Agenda – Executive Policy Committee – January 21, 2015

Report – Standing Policy Committee on Property and Development – September 16, 2014

Item No. 2 **Closing - Part of the Public Lane North of Notre Dame Avenue, East of Lydia Street**
(Point Douglas Ward)
File DAC 15/2013

On January 13, 2015, Dieter Scheffer, Frank Motors, withdrew the application.

Report – Standing Policy Committee on Property and Development – September 16, 2014

DECISION MAKING HISTORY:

COMMUNITY COMMITTEE RECOMMENDATION:

On November 18, 2014, the Lord Selkirk-West Kildonan Community Committee did not hear any representation on the application and adjourned the matter to its meeting on January 13, 2015 at 5:00 p.m. in the Council Building, 510 Main Street.

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On September 17, 2014, the Executive Policy Committee referred the item back to the Lord Selkirk-West Kildonan Community Committee for consideration of further information, including the impacts of any injurious affect.

EXECUTIVE POLICY COMMITTEE DECISION:

On September 17, 2014, the Executive Policy Committee directed the Public Works and Planning, Property and Development Departments, and the Winnipeg Police Service, to mitigate any traffic and safety issues in the area.

Further on September 17, 2014, John Stefaniuk, Thompson Dorfman Sweatman LLP, together with Dieter Scheffer, Frank Motors, submitted a presentation titled “Summary Submission of Frank Motors” in support of the Closing of Part of the Public Lane North of Notre Dame Avenue, East of Lydia Street.

Further on September 17, 2014, Mark Newman, Fillmore Riley LLP, together with Michael Filz, submitted a presentation titled “Submission of Kelsey Trail Holdings Ltd. and Keltek Safety Apparel” in opposition to the Closing of Part of the Public Lane North of Notre Dame Avenue, East of Lydia Street.

STANDING COMMITTEE RECOMMENDATION:

On September 16, 2014, due to a tie vote, the Standing Policy Committee on Property and Development submits the matter to Executive Policy Committee and Council without recommendation.

Further on September 16, 2014, Mark Newman, Fillmore Riley LLP, submitted a communication dated September 16, 2014 with respect to Closing – Part of the Public Lane North of Notre Dame Avenue, East of Lydia Street, which in on file in the City Clerk’s Office.

Further on September 16, 2014, John Stefaniuk, submitted a communication with respect to Closing – Part of the Public Lane North of Notre Dame Avenue, East of Lydia Street.

Report – Standing Policy Committee on Property and Development – September 16, 2014

DECISION MAKING HISTORY (continued):

STANDING COMMITTEE RECOMMENDATION:

On June 10, 2014, the Standing Policy Committee on Property and Development laid over the matter to its meeting on September 16, 2014.

Further on June 10, 2014, Mark Newman, Fillmore Riley LLP, submitted a communication dated June 10, 2014 with respect to Closing – Part of the Public Lane North of Notre Dame Avenue, East of Lydia Street, which in on file in the City Clerk's Office.

On May 13, 2014, the Standing Policy Committee on Property and Development laid over the matter to the June 10, 2014 meeting of the Standing Policy Committee on Property and Development.

COMMUNITY COMMITTEE RECOMMENDATION:

On April 22, 2014, the Lord Selkirk-West Kildonan Community Committee concurred in the recommendation of the Winnipeg Public Service and forwarded to the Standing Policy Committee on Property and Development.

On February 18, 2014, the Lord Selkirk-West Kildonan Community Committee did not hear any representation on the application and adjourned the public hearing to its meeting on April 22, 2014 at 5:00 p.m. in the Council Building, 510 Main Street.

On January 21, 2014, the Lord Selkirk-West Kildonan Community Committee did not hear any representation on the application and adjourned the public hearing to its meeting on February 18, 2014 at 5:00 p.m. in the Council Building, 510 Main Street.

PUBLIC HEARING SUMMARY

File:	DAC 15/2013
Before:	Lord Selkirk-West Kildonan Community Committee Councillor Pagtakhan, Chairperson Councillor Eadie Councillor Sharma
Hearing:	January 13, 2015 November 18, 2014 April 22, 2014 February 18, 2014 January 21, 2014 Council Building, 510 Main Street
Applicant:	John Stefaniuk, Thompson Dorfman Sweatman LLP, representing Dieter Scheffer, on behalf of Frank Scheffer Enterprises Ltd. (Frank Motors)
Premises Affected:	Part of the Public Lane North of Notre Dame Avenue, East of Lydia Street

Exhibits Filed:

1. Report from the Real Property Officer dated January 3, 2014
2. Petition in support of the application purporting to contain the signatures of 8 area residents (Appendix C of the Report of the Real Property Officer dated January 3, 2014)
3. Inspection Report
4. Communication dated January 15, 2014, from Michael Filz in opposition to the application
5. Communication dated January 14, 2014, from David Thomas, President, Keltek Safety Apparel / Kelsey Sportswear Ltd., in opposition to the application
6. Communication dated January 21, 2014, from Gord Steeves, D'Arcy & Deacon LLP, representing Frank Scheffer Enterprises Ltd. (Frank Motors), requesting the application be adjourned to February 18, 2014
7. Notice of Adjournment dated January 24, 2014
8. Communication dated February 14, 2014, from Gord Steeves, D'Arcy & Deacon LLP, representing Frank Scheffer Enterprises Ltd. (Frank Motors), requesting the application be adjourned to April 22, 2014
9. Notice of Adjournment dated January 24, 2014

10. Correspondence submitted by Michael Filz with respect to the application (Communication dated February 6, 2014 addressed to David Thomas, Keltek Safety Apparel / Kelsey Sportswear Ltd., from Gary Nazer, FedEx Express Canada; Communication dated January 22, 2014 addressed to David Thomas, Keltek Safety Apparel / Kelsey Sportswear Ltd., from Paul Knight, Mid-West Quilting Co. Ltd. / Protective Textiles Int'l Inc.; Communication dated January 22, 2014 from Mike Sproule, Locher Evers International; Communication dated January 20, 2014 from Jennifer Silvari, Instabox Winnipeg Ltd.; and, Communication dated January 22, 2014 addressed to Michael Filz from the Service Center Manager, Canadian Freightways)
11. Communication dated January 24, 2014 from Bill Munroe, Interim Terminal Manager, Clarke, in opposition to the application
12. Presentation submitted by Mark Newman, Fillmore Riley LLP at the public hearing
13. Photographs of subject area submitted by John Wintrup at the public hearing
14. Communication submitted at the public hearing by John Wintrup, in support of the application dated April 4, 2014 from Rick Varkerti
15. Communication submitted at the public hearing by John Wintrup, in support of the application dated April 10, 2014 from Dennis Meyer addressed to Dieter Scheffer, Frank Motors
16. Correspondences submitted at the public hearing by John Wintrup with respect to the application (Communication dated April 7, 2014 addressed to Dieter Scheffer, Frank Motors from Eric M. Roeder; Communication dated March 29, 2014 addressed to Eric M. Roeder from Dieter Scheffer, Frank Motors)
17. Correspondences submitted at the public hearing by John Wintrup with respect to the application (Communication dated March 11, 2014 addressed to Dieter Scheffer, Frank Motors from Kevin Krasowski; Communication dated March 11, 2014 addressed to Kevin Krasowski from Dieter Scheffer, Frank Motors)
18. Notice that the matter has been referred back to the Lord Selkirk-West Kildonan Community Committee
19. Revised Report from the Real Property Officer dated November 3, 2014
20. Communication dated November 10, 2014, from Michael Filz, Owner of 563 / 567 Notre Dame Avenue and Vice President of Kelsey Trail Ltd., in opposition to the application
21. Communication dated November 10, 2014, from David Thomas, President, KELTEK Safety Apparel / Kelsey Sportswear Ltd. in opposition to the application

22. Communication dated November 12, 2014, from Walter Rodrigues, Manager, Bestway Agencies (RTI) Ltd. with respect to the application and advising a neutral position as it relates to the petition filed as Exhibit 2 (Appendix C of the Report of the Real Property Officer dated January 3, 2014)
23. Inspection Report
24. Communication dated November 18, 2014, from Dieter Scheffer, President, Frank Scheffer Enterprises Ltd. (Frank Motors), requesting the application be adjourned to 2015
25. Notice of Adjournment dated November 21, 2014
26. Communication dated January 13, 2015 from Dieter Scheffer, Frank Motors, withdrawing the application

Exhibit “26” referred to in File DAC 15/2013

From: Dieter Scheffer
Sent: Tuesday, January 13, 2015 3:30 PM
To: Nuytten, Kathy
Cc: Skundberg, Inga
Subject: DAC 15-2013

Dear Chairperson and Members:

With respect to your file DAC 15-2013 to be heard at today’s committee hearing, we are withdrawing our application and will not be attending this evening.

We may reapply at a future date and understand that there is no time restriction on doing so.

Sincerely

Dieter Scheffer | General Manager

FRANKMOTORS
We promise to know you better

www.frankmotors.ca | 204-987-2461

We believe in sustainability and ask that you please consider the environment before printing this email.

Exhibit “19” referred to in File DAC 15/2013

ADMINISTRATIVE REPORT

Title: **REVISED REPORT FOR DAC 15/2013: TO SEEK COUNCIL APPROVAL FOR THE PROPOSED CLOSING OF PART OF THE PUBLIC LANE NORTH OF NOTRE DAME AVENUE, EAST OF LYDIA STREET**

Critical Path: **LORD SELKIRK – WEST KILDONAN COMMUNITY COMMITTEE – STANDING POLICY COMMITTEE ON PROPERTY AND DEVELOPMENT - EXECUTIVE POLICY COMMITTEE – COUNCIL**

AUTHORIZATION

Author	Department Head	CFO	CAO
M. Pittet	B. Thorgrimson	N/A	N/A

RECOMMENDATIONS

That the proposed lane closing as shown on Misc. Plan No. 14583 not be proceeded with.

REASON FOR THE REPORT

On September 17, 2014, the Executive Policy Committee referred the subject lane closing back to the Lord Selkirk – West Kildonan Community Committee for consideration of further information, including the impact of any injurious affect.

IMPLICATIONS OF THE RECOMMENDATIONS

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

The report recommendation is that the proposed closing not be proceeded with. There are no financial implications for the City of Winnipeg.

HISTORY

On October 18, 2013, the Planning, Property and Development Department received a request from D’Arcy & Deacon LLP, representing Frank Scheffer Enterprises Ltd. (Frank Motors), to close and purchase the portion of the public lane so identified on the attached copy of Misc. Plan No. 14583. The

applicant indicated that it was his intention to eventually consolidate his existing holdings at No. 575 Notre Dame Avenue and No. 47 Lydia Street with the subject closing for a future development comprising the construction of a double-ended garage with drive through capabilities.

Notwithstanding the future development, the applicant further advised that the main reason for the closing application was to address existing community issues that have persisted within the open laneway including graffiti, vandalism, criminal activity of drug use and sales as well as soliciting and prostitution.

By copy of a letter dated January 14, 2014 to the City Clerk's Department, Mr. Dave Thomas of Keltek Safety Apparel/Kelsey Sportswear Ltd. (No. 567 Notre Dame Avenue) objected to the lane closing, citing adverse and negative effects to the operation of his business at this location, including the loss of shipment and delivery capabilities which take place through loading doors adjoining the proposed lane closing area. Mr. Thomas further indicated that he would start legal proceedings against the City of Winnipeg should the proposed closing proceed.

On January 21, 2014, the Lord Selkirk – West Kildonan Community Committee did not hear any representation on the application and adjourned the public hearing to its meeting on February 18, 2014.

On February 18, 2014, the Lord Selkirk – West Kildonan Community Committee did not hear any representation on the application and adjourned the public hearing to its meeting on April 22, 2014.

On April 22, 2014, the Lord Selkirk – West Kildonan Community Committee concurred in the recommendation of the Winnipeg Public Service and forwarded the report to the Standing Policy Committee on Property and Development.

By copy of a letter dated April 22, 2014 to the CAO's Office, Mr. Mark Newman, solicitor for Mr. Thomas, formally placed the City of Winnipeg on notice that his client would be asserting a claim for all damages suffered as a result of the proposed lane closing.

On May 13, 2014, the Standing Policy Committee on Property and Development laid the matter over to its June 10, 2014 meeting.

On June 10, 2014, the Standing Policy Committee on Property and Development laid the matter over to its September 16, 2014 meeting.

On September 16, 2014, due to a tie vote, the Standing Policy Committee on Property and Development submitted the matter to the Executive Policy Committee and Council without recommendation.

On September 17, 2014, the Executive Policy Committee referred the subject lane closing back to the Lord Selkirk – West Kildonan Community Committee for consideration of further information, including the impact of any injurious affect.

The original recommendation of the administrative report for the subject application dated January 3, 2014 was for approval of the lane closing as shown on the attached copy of Misc. Plan No. 14583. The recommendation was based on no objections having been received from affected City of Winnipeg Departments and Public Utilities. Subsequent to correspondence received from Keltek Safety Apparel and their solicitor as noted above, the Planning, Property and Development Department has now rescinded its original recommendation.

CONSULTATION

In preparing this Report there was consultation with:

Internal Consultation:

N/A

External Consultation:

N/A

SUBMITTED BY

Department: Planning, Property and Development
Division: Land Development, Geomatics and Land Information Services
Prepared by: Bohdan Buyachok, Real Property Officer
Date: November 3, 2014
File No.

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Aerial View of Subject Closing



Miscellaneous Plan

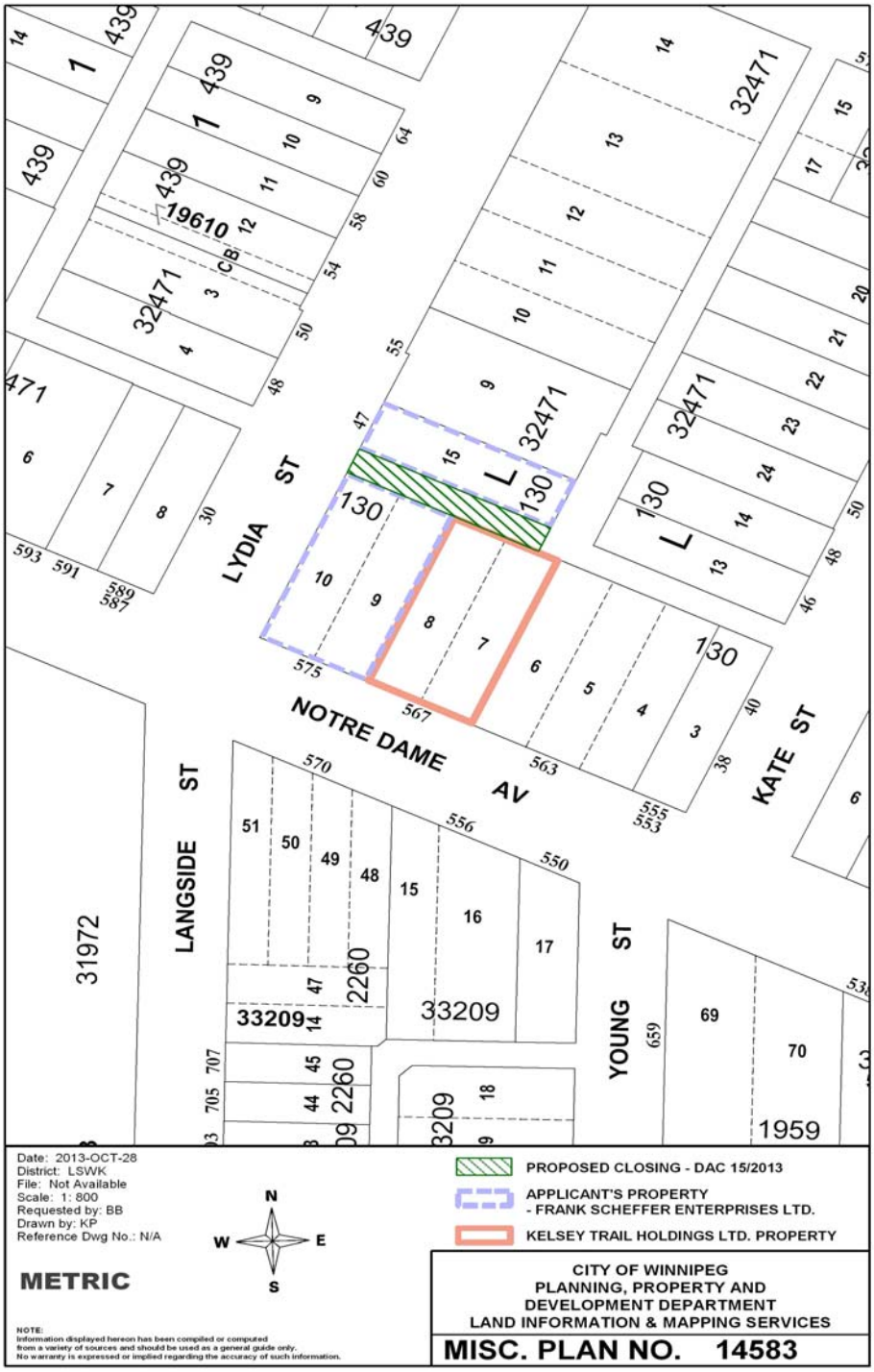

Exhibit "1" referred to in File DAC 15/2013

ADMINISTRATIVE REPORT

Title: **DAC 15/2013: TO SEEK COUNCIL APPROVAL FOR THE PROPOSED CLOSING OF PART OF THE PUBLIC LANE NORTH OF NOTRE DAME AVENUE, EAST OF LYDIA STREET**

Critical Path: **LORD SELKIRK – WEST KILDONAN COMMUNITY COMMITTEE – STANDING POLICY COMMITTEE ON PROPERTY AND DEVELOPMENT - EXECUTIVE POLICY COMMITTEE – COUNCIL**

AUTHORIZATION

Author	Department Head	CFO	CAO
M. Pittet	B. Thorgrimson	N/A	N/A

RECOMMENDATIONS

1. That the proposed lane closing as shown on Misc. Plan No. 14583 be approved and that the land be declared surplus to the City's needs.

2. That the Director of Legal Services and City Solicitor be instructed to prepare the necessary by-law for submission to Council to effect the lane closing in accordance with Misc. Plan No. 14583, subject to the approval of the terms and conditions of the conveyance of the land by the Director of the Planning, Property and Development Department.

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

REASON FOR THE REPORT

All street and lane closings require the consideration of the Community Committee.

IMPLICATIONS OF THE RECOMMENDATIONS

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

All costs associated with the lane closing are the responsibility of the applicant. There are no financial implications for the City of Winnipeg.

HISTORY

The Planning, Property and Development Department has received a request from D'Arcy & Deacon LLP, representing Frank Scheffer Enterprises Ltd. (Frank Motors), to close and purchase the portion of the public lane so identified on the attached copy of Misc. Plan No. 14583. It is the intention of the applicant to eventually consolidate his existing holdings at No. 575 Notre Dame Avenue and No. 47 Lydia Street with the subject closing for a future development comprising the construction of a double-ended garage with drive through capabilities.

Notwithstanding the future development, the applicant has further advised that the main reason for the closing application is to address existing community issues that have persisted within the open laneway. The applicant has been working with the West End Biz and the West Alexander Residents Associations over the years to deal with graffiti, vandalism, criminal activity including drug use and sales as well as soliciting and prostitution. Furthermore, vehicles presently use the lane as a high speed short cut to avoid congestion and traffic signals on Notre Dame Avenue, posing significant safety concerns for pedestrians and area residents. Comments from the West End Biz Association confirming existing community issues appear in Appendix "B" of this report. A petition from area residents in support of the lane closing appears in Appendix "C" of this report.

The applicant has advised that he has been in discussion with his neighbour at 567 Notre Dame Avenue, Kelsey Trail Holdings Ltd., and has indicated that he is prepared to enter into cross access easement agreements with them to ensure continual, unimpeded ingress/egress to their property affected by the lane closing.

The subject lane was opened by Plan No. 130 and registered in the Winnipeg Land Titles Office in July of 1881. It forms part of a "T" intersection currently providing access between Kate and Lydia Streets and McDermot Avenue.

CONSULTATION

In preparing this Report there was consultation with:

Internal Consultation:

There was consultation with the affected Civic departments.

External Consultation:

Manitoba Hydro, Centra Gas, MTS Inc., Shaw Cablesystems, Bell Canada, TeraSpan and Telus.

Imperial Oil, Norscan, Rogers Communications and Fibre did not respond to the request for comments on this proposal.

SUBMITTED BY

Department: Planning, Property and Development
Division: Land Development, Geomatics and Land Information Services
Prepared by: Bohdan Buyachok, Real Property Officer
Date: January 3, 2014
File No.

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APPENDIX "A"

Administrative Approval

The proposal has been considered by all affected City departments and public utilities. There are no administrative objections to the lane closing.

Administrative Comments

Administrative approval of this application is subject to the following conditions:

The Zoning and Permits Branch:

> The applicant's property that fronts Notre Dame Avenue is zoned CMU (Commercial: Mixed-Use). The property that fronts Lydia Street is C1 (Commercial: Neighbourhood). The lane, once closed, will take on both zoning designations. 47 Lydia has a non-conforming right which allows the sale of auto parts in a C1 zoning district. This use would not be able to expand further onto the section of the closed lane to be zoned C1. Consequently, the lane would only be allowed for access purposes.
>
> The owner of 567 Notre Dame Avenue has a loading door at the back of the building which fronts onto the lane closing area. The applicant will be required to enter into a cross access easement agreement with the owner of No. 567 Notre Dame Avenue for the provision of unimpeded ingress/egress to this property.

The Public Works Department:

> The applicant will be required to remove the existing lane turn-out on Lydia Street and restore the curb, boulevard and sidewalk at that location, all as determined by and to the satisfaction of the Director of Public Works. Should the applicant wish to retain the existing lane turn-out as a private approach, they must make application to the Public Works Department for private approach approval.

The Plan Examination Branch:

> The formation of new property lines indicated on Misc. Plan No. 14583 will require confirmation that the maximum aggregate area of unprotected openings (ie. construction, cladding and fire resistance rating) on the exposing building faces of buildings adjacent to the new property lines complies with the Manitoba Building Code. Additionally, confirmation will be required to ensure that any required rear exits from buildings at 575 and 567 Notre Dame are not compromised by the introduction of the new property lines.
>
> The spatial separation calculations and construction details shall be submitted under the seal of an architect or professional engineer entitled to practice in the Province of Manitoba, skilled in the appropriate section of work concerned.

In the event that the spatial separation calculations determine the exposing building face(s) or exiting requires upgrading, a building permit complete with upgrading construction details will be necessary prior to the release of the closing mylars.

Easements

Manitoba Hydro has identified services within the closing area and will require easements for their existing facilities.

No permanent structures will be allowed within the easement areas.

Any removal or relocation of existing facilities as a result of the proposed lane closing will be at the expense of the applicant.

Transfer of Jurisdiction Over Public Rights-of-Way

The lane must be legally closed before it may be sold. Title to all public rights of way in Manitoba is vested in the name of the Province. The registration in the Winnipeg Land Titles Office of a closing by-law removes the public right of way status from the land and vests the ownership of the property in the City's name. The City is not entitled to dispose of the land until this has been done.

APPENDIX "B"

D'Arcy & Deacon have provided the following excerpt from the Biz Patrol Report with respect to the subject lane:

> "The Biz Patrol staff has confirmed many of the concerns raised by Mr. Scheffer. For example, the patrol staff regularly notices a large amount of condoms in the back lane and surrounding vicinity indicating the presence of a sex trade in the area. Additionally, graffiti is often found in the backside of commercial and residential properties as Mr. Scheffer has indicated. The patrol has also observed that drivers use the back lane as a shortcut to avoid congestion and traffic signals on Notre Dame. The drivers cutting through the back lane commonly fail to follow speed limits, endangering the safety of the neighbourhood residents and students of the nearby schools, École Sacré Coeur and Hugh John McDonald. In the opinion of the Biz Patrol, the students walking to and from their schools are in danger of being hit by reckless drivers. At neighbourhood safety meetings attended by the Biz Patrol, the usage of back lanes to avoid congestion and traffic signals is often discussed as a large safety concern for the community residents and other stakeholders. The West End Biz Patrol noticed that if a portion of the back lane is blocked off, there would still be two other alternative access points available for waste disposal, Winnipeg Police and Emergency Medical Services and the Winnipeg Fire Department."

APPENDIX "C"

The following is a petition from area residents in support of the lane closing:

PETITION

FOR CLOSING A PUBLIC LANE NORTH OF NOTRE DAME AVENUE BETWEEN LYDIA STREET AND KATE STREET AS PER THE ATTACHED DIAGRAM.

We, the following owners and residents of homes and businesses abutting the public lane north of Notre Dame Avenue between Lydia Street and Kate Street, consent to the closing of this lane at Lydia Street.

Neighbourhood contact: **Dieter Scheffer**
Frank Motors
575 Notre Dame Avenue
Winnipeg, MB. R3B 1S5
297-0905

SIGNATURE	PRINT NAME	ADDRESS	FOR	AGAINST
[illegible]	D. Miranda	30 Lydia st WPG. MB.	[illegible]	
[illegible]	L. MIRANDA	587 Notre Dame	[illegible]	
[illegible]	L. MIRANDA	48 Lydia st	[illegible]	
[illegible]	Michael Rodrigues	60 Lydia st	[illegible]	
[illegible]	JOHN RODRIGUES	54 LYDIA ST	[illegible]	
[illegible]	Roman Hawaka	KATE ST	[illegible]	
[illegible]	Richard Vankeit	50 Lydia	[illegible]	
[illegible]	WALTER RODRIGUES	555 Notre Dame	[illegible]	

Aerial View of Subject Closing



Miscellaneous Plan

