Agenda – Council – September 25, 2013

Report – Standing Policy Committee on Property and Development – September 10, 2013

Item No. 17 Encroachment Agreement for the Development and Maintenance of Parking and Display Areas Encroaching on the Dugald Road Right of Way Adjacent to 1370 and 1390 Dugald Road – GJLSL Holding Corporation

STANDING COMMITTEE RECOMMENDATION:

On September 18, 2013, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development, and submitted the following to Council:

1. That the terms and conditions for an Encroachment Agreement in favour of GJLSL Holding Corporation for the maintenance of parking and display areas(3) within the Dugald Road right of way, as shown on Misc. Plan No. 13917/2 attached, be approved in accordance with the attached negotiated terms and conditions.

2. That the City enter into the Encroachment Agreement and such other agreements as determined necessary by the City Solicitor / Director of Legal Services to implement the intent of the foregoing.

3. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

Report – Standing Policy Committee on Property and Development – September 10, 2013

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On September 18, 2013, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development, and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On September 10, 2013, the Standing Policy Committee on Property and Development concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

ADMINISTRATIVE REPORT

Title: **Proposed Encroachment Agreement for the Development and Maintenance of Parking and Display Areas (3) Encroaching on the Dugald Road Right of Way Adjacent to 1370 and 1390 Dugald Road – GJLSL Holding Corporation**

Critical Path: **Standing Policy Committee on Property and Development**
Executive Policy Committee
Council

AUTHORIZATION

Author	Department Head	CFO	CAO
J. Zabudney	B. Thorgrimson	M. Ruta	D. Joshi

RECOMMENDATIONS

1. That the proposed terms and conditions for an Encroachment Agreement in favour of GJLSL Holding Corporation for the maintenance of parking and display areas(3) within the Dugald Road right of way, as shown on Misc. Plan No. 13917/2 attached, be approved in accordance with the attached negotiated terms and conditions.

2. That the City enter into the Encroachment Agreement and such other agreements as determined necessary by the City Solicitor / Director of Legal Services to implement the intent of the foregoing.

3. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

REASON FOR THE REPORT

The Encroachment By-law 692/74, which regulates the construction and maintenance of certain encroachments in streets, under General Regulations, Clause 4(1) (d) states that where the encroachment is of an unusual or commercial nature that it be referred to the Director of the Planning, Property and Development Department of the City for the purpose of negotiating a reasonable rental and making recommendations to the Chief Administrative Officer for subsequent referral to Council.

In this regard, the Planning, Property and Development Department has negotiated the proposed terms and conditions of an Encroachment Agreement in favour of GJLSL Holding Corporation.

IMPLICATIONS OF THE RECOMMENDATIONS

There is no general policy, regulatory, environmental or human resource implications associated with the proposed recommendations herein.

Failure to receive approval for this encroachment by the end of September 2013, will affect the City's ability to obtain the proposed Easements as shown on Misc. Plan No. 13917/2, which are necessary for the Active Transportation Network and will nullify the funding commitment already received by the City from the two other levels of government. The result of this is that the City will have to detour the Active Transportation Network around the proposed Easement Areas at a very substantial cost to the City.

HISTORY

The City has negotiated an Easement Agreement (Attached as Schedule A) with GJLSL Holding Corporation, the property owner of 1370 Dugald Road, for the purpose of installing an Active Transportation Pathway on the land shown as "Proposed Easement" on Misc. Plan No. 13917/2 attached.

As a condition of granting the Easement Agreement, GJLSL Holding Corporation, requires that the City, in turn, grant GJLSL Corporation an Encroachment on the areas shown as "Proposed Encroachments" on the attached Misc. Plan No. 13917/2.

The Department has completed its negotiations for the proposed Encroachment with GJLSL Holding Corporation.

In addition to granting the Encroachment for $1.00 per annum, the City (Public Works) shall pay for the associated municipal taxes, school taxes, local improvements, license fees, business taxes and realty taxes applicable to the Encroachment with the following account: 001-583010-181401-999-Property.

This report seeks approval of the Encroachment Agreement as negotiated.

FINANCIAL IMPACT

Financial Impact Statement **Date:** August 21, 2013

Project Name:

Proposed Encroachment Agreement for the Development and Maintenance of Parking and Display Areas (3) Encroaching on the Dugald Road Right of Way Adjacent to 1370 and 1390 Dugald Road – GJLSL Holding Corporation

COMMENTS:

In addition to granting the Encroachment for $1.00 per annum, the City (Public Works) shall pay for the associated municipal taxes, school taxes, local improvements, license fees, business taxes and realty taxes applicable to the Encroachment. These costs are considered to be immaterial in nature. As such, there are no material financial implications associated with this report.

"Original Signed By"
Mike McGinn, CA
Manager of Finance

CONSULTATION

In preparing this report there was consultation with:

Public Works
Legal Services as to legal issues (skom)

SUBMITTED BY

Department	Planning, Property and Development
Division	Real Estate
Prepared by:	Michelle Granger, RPA
Date:	August 21, 2013
File No.	5894/6 (V2)

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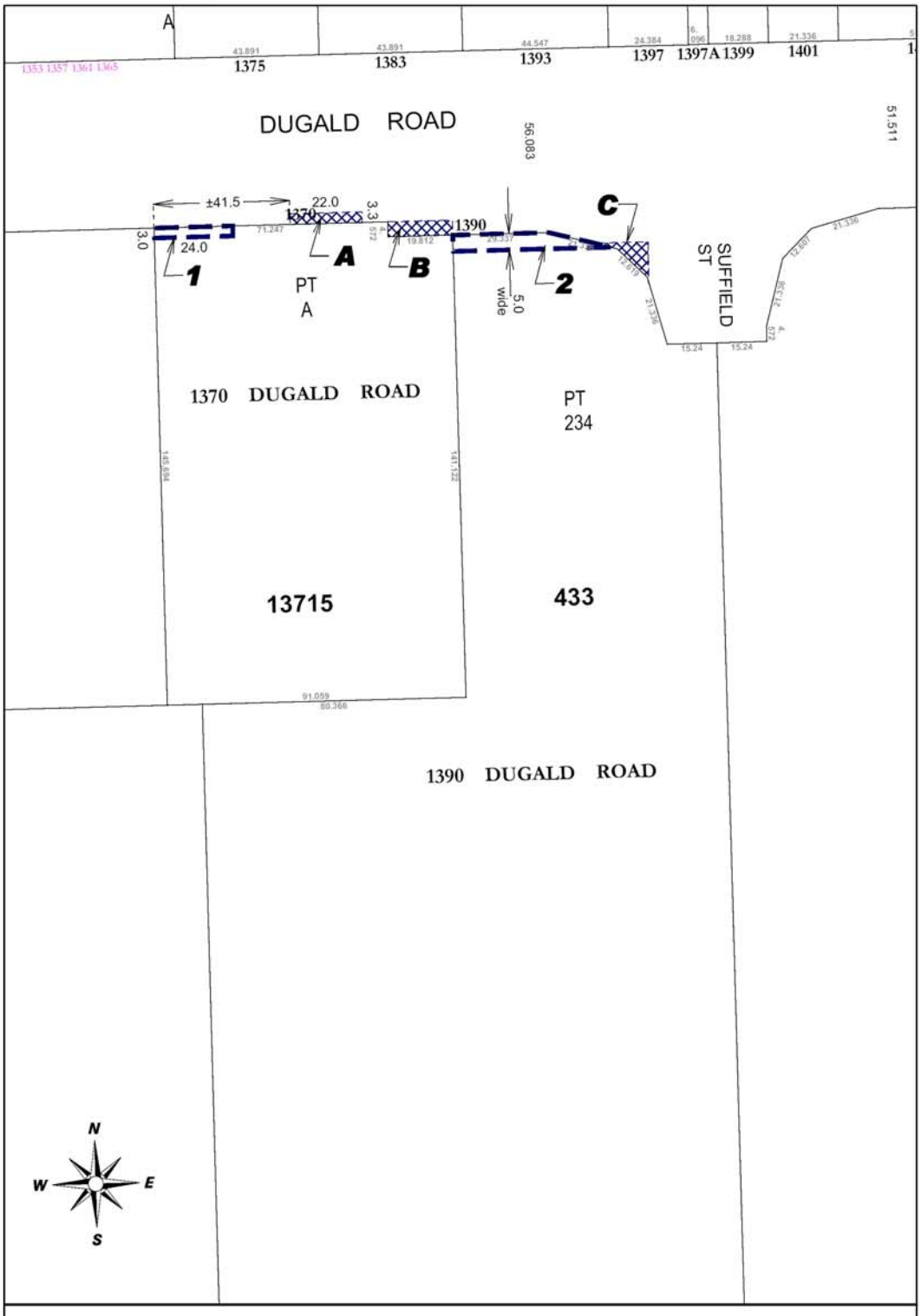

PROPOSED EASEMENT
AREA 1:±72.0 m² (±775 ft²)
AREA 2: ±193.4 m²(±2,082 ft²)

PROPOSED ENCROACHMENTS
AREA A: ±72.6 m² (±781 ft²)
AREA B: ±90.6 m² (±975 ft²)
AREA C: ±42.6 m² (±458 ft²)

Date: 2011-OCT-14
District: RIEL
File: 5894/3
Scale: 1: 1500

METRIC

NOTE:
Information displayed hereon has been compiled or computed from a variety of sources and should be used as a general guide only. No warranty is expressed or implied regarding the accuracy of such information.

CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES

MISC. PLAN NO. 13917/2

SCHEDULE A

PROPOSED TERMS AND CONDITIONS FOR ENCROACHMENT AGREEMENT FOR PARKING AND DISPLAY PURPOSES ONTO THE DUGALD ROAD RIGHT OF WAY ADJACENT TO 1370 AND 1390 DUGALD ROAD.

Licensee:	GJLSL Holding Corporation and GNR Travel Centre Ltd. (hereinafter called the **"Licensee"**)
Use:	Parking area & Display area
Area:	Shown and identified as 'Proposed Encroachment Areas A, B and C' on Misc. Plan No. 13917/2 attached, (hereinafter called the "Licensed Lands").
Term:	Annual Continuing, commencing May 1, 2012
Rent:	$1.00 per annum, receipt and sufficiency of which is hereby acknowledged
Taxes:	Licensee responsible for all municipal taxes, school taxes, local improvements, license fees, business tax, etc. which may be charged in respect to the use and occupancy of the Licensed Lands. The City shall contribute a lump sum of $2,000.00 to the Licensee for the purposes of paying all municipal taxes, school taxes and local improvements as assessed on the Licensed Lands and the Licensee shall use the lump sum payment for this purpose. Upon the expiration of the $2,000.00 lump sum payment, the City shall provide the Licensee with additional funds for the purpose of paying all municipal taxes, school taxes and local improvements as assessed on the Licensed Lands if the encroachment agreement is still in force and effect at that time. The Licensee shall provide the City with proof of payment as made by the Licensee to the taxing authority and as set out herein upon written request from the City.
Insurance:	The Licensee shall purchase and keep in force during the full term of the agreement the following insurance coverage: (i) Commercial general liability insurance in the amount of at least two million dollars ($2,000,000) per occurrence, such liability policy to include the City of Winnipeg as an additional insured and contain evidence of a cross liability clause; (ii) All policies to be taken out with insurers license to and carrying on business in the Province of Manitoba; (iii) Deductibles shall be borne by the Licensee; (iv) The Licensee shall not cancel, materially change or cause any such policies to lapse without a minimum of thirty (30) days prior notice to the City of Winnipeg; (v) The Licensee shall file with the City a certificate of insurance in a form satisfactory to the City Solicitor; (vi) The City shall have the right to alter the limits and/or coverage's as reasonably required from time to time during the continuance of this agreement and any subsequent renewals thereof, provided that the City shall give the Licensee reasonable notice and shall request reasonable change.
Cancellation:	Three Hundred and Sixty Five (365) days written notice by either party.
Conditions:	1. That the approval of this application by the Designated Officer – Encroachments is valid for a period of six (6) months from the date of said approval and unless the

Licensee enters into an Encroachment Agreement with the City of Winnipeg within the stated time frame, or alternatively obtains an extension of time from the Designated Officer- Encroachments.

2. That all utilities be permitted to enter the area for maintenance, repair or installation of services at anytime without notice to the Licensee and that any removal or relocation of existing facilities as a result of the proposed application will be at the expense of the Licensee and that prior to any digging or excavation, Manitoba Hydro and Centra Gas Manitoba Inc. advise the Licensee to Call Before You Dig at 480-1212.

3. The Licensee indemnify and keep indemnified the City from and against all claims for damages which arise out of the use of the Licensed Lands by the Licensee.

4. Except with respect to the fence on area C, and any replacement of that fence, the Licensee will not construct or permit the construction of any building or structure whatsoever on the Licensed Lands, nor make any excavation therein or improvement thereon, without the written consent of the City's Director of Planning, Property and Development Department.

5. The development and maintenance of the Licensed Lands will be performed at the sole cost, expense and effort of the Licensee, including but not limited to, obtaining all permits required to develop, occupy and utilize the Licensed Lands for the intended use.

6. The Licensee will maintain at its own expense, the Licensed Lands in a safe, clean and tidy condition to the satisfaction of the City.

7. In the event that the Licensed Lands require repair, the Licensee shall perform, at its sole cost, expense and effort complete the required repairs within thirty (30) days written notice provided by the City.

8. The Licensee will pay all operating costs including hydro costs related to the use and occupancy of the Licensed Lands.

9. The Licensee takes the Licensed Lands on an "as is" basis and acknowledges and agrees that the City has made no representation, warranties or guarantees of any nature or kind whatsoever as to the quality, condition or suitability of the Licensed Lands for any use or purpose, nor to any environmental conditions which may exist.

10. Licensee not at any time release into the environment, or deposit, discharge, place or dispose of, at, on or near the Licensed Lands any dangerous goods as that term is defined in The Dangerous Goods Handling and Transportation Act. R.S.M. 1987, c.D12, as amended, replaced or substituted from time to time.

11. That extreme caution be used when excavating in the vicinity of the Licensed Lands as Manitoba Hydro advises that they have an electrical P86 underground cable one (1) meter outside of the property on the road allowance. No digging is permitted outside the encroachment area.

12. The Licensee consents to allow the City or other persons acting with its authorization to enter upon the encroachment area for the repair and maintenance of the box culvert, at any time hereafter subject to the City providing the Licensee with seventy-two (72) hours notice, except for in the event of an emergency whereby the City will be able to enter the encroachment area immediately without providing notice to the Licensee.

13. The Licensee is to comply with all laws, by-laws and regulations of any federal, provincial or municipal authority, and shall obtain all necessary permits pertaining to the use and occupancy of the Licensed lands.

14.
In the case of the death of the Licensee, or the disposal by the Licensee of the business or premises including the Licensed Lands, during the currency of this License, this License shall continue if the new owner or the legal representative of the Licensee applies to the City's Designated Officer and obtains a transfer of this License within one year of when the aforesaid death or disposal occurs, which transfer shall not be unreasonably withheld.

15. In the event of the Licensee being in default of any Terms and Conditions contained herein, the Encroachment Agreement is subject to cancellation by the City if the Licensee fails to remedy the default after having received 365 days notice in writing. If the either party elects to terminate the Encroachment Agreement or if the City does not approve the transfer of the Encroachment Agreement, the Easement Agreement in favour of the City with respect to the areas shown on Misc. Plan No. 13917/2 is also terminated.

16. Upon notice of termination or cancellation of the Encroachment Agreement, the Licensee shall remove its property and improvements from the Licensed Lands and leave same in a condition satisfactory to the City within 365 days. Should the Licensee default in so doing the City may remove the Licensee's property and improvements and restore the Licensed Lands at the sole risk and expense of the Licensee.

17. The parties have agreed to proposed terms and conditions, dated October 31, 2011, granting the City an Easement Agreement over the Licensee's Property subject to the approval of this proposed Encroachment Agreement. If this proposed Encroachment Agreement is approved by Council, or its delegated authority, both this Encroachment Agreement and the corresponding Easement Agreement shall take effect and be executed in concurrence with one another.

This proposal is subject to final approval by the City of Winnipeg's Council, or its delegated authority.

The Licensee shall enter into a formal Encroachment Agreement with the City employing the foregoing Terms and Conditions and such other Terms and

Conditions as the City Solicitor/Director of Legal Services and the Solicitor for the Licensee deem necessary and in a form satisfactory to the City Solicitor/Director of Legal Services and to the Solicitor for the Licensee, each acting reasonably.

GJLSL Holding Corporation and GNR Travel Centre Ltd. hereby acknowledge and agree to enter into an Encroachment Agreement with the City of Winnipeg for the use of the area identified as "Proposed Encroachments Area A, B and C" on Misc. Plan #13917/2 attached in accordance with the Terms and Conditions as outlined herein on this Schedule "A".

GJLSL HOLDING CORPORATION

NAME G.J. ROBERT

JUNE 1, 2013

DATE

TITLE: PRESIDENT

GNR TRAVEL CENTRE LTD.

NAME G.J. ROBERT

JUNE 1, 2013

DATE

TITLE: PRESIDENT

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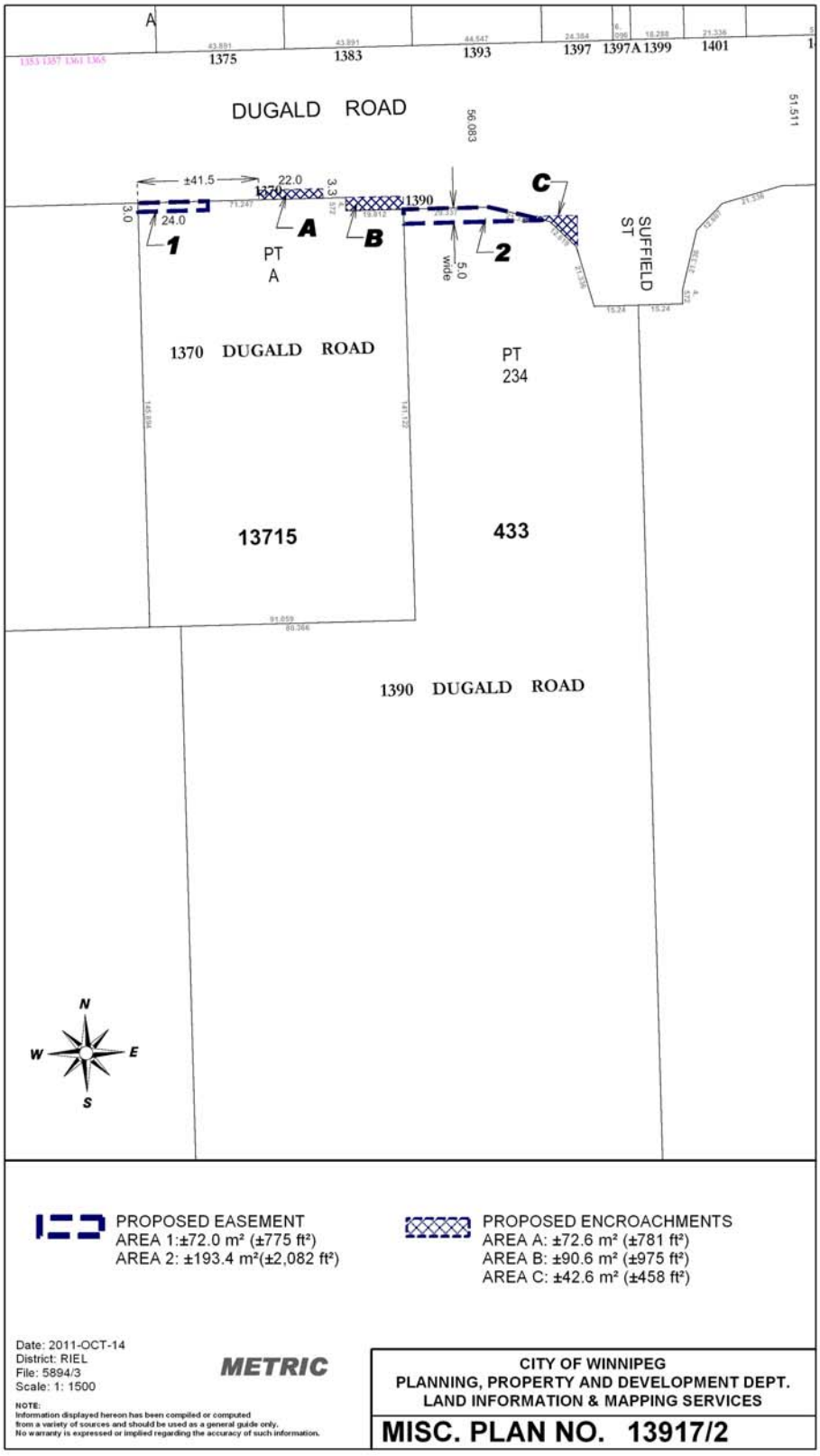
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PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 13917/2