded that an invitation to proceed with a rezoning enquiry does not constitute any guarantee or endorsement of specific project details (e.g. heights and densities, parking, etc.) proposed as part of a pre-enquiry discussion. As part of the rezoning enquiry process, staff will review submitted information and provide detailed site-specific advice to inform a complete rezoning application submission package.

*It is also important to note that the MIRHPP is discrete from the City's other rental incentive programs. All applications will be reviewed and evaluated in context of the MIRHPP policy parameters and **will be required to proceed through a full rezoning application process, regardless of any previous consideration or approval under other policies.***

The letter makes it clear that **this is not an application for rezoning advice (a rezoning enquiry), just an invitation to submit an application for rezoning advice, and doesn't state that a rezoning application would be considered, as required by the IRP.** Staff did not indicate a rezoning application would be considered until October 2, 2018, well after the required date of the IRP on June 20, 2018.

Exceptions to the IRP Policy 1 are only for active rezoning applications or recent rezoning enquiry applications with written response from planning staff on the rezoning enquiry. The Birch St. project does not seem to meet these requirements so please explain why you say the "application is in adherence with the IRP"?

I have attached relevant correspondence which are public through FOI.

Thanking you in advance for your attention to this matter.

Colleen Hardwick | Councillor
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From: Johnston, Sadhu
Sent: Wednesday, June 10, 2020 2:28 PM
To: Direct to Mayor and Council - DL
Cc: City Manager's Correspondence Group - DL; Kelley, Gil
Subject: Memo: 2538 Birch Street (formerly 1296 West Broadway)

Good afternoon Mayor and Council,

The following information refers to RTS #13730 and addresses questions from Council at the June 9 Council Meeting with regards to the application at 2538 Birch and adherence to timelines outlined in the Broadway Plan Interim Rezoning Policy (IRP):

Key dates and timelines

- The MIRHP program was approved by Council in November 2017
- On February 16, 2018, a pre-enquiry application was received
- On June 12, 2018, staff sent a letter inviting the property owner to participate in the limited pilot program for MIRHPP
- On June 20 2018, Council approved the Broadway Planning Program Terms of Reference and the Interim Rezoning Policies
- On July 9, 2018, a full rezoning enquiry application was received

Applicability of policy:

- The correspondence inviting the property owner to participate in the pilot program predated Council's approval on June 20, 2018 of the Broadway Planning Program Terms of Reference and Associated Interim Policies. Therefore, the application adheres to the IRP.
- A copy of the Broadway Plan IRP is enclosed for your convenience.
- Should you have any questions, please don't hesitate to contact Gil Kelley or Theresa O'Donnell (Theresa.O'Donnell@vancouver.ca)

Best,
Sadhu

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