Minute No. 261
Report – Standing Policy Committee on Downtown Development, Heritage and Riverbank Management – February 3, 2014

Item No. 3 **Encroachment Agreement to Allow for the Use of City Owned Right-of-Way between 340 Assiniboine Avenue and the Donald Street Bridge for the Development and Maintenance of a Parking Area (Fort Rouge – East Fort Garry Ward)**

COUNCIL DECISION:

Council concurred in the recommendation of the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management and adopted the following:

1. That the terms and conditions attached as Schedule "A" for an encroachment agreement in favour of 340 Assiniboine Ave. Ltd. for the purpose of a parking area identified as "Total Encroachment Area" on Misc. Plan 14538, be approved.

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

3. That the authority be delegated to the Director of Planning, Property and Development to negotiate and approve the final terms and conditions of the encroachment agreement and such other agreements as determined necessary by the Director of Legal Services and City Solicitor, in accordance with the terms and conditions set forth in Schedule "A" and such other terms and conditions deemed necessary by the Director of Legal Services and City Solicitor to protect the interests of the City.

4. 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 Downtown Development, Heritage and Riverbank Management – February 3, 2014

DECISION MAKING HISTORY:

Moved by Councillor Pagtakhan,

That the recommendation of the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On February 12, 2014, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On February 3, 2014, the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management 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 to Allow for the Use of City- Owned Right-of-Way between 340 Assiniboine Avenue and the Donald Street Bridge for the Development and Maintenance of a Parking Area**

Critical Path: **Standing Policy Committee on Downtown Development, Heritage and Riverbank Management, Executive Policy Committee, Council**

AUTHORIZATION

Author	Department Head	CFO	CAO
I. Day	B. Thorgrimson	M. Ruta, CFO	D. Joshi A/CAO

RECOMMENDATIONS

1. That the proposed terms and conditions attached as Schedule "A" for an encroachment agreement in favour of 340 Assiniboine Ave. Ltd. for the purpose of a parking area identified as "Total Encroachment Area" on Misc. Plan 14538 be approved.

2. That the City enter into an 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 authority be delegated to the Director of Planning, Property & Development to negotiate and approve the final terms and conditions of the encroachment agreement and such other agreements as determined necessary by the City Solicitor/Director of Legal Services, in accordance with the terms and conditions set forth in Schedule "A" and such other terms and conditions deemed necessary by the City Solicitor/Director of Legal Services to protect the interests of the City.

4. 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

Encroachment By-law 692/74, General Regulations, 4. (1) d, states:

"Where the encroachment is of an unusual or commercial nature that it be referred to the Director of Land and Development Services of the City for the purpose of negotiating a reasonable rental and making recommendation to the Chief Administrative Officer for subsequent referral to Council."

In this regard, the Planning, Property & Development Department has negotiated Terms and Conditions of an Encroachment Agreement, in favour of 340 Assiniboine Ave. Ltd.

IMPLICATIONS OF THE RECOMMENDATIONS

The Department has determined that there are no general, policy, regulatory, environmental or human resource implications to entering into an Encroachment Agreement shown on the attached Miscellaneous Plan No. 14538.

Several trees currently exist in the Encroachment Area. It has been established in the Terms and Conditions which of these trees may be removed and which are to remain intact. The Licensee shall reimburse the City for trees that are removed.

HISTORY

340 Assiniboine Ave. Ltd. is the owner of an Apartment Complex at 340 Assiniboine Avenue and is seeking to add to its parking capacity by expanding into City-owned lands between their own property and the Donald Street Bridge (also known as Midtown Bridge).

340 Assiniboine Ave. Ltd. submitted an application to the City's Zoning and Permits Branch to allow for parking on the Dawson Road North right-of-way.

The application was circulated to applicable City departments and public utilities for consideration and comments. All comments and concerns have been incorporated into the signed terms and conditions.

The Risk Management Division of Corporate Finance reviewed the insurance requirements for this proposed encroachment and their comments have been incorporated into the terms and conditions.

The Planning, Property and Development Department has negotiated proposed terms and conditions of an Encroachment Agreement in favour of 340 Assiniboine Ave. Ltd.

This report seeks approval of the Encroachment Agreement as negotiated.

FINANCIAL IMPACT

Financial Impact Statement

Date: January 7, 2014

Project Name:

First Year of Program **2014**

Proposed Encroachment Agreement to Allow for the Use of City- Owned Right-of-Way between 340 Assiniboine Avenue and the Donald Street Bridge for the Development and Maintenance of a Parking Area

	2014	2015	2016	2017	2018
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
Debt - External	-	-	-	-	-
Grants (Enter Description Here)	-	-	-	-	-
Reserves, Equity, Surplus	-	-	-	-	-
Other - Enter Description Here	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ -	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	1,532	1,282	1,282	1,282	1,282
Net Cost/(Benefit)	$ (1,532)	$ (1,282)	$ (1,282)	$ (1,282)	$ (1,282)
Less: Existing Budget Amounts	(1,532)	(1,282)	(1,282)	(1,282)	(1,282)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Revenues in 2014 consist of the annual rental amount of $1,282 + a $250 one-time admin fee. Revenues from 2015 onward consist of the annual rental amount only.

"Original signed by"
Mike McGinn, CA
Manager of Finance

CONSULTATION

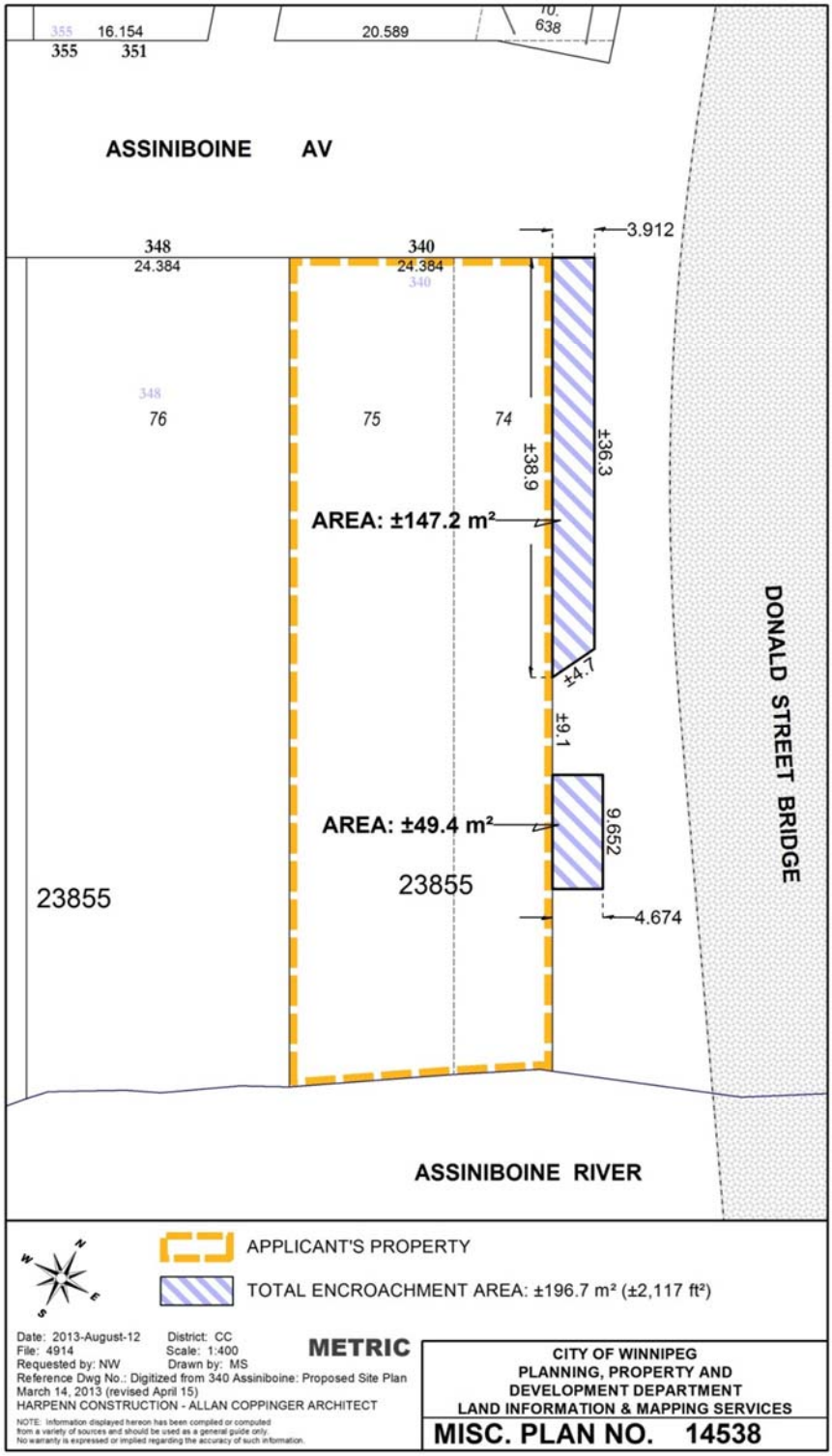
In preparing this report there was consultation with:

Legal Services Department as to legal issues
Risk Management, Corporate Finance

SUBMITTED BY

Department	Planning, Property and Development
Division	Municipal Accommodations
Prepared by:	Nolan Winters
Date:	January 16, 2014
File No.	MA2014-0003

O:\Reports Directive\Municipal Accommodations\Leases\2014\MA2014-003 RIS Report Encroachment Agreement for use of Right-of-Way between 340 Assiniboine Ave & Donald St. Bridge.docx


355
16.154
355
351
20.589
638
ASSINIBOINE AV
348
24.384
340
24.384
340
3.912
348
76
75
74
±38.9
±36.3
AREA: ±147.2 m²
±4.7
±9.1
AREA: ±49.4 m²
9.652
23855
23855
4.674
DONALD STREET BRIDGE
ASSINIBOINE RIVER
APPLICANT'S PROPERTY
TOTAL ENCROACHMENT AREA: ±196.7 m² (±2,117 ft²)
Date: 2013-August-12
File: 4914
Requested by: NW
District: CC
Scale: 1:400
Drawn by: MS
METRIC
Reference Dwg No.: Digitized from 340 Assiniboine: Proposed Site Plan
March 14, 2013 (revised April 15)
HARPENN CONSTRUCTION - ALLAN COPPINGER ARCHITECT
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 DEPARTMENT
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 14538

SCHEDULE A

PROPOSED TERMS AND CONDITIONS FOR AN ENCROACHMENT AGREEMENT TO ALLOW FOR THE USE OF A PORTION OF CITY OWNED PROPERTY BETWEEN 340 ASSINIBOINE AVENUE AND DONALD STREET BRIDGE FOR THE PURPOSE OF A PAVED PARKING LOT

Use:	Development and maintenance of a paved parking area
Licensee:	340 Assiniboine Ave. Ltd. . (hereinafter called the "Licensee")
Area:	Shown and identified as 'Total Encroachment Area' on Misc. Plan No. 14538, attached; (hereinafter called the "Encroachment Area")
Term:	Annually continuing, commencing the first day of the month following approval from the City's Standing Committees and Council;
Rental:	$1,281.5 per annum, plus GST, computed on the basis of the fees outlined in the City of Winnipeg Encroachment By-Law No. 692/74 and amendments thereto, in event that the By-law is amended changing the fees charged for encroachments the rental paid under this agreement shall be adjusted accordingly, plus an initial administrative fee of $250.00 plus GST;
Insurance:	The Licensee shall purchase and keep in force during the full term of the agreement the following insurance coverage: 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 contractual liability and cross liability clause; All policies to be taken out with insurers licensed to and carrying on business in the Province of Manitoba; Deductibles shall be borne by the Licensee; The Licensee shall not cancel, materially change or cause any such policies to lapse without a minimum of thirty (30) days prior written notice to the City of Winnipeg;

The Licensee shall file with the City a certificate of insurance in a form satisfactory for the City Solicitor;

The City shall have the right to alter the limits and/or coverages as reasonably required from time to time during the continuance of this lease agreement and any subsequent renewals thereof, provided that the City shall give the Licensee reasonable notice and shall request reasonable change;

Cancellation: Ninety (90) days written notice;

Conditions: That the approval of this application by Council is only valid for a period of twelve (12) months from the date of said approval 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;

The Licensee understands and agrees that the 'Encroachment Area' is licensed on an "as is" basis.

The City shall have the right to access the Encroachment Area at any time (twenty four hours a day, seven days a week) by its employees or other persons acting with its authorization, with or without equipment for any purpose including, without limitation, to maintain, operate, repair, inspect the Encroachment Area and any improvement thereon or rehabilitate existing water mains, sewer lines and appurtenances located within the Encroachment Area.

That if at any time during the term the City's use or requirements for the Encroachment Area reasonably necessitate the relocation and/or modification and/or removal of the Encroachment Area, the Licensee shall be responsible to do all things necessary to relocate and/or modify and/or remove the Encroachment Area as required by the City and to pay all costs and expenses associated therewith.

The Licensee shall not assign the Encroachment Agreement or sublet the Encroachment Area without the prior written consent of the Licensor.

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 Licensee will be at the expense of the Licensee.

Any removal or relocation of Manitoba Hydro and/or Centra Gas Manitoba Inc. existing facilities as a result of the proposed license will be at the expense of the Licensee. If the application is revised at any time it will be necessary for Manitoba Hydro/Centra Gas to review the file to determine if their easement requirements remain the same. Prior to any digging or excavation, Manitoba Hydro and/or Centra Gas Manitoba Inc. advise the Licensee to contact the Call-Before-You-Dig line at 204-480-1212;

The Licensee shall be responsible for all costs, utilities, and operating expenses in connection with the use and occupation of the Encroachment Area including, but not limited to; license fees, business tax, garbage removal, security, etc. The Licensee shall also be responsible for cleanup of litter in the immediate area as a result of use and occupation of the Encroachment Area.

That snow removal in the Encroachment Area shall be the responsibility of the Licensee;

The Licensee shall release, indemnify and save the City harmless from and against any and all claims for damages or injuries, including death that may arise from the use of the Encroachment Area by the Licensee.

That if any removal, relocation or adjustment of existing MTS facilities is required, it will be at the expense of Licensee; that extreme caution be used when excavating in the vicinity of MTS buried plant and that the Licensee contact the Buried Plan Location Service at 204-941-7267, 48 hours prior to excavation for further confirmation in the field;

That the black ornamental fence that is to run along the east side of the Encroachment Area is to be no higher than 5 feet tall;

The Licensee is to provide access to the City or its contractors for bridge inspection and repair as required;

The Licensee, if required, shall obtain a waterways permit with the City and install a fence to screen headlights along the east edge of the Encroachment Area;

The Licensee is to restore the curb, boulevard and sidewalk at the West approach along Assiniboine Avenue as detailed in "Schedule C";

Before construction commences, the Licensee must have a registered Landscape Architect or Engineer submit to the Underground Structures Branch of the City of Winnipeg for review and approval a construction drawing that includes (but is not limited to) surface grade elevations, construction details and existing underground utilities for the proposed works in the Encroachment Area. Supervisor of Underground Structures is Derrick Saedal, 986-6400;

The Licensee shall ensure that the east edge of the Encroachment Area is at least 4 metres away from the farthest western edge of the Donald Street Bridge as identified on Misc. Plan No. 14538;

The Licensee shall not remove or disturb or cause to be removed or disturbed the American Elm in the boulevard on Assiniboine Avenue. The Licensee shall not make any changes or cause any changes to be made to the existing private approach adjacent to the American Elm.

The Licensee shall be responsible, at its sole cost and expense, to install protective fencing that is 1.2 metres in height along the perimeter of the boulevard to establish a tree protection zone (TPZ) for the two mature boulevard trees and their root systems.

Schedule C shows the location of 12 trees in close proximity to the proposed Encroachment Area. There is no indication of which trees are proposed to be removed. However, it appears that trees 3,4, and 5 are most likely to require removal. The Licensee shall be required to ensure that the following TPZ requirements are followed during construction by installing construction fencing at each of the following TPZ limits:

- The minimum TPZ required for Tree 1 and Tree 2 combined is a 5 metre radius from Tree 2; and
- the minimum TPZ for Tree 11 is a 2.5 metre radius around Tree 11.

The Licensee shall not remove any trees in the Encroachment Area or the surrounding City owned or operated land, streets or boulevards without the written approval of the City. The Licensee shall reimburse the City for every tree that is removed at the compensation set out in the attached Schedule B. The Licensee shall not be permitted to remove or cause the removal of any trees that are identified in Schedule B as "Do not remove; tree protection zone required". If the Licensee fails to comply with this provision and a tree that has not been approved for removal is removed the Licensee will compensate the City according to appraised values established in Schedule B.

That the three new deciduous trees proposed at the bridge setback line (four metres from the western edge of the bridge) be moved to a point 6 metres from the edge of the bridge (i.e. inwards towards the parking lot by 2 inches relative to their currently proposed position) and that shade trees with a tighter canopy (less than 2.5 metres radius) or smaller ornamental trees with a smaller canopy (less than 2.5 metres radius) be utilized for the plantings;

The Licensee shall not permit unauthorized activities to occur in the TPZ, including storage and piling of materials. The Licensee shall not prune any trees that may require it as a result of construction without first obtaining the written approval by the City Forester or designate. The Licensee shall not prune any elm trees between April 1 to July 1 pursuant to provincial legislation.

Upon termination, cancellation or expiry of the Agreement, the Tenant shall remove its property from the Encroachment Area (including but not limited to any asphalt that may be installed) and improvements from the Encroachment Area, at its expense, and leave same in a condition satisfactory to the City. Should the Tenant default in doing so, the City may remove the Tenant's property and improvements and restore the Encroachment Area at the sole risk and expense of the Tenant.

That the Licensee shall obtain all applicable permits prior to any development;

Any other terms and conditions as are deemed necessary by the Director of the Planning, Property and Development Department, the Director of Public Works Department and by the City Solicitor/Director of Legal Services to protect the City's interests, acting reasonably.

The proposed terms and conditions of the proposed Encroachment Agreement are subject to the final approval of the City's Standing Committees and Council and to the City Solicitor as to form and content.

340 ASSINIBOINE AVE. LTD. HEREBY AGREES TO ENTER INTO AN ENCROACHMENT AGREEMENT WITH THE CITY OF WINNIPEG FOR THE USE OF THE PROPERTY IDENTIFIED AS `TOTAL ENCROACHMENT AREA` ON THE ATTACHED MISC. PLAN NO. 14538 AND IN ACCORDANCE WITH THE PROPOSED TERMS AND CONDITIONS AS OUTLINED HEREIN.

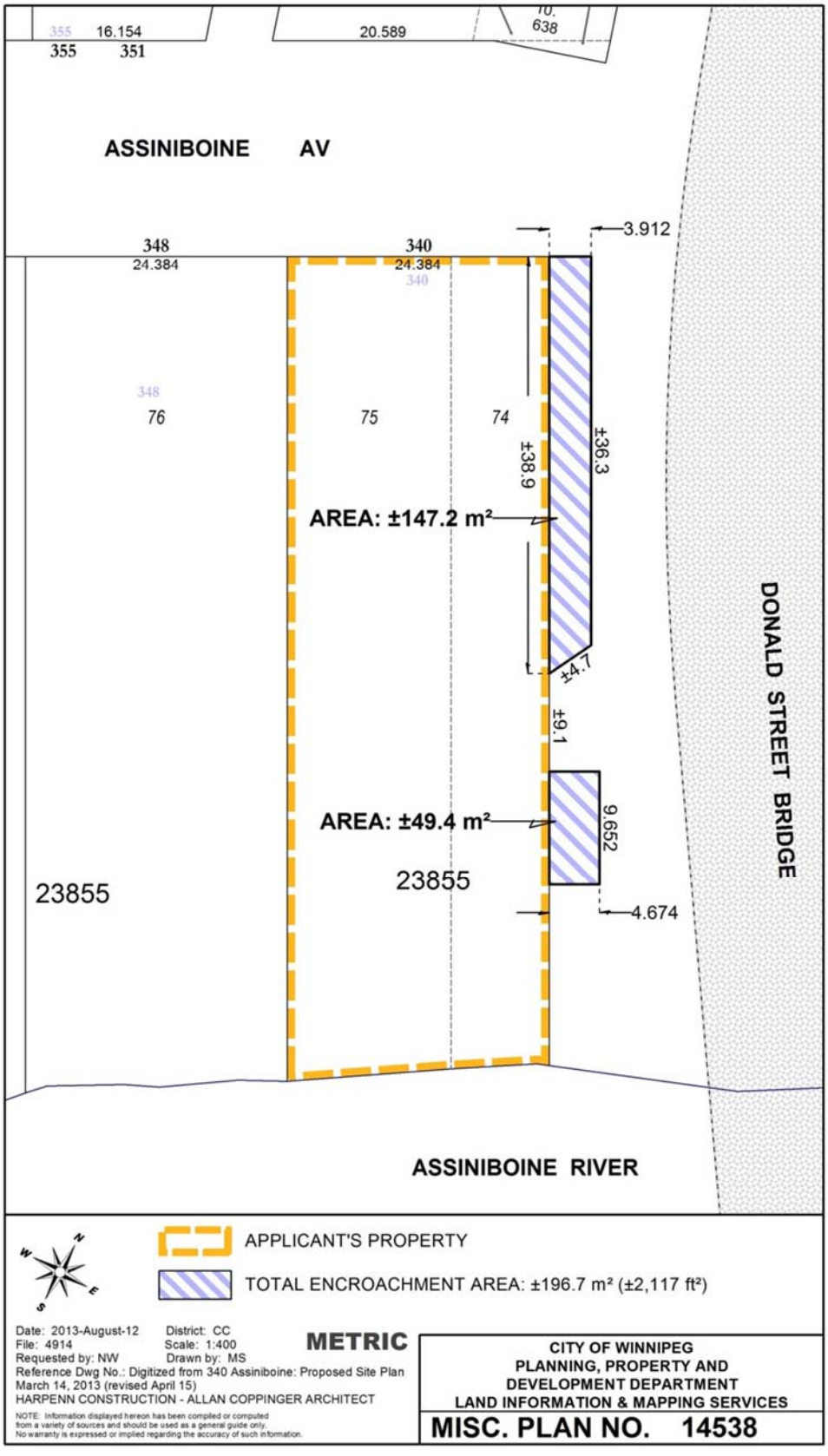
340 Assiniboine Ave. Ltd.

Per: _____ 20/12/2013
DATE

GLEN KNAPP
NAME

SENIOR PROJECT MANAGER, THORWIN REAL ESTATE LP
TITLE

I/We have been authorized to bind the Corporation


355
16.154
355
351
20.589
638
ASSINIBOINE AV
348
24.384
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76
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APPLICANT'S PROPERTY
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CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPARTMENT
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 14538

SCHEDULE B

June 19, 2013 Page 3

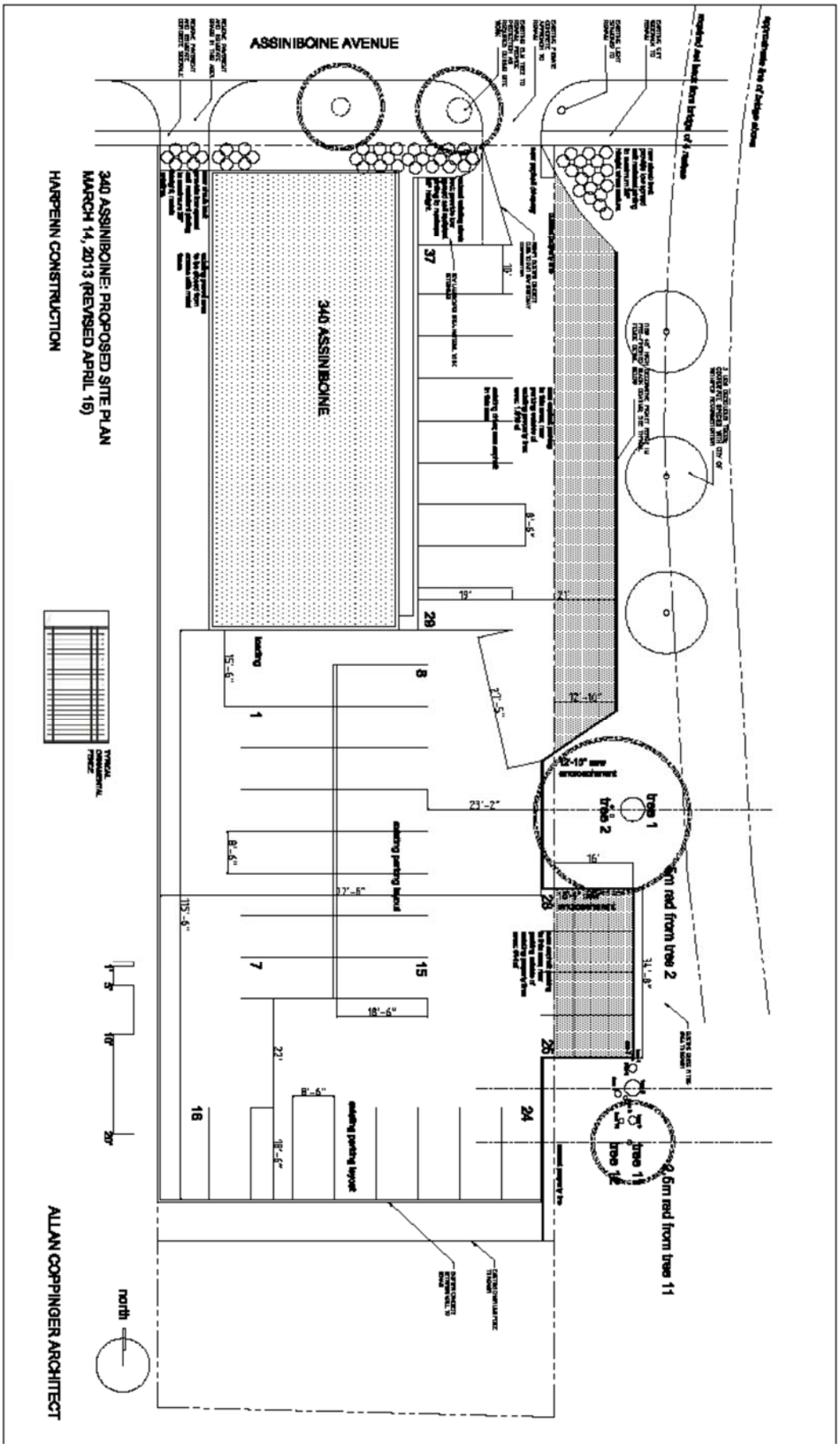
however, it appears that trees 3, 4 and 5 are most likely to require removal. The minimum tree protection zone (TPZ) required for Tree 1 and Tree 2 combined is 5 m radius from Tree 2 and shall be fenced off with construction fencing. TPZ for Tree 11 shall be minimum 2.5 m radius from the tree and shall be fenced off with construction fencing. No unauthorized activities shall occur in the TPZ, including storage and piling of materials. Any pruning that may be required as a result of construction shall require approval by the City Forester or designate. Under provincial legislation, elms cannot be pruned from April 1 to July 31. The table below identifies which trees cannot be removed and require protection zones and which trees may be removed and the compensation required for those trees.

Tree No.	Species	Size (dbh in cm)	Condition	Appraised Value	Assessment
1	**American elm**	**83**	**Good**	**$64,300.00**	**Do not remove; tree protection zone required**
2	**American elm**	**17 + 19**	**Good**	**$6,060.00**	**Do not remove; tree protection zone required**
3	Manitoba maple	11	Good	$680.00	Approve removal with compensation
4	Manitoba maple	8	Good	$600.00	Approve removal with compensation
5	Green ash	28	Good	$5,850.00	Approve removal with compensation
6	Poplar	105	Poor	$0.00	Approve removal
7	Manitoba maple	20	Fair	$1,400.00	Approve removal with compensation
8	Manitoba maple	13	Poor	$0.00	Approve removal
9	Manitoba maple	24	Fair	$2,010.00	Approve removal with compensation
10	Manitoba maple	13	Fair	$600.00	Approve removal with compensation
11	**American elm**	**29**	**Good**	**$7,850.00**	**Do not remove; tree protection zone required**
12	American elm	7	Good	$600.00	Approve removal with compensation

If removal is required for those trees approved to be removed, the corresponding compensation payment shall be made to City of Winnipeg and forwarded as described below prior to tree removal:

Urban Foresty Branch
1539 Waverley St.
Winnipeg, MB R3T 4V7

Schedule C (next page)


ASSINIBOINE AVENUE
340 ASSINIBOINE
340 ASSINIBOINE: PROPOSED SITE PLAN
MARCH 14, 2013 (REVISED APRIL 15)
HARPENN CONSTRUCTION
ALLAN COPPINGER ARCHITECT
north
loading
existing parking layout
existing parking layout
tree 1
tree 2
tree 11
tree 12
2.5m rad from tree 2
2.5m rad from tree 11