Minutes – Executive Policy Committee – January 20, 2016

Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – January 12, 2016

Item No. 17 Expropriation of Lands – Southwest Rapid Transitway (Stage 2) and Pembina Highway Underpass Project

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

The Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development and submitted the following to Council:

1. That the expropriation of lands for the Southwest Rapid Transitway (Stage 2) and Pembina Highway Underpass Project, approved at the February 25, 2015 Council Meeting, be confirmed as outlined in the Declaration of Expropriation submitted on March 25, 2015 with the exception of Holdings #15, #16, #17 which will be removed from the expropriation and Holdings #22 and #23 which have had the required takings reduced in size.

2. That the four recommendations proposed by the Inquiry Report not be endorsed.

3. That Council acknowledge sections 354, 356 and 357 of the Inquiry Report.

4. That the Director of Legal Services/City Solicitor be instructed to initiate Manitoba Court of Queen's Bench proceedings, if necessary, to obtain an order extending the time under The Expropriation Act for Council to confirm the expropriation.

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

Minutes – Executive Policy Committee – January 20, 2016

Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – January 12, 2016

DECISION MAKING HISTORY:

Moved by Councillor Orlikow,

That the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development be concurred in and forwarded to Council.

Carried

Mark Newman, Fillmore Riley LLP Barristers, Solicitors and Trademark Agents, submitted a presentation titled "in Relation to the Southwest Rapid Transit (Stage 2) on behalf of McDonald Grain Company Limited And in Relation to the Cockburn-Calrossie Combined Sewer Area Drainage Upgrade Project on behalf of 6165347 Manitoba Inc. and First National Financial GP Corporation, dated January 20, 2016, with respect to the matter.

STANDING COMMITTEE RECOMMENDATION:

On January 12, 2016, the Standing Policy Committee on Property and Development, Heritage and Downtown Development concurred in the recommendation of the Winnipeg Public Service, with the following amendment:

- Add the following new recommendation 3 and renumber the remaining recommendations accordingly:

    3. That Council acknowledge sections 354, 356 and 357 of the Inquiry Report.

and submitted the matter to the Executive Policy Committee and Council.

David Sanders submitted a presentation dated January 12, 2016, in opposition to the matter, parts of which are on file in the City Clerk's Office.

Antoine F. Hacault, Thompson Dorfman Sweatman LLP, submitted a presentation with respect to the matter.

ADMINISTRATIVE REPORT

Title: **Expropriation of Lands – Southwest Rapid Transitway (Stage 2) and Pembina Highway Underpass Project**

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

AUTHORIZATION

Author	Department Head	CFO	CAO/COO
J. Zabudney	J. Kiernan	P. Olafson	M. Jack COO

RECOMMENDATIONS

1. That the expropriation of lands for the Southwest Rapid Transitway (Stage 2) and Pembina Highway Underpass Project, approved at the February 25, 2015 Council Meeting, be confirmed as outlined in the Declaration of Expropriation submitted on March 25, 2015 with the exception of Holdings #15, #16, #17 which will be removed from the expropriation and Holdings #22 and #23 which have had the required takings reduced in size.

2. That the four recommendations proposed by the Inquiry Report not be endorsed.

3. That the Director of Legal Services/City Solicitor be instructed to initiate Manitoba Court of Queen's Bench proceedings, if necessary, to obtain an order extending the time under The Expropriation Act for Council to confirm the expropriation.

4. That the proper officers of the City be authorized to do all things necessary to implement the foregoing, including the preparation and execution of any necessary documents.

REASON FOR THE REPORT

On February 25, 2015, Council approved to expropriate the land required for the Southwest Rapid Transitway (Stage 2) and Pembina Highway Underpass Project.

Of the 35 expropriated properties, 11 parties (850 Pembina Highway Limited Partnership and FWS Pembina Ltd.; 2114062 Manitoba Ltd. c/o Quality Management Ltd.; Catia Aparecida Macieira and Anderson Macieira; 6165347 Manitoba Inc. and First Nationals Financial GP Corporation; McDonald Grain Company Limited; ACI Shoppers Southpark Ltd.; Pembina Care Services Limited; 3346234 Manitoba Limited; R.S. Harris Transport Ltd.; GBR International Inc.; and North American Food Ingredients Inc.) objected to the expropriation.

An inquiry hearing was held on August 4th, 6th, 7th, 10th, 11th, 12th, 25th, September 2nd and 4th to determine whether the "*intended expropriation is fair and reasonably necessary for the achievement of the objective of the expropriating authority*" (The Expropriation Act, Schedule A, 6(2)). The inquiry hearing occurred based on the objections from the expropriated parties.

On November 16, 2015, the Inquiry Officer completed the Inquiry Report which included a recommendation to the expropriating authority that changes be made to the expropriation. (Inquiry Report attached)

If any of the Inquiry Officer's recommendations are endorsed, an extension of time will be required to have the plan of expropriation changed at Winnipeg Land Titles Office, which would cause confirmation of the expropriation and possession of the expropriated lands to be delayed.

The Public Service requests that Holdings 15, 16 and 17 which have already been settled, approved by Standing Policy Committee on Property and Development and transferred into the City's name, be removed from the expropriation confirmation.

The Public Service also requests that Holdings 22 and 23 be reduced in size from the original taking sizes of 5,700sq.ft.+/- and 26,716+/- sq., respectively to 5,601sq.ft.+/- and 9,754 sq.ft.+/-, respectively as per the attached Misc. Plans.

EXECUTIVE SUMMARY

Under The Expropriation Act of Manitoba, an owner of a property being expropriated can object to the expropriation of his property. There were eleven objections received from property owners. An Inquiry Officer was appointed to review if the expropriation in question was fair and reasonably necessary for the achievement of the expropriating authority. An Inquiry hearing was held and on November 16, 2015, the Inquiry Officer completed the Inquiry Report which included 4 recommendations to the expropriating authority that changes be made to the expropriation.

IMPLICATIONS OF THE RECOMMENDATIONS

January 2016 Council approval is required to confirm the expropriation which allow the City to successfully award the project in June of 2016 and therefore maintain existing construction timelines and costs as they relate to the Southwest Transitway (Stage 2) and Pembina Highway Underpass projects.

The Public Service has negotiated the acquisitions of Holdings #15, #16 and #17; therefore they will be removed from the Plan of Expropriation.

The Public Service has met with the property owner of #22 and #23. Through negotiations, the Public Service is now recommending a reduction in the size of the taking for Holdings #22 and #23 and, subject to the property owner granting an easement for the Active Transportation Pathway upon its completion, the City will sell the takings for Holdings #22 and #23 back to the property owner.

Choosing not to endorse the Inquiry Officer's recommendations will not affect the property owners' ability to seek additional compensation through the LVAC.

HISTORY

On February 25, 2015, Council approved the administrative report titled *"Expropriation of Lands – Capital Integration Project (Southwest Transitway (Stage 2) and Pembina Highway Underpass)"*.

On July 18, 2015, a Notice of Public Hearing for the inquiry was published in the Winnipeg Free Press.

On July 30, 2015, George Ulyatt was appointed as an Inquiry Officer by the Manitoba Minister of Justice.

On August 4, 2015, the public inquiry for The Southwest Rapid Transit Way (Stage 2) expropriations commenced, in order to determine whether or not the intended expropriation was reasonably fair and reasonably necessary for the achievement of the objective of The City.

On August 14, 2015, an Order was endorsed by the Manitoba Court of Queen's Bench granting the Inquiry Officer an extension of time to October 13, 2015 to submit his report under The Expropriation Act, thereby extending the confirmation date for the Confirming Authority to October 29th 2015. A further Consent Order was granted, dated October 7, 2015, which extended the submission date for the Inquiry Officer's Report to November 16th, 2015 and the confirmation date for the Confirming Authority to January 31st, 2016. This extension was requested by the inquiry officer and was necessary due to the length of time it took to conduct the Inquiry.

The position of the Public Service at the hearing was that the expropriation was fair and reasonable.

On November 16, 2015, the Inquiry Officer completed the Inquiry Report which included a recommendation to the expropriating authority that changes be made to the expropriation (Inquiry Report attached).

The findings of the inquiry hearing were published on November 16, 2015 and the Inquiry Officer (as appointed by the Manitoba Minister of Justice) made four recommendations:

1. 1679 Pembina Highway (Holding #22 and 23):

   > "The Objector and the City have reached an agreement of principle that the new Active Transportation Path can be accommodated by an easement being granted to the City that would parallel the owner's property lines. In the circumstances, this Inquiry Officer would find that it is not fair and reasonably necessary for a fee simple taking and that the issue be resolved by an easement as outlined and such a taking would be found to be fair and reasonably necessary and would satisfy the tests of public versus private interests."

2. 850 Pembina Highway (Holding #35):

   > "In the present circumstances, this Inquiry Officer finds that the proposed taking of a fee simple is not fair and reasonably necessary and that the taking, by way of an easement, would be appropriate and that the City amend its Declaration of Expropriation to reduce the taking to an easement taking that would allow the City to construct and maintain the retaining walls."

3. 1833 Pembina Highway (Holding #38):

   > "It is this Inquiry Officer's opinion that the City has failed to examine and pursue options, failed to do due diligence concerning the taking and has not satisfied the onus that it is fair or reasonably necessary in the circumstances for the taking, and has failed to establish the taking would balance the private versus public interests. The proposed taking is denied.
   >
   > This Inquiry Officer would urge the City to explore alternate sites and/or arrange a meeting with the City, the Objector, and Manitoba Hydro."

4. West of Pembina Highway (Holding #39):

> "This Inquiry Officer is of the opinion that the proposed taking of a fee simple interest is not fair and reasonably necessary, but the taking of an easement upon the lands would be fair and reasonably necessary and would satisfy the City's objectives and meet the amount of the taking. There is no evidence before this Inquiry Officer that an easement would not be sufficient."

The Public Service does not endorse the Inquiry Officer's recommendations for the following reasons:

Inquiry Officer's recommendation for 1679 Pembina Highway (Holding #22 and #23)

At the inquiry hearing, the City agreed to an easement for Holdings #22 and #23 rather than a taking on condition that the easement could be negotiated in time. The parties were unable to negotiate and complete an easement agreement in time for Holdings #22 and #23 to be removed from the expropriation prior to confirmation by Council. The City did reduce the size of the takings for each Holding to a much smaller area but due to time constraints had to move forward with the reduced takings rather than an easement. Once construction of the Active Transportation Path is complete, the City intends to sell all of the land from Holdings #22 and #23 back to the property owner, subject to the City having secured an easement in perpetuity on these lands. The easement to be granted to the City by the owner of Holdings #22 and #23 will be further reduced from the areas included in the takings. The easements will be at the very minimum size possible in order to accommodate the safe utilization of the Active Transportation Path.

Inquiry Officer's recommendation for 850 Pembina Highway (Holding #35)

Public Works advises that the expropriated land required is for construction of a retaining wall. The retaining wall will be situated within the expropriated land. The City's contractor will design the type of retaining wall that will be constructed as well as determining the area required within the expropriated land to stage the construction. As a minimum, the City must ultimately own the land that contains all components of the retaining wall and obtain a permanent easement for maintenance, rehabilitation, and reconstruction over the balance of the land. After completion of construction, a determination will be made whether some of the land can be sold back and/or an easement negotiated.

Inquiry Officer's recommendation for 1833 Pembina Highway (Holding #38)

The Inquiry Officer stated in page 129 of the report that, *"It would appear that the Objector is in fact correct in submitting that there was inadequate consultation or investigation of the placement of the proposed pumping station. At the time, there was no adequate discussion with the Objector, or it appears, any site visits. This Inquiry Officer did attend at 1833 Pembina Highway and the Capri Motel, and examined the properties. Whilst mindful that this Inquiry Officer is not a property evaluator, one can easily observe the buildings on the Capri Motel site which could be used for the placement of the pumping station, are old, run down, and do not appear to be maintained. A visit to the site may well have affected the placement of the pumping station."*

The table below outlines the position of the Public Service for Holding #38:

1833 Pembina Highway (Holding #38)	***The Capri Hotel Location***
• The affected property is an existing parking lot which impacts 6 resident parking spots.	• The affected property includes a minimum of 3 and possibly 4 hotel buildings, each building housing 2 units. In total 6 to 8

	hotel units would be demolished resulting in a loss of income to the business.
• The affected property will require the relocation of the above parking spots. At the inquiry evidence was given by the owner that arrangements had already been made with Manitoba Hydro for parking sites within Hydro lands to accommodate both future apartment expansion and the above noted impacted parking spots.	• The affected property would lose parking spots associated with the 8 units mentioned above.
• The affected property has no existing utilities that are impacted.	• The affected property has existing sewer, water, site lighting and power that would be impacted and removal of this infrastructure would be required.
• The pump station at the affected property is located in a parking lot and therefore does not significantly impact existing residents.	• The pump station at the affected property would be within 1-2 meters of adjacent motel units which could create noise disturbance for hotel clients.
• The length of the required access road from Plaza Drive to the pump station and the length of the Outfall from the pump station to the Lot 16 Drain are minimal.	• The length of the required access road from Plaza Drive to the pump station and the length of the Outfall from the pump station to the Lot 16 Drain would be approximately 75 meters longer than the proposed 1833 Pembina site, increasing the costs.

In summary, it is the position of the Public Service that the expropriation of the 1833 Pembina Highway location (Holding #38) is less costly to the City and has less impact on the expropriated parties than expropriation of the Capri Hotel location is likely to have on its interested parties.

<u>Inquiry Officer's recommendation for the property west of Pembina Highway (Holding #39)</u>

Public Works advises that the expropriated land required is for construction of a retaining wall, active transportation path switchback ramp, and embankment slope. The City's contractor will be designing the configuration and type of retaining wall, switchback ramp and slopes that will be constructed as well as determining the area required within the expropriated land to stage the construction. As a minimum, the City must ultimately own the land that contains the above-mentioned components for maintenance, rehabilitation, and reconstruction. After completion of construction, a determination will be made whether some of the land can be sold back to the property owner and/or an easement can be negotiated.

FINANCIAL IMPACT

Financial Impact Statement **Date:** December 9, 2015

Project Name:

Southwest Rapid Transitway (Stage 2) and Pembina Highway Underpass

COMMENTS:

There are no direct financial implications associated with the recommendations contained in this report.

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

CONSULTATION

In preparing this report there was consultation with:

Legal Services (as to legal issues)
Public Works
Transit

OURWINNIPEG POLICY ALIGNMENT

OurWinnipeg and Complete Communities support the integration of transportation and land use planning, and a transportation network that supports the urban structure and the concept of complete communities.

The Transportation Master Plan (TMP) was developed in alignment with OurWinnipeg and Complete Communities. The TMP identifies that rapid transit is necessary for Winnipeg's ongoing growth. It is needed to ensure that residents are provided with a viable alternative to the automobile, in order to reduce existing and future road congestion and to build a transportation system that is capable of serving future generations. Rapid transit is also essential for shaping land use in a manner that achieves the objectives of OurWinnipeg and Complete Communities.

The TMP identifies that the Southwest Corridor will serve existing residential areas in southwest Winnipeg (having a total population of 75,000), the 30,000 students and staff at the University of Manitoba, the new stadium complex at the University of Manitoba, the developing Waverley West area (with a planned population of 30,000 and new employment centres by 2031), as well as the TOD development underway in the Fort Rouge Yards, and similar development proposed for the Southwood Golf Course lands, the former Sugar Beet lands near Pembina & Bishop Grandin, and the Parker lands west of Pembina and south of the CN main line.

SUBMITTED BY

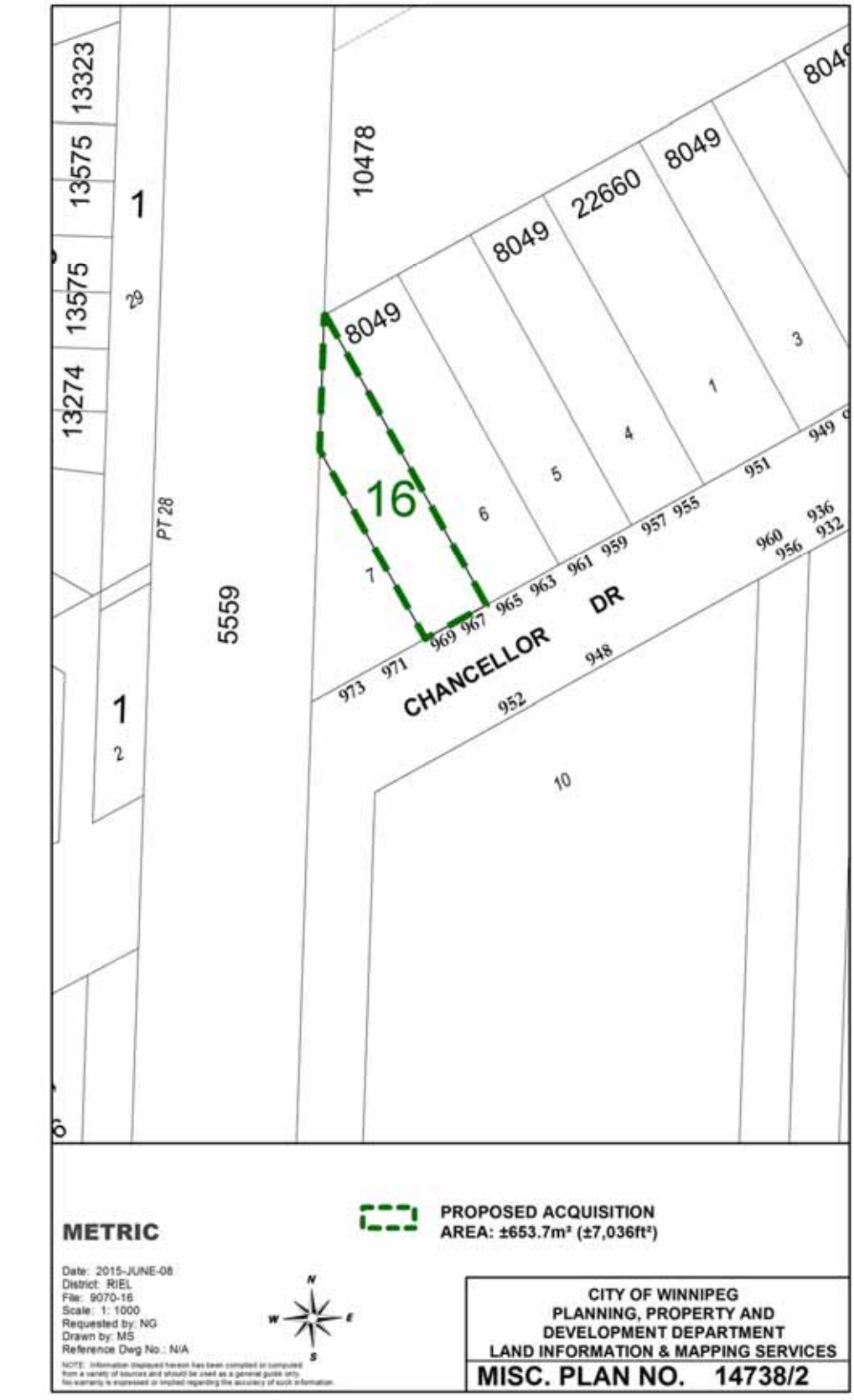
Department: Planning, Property and Development
Division: Real Estate
Prepared by: Marlene Haderer
Date: December 11, 2015
File No.: 9070/15, 9070/16, 9070/17, 9070/22, 9070/23, 9070/35, 9070/38, 9070/39

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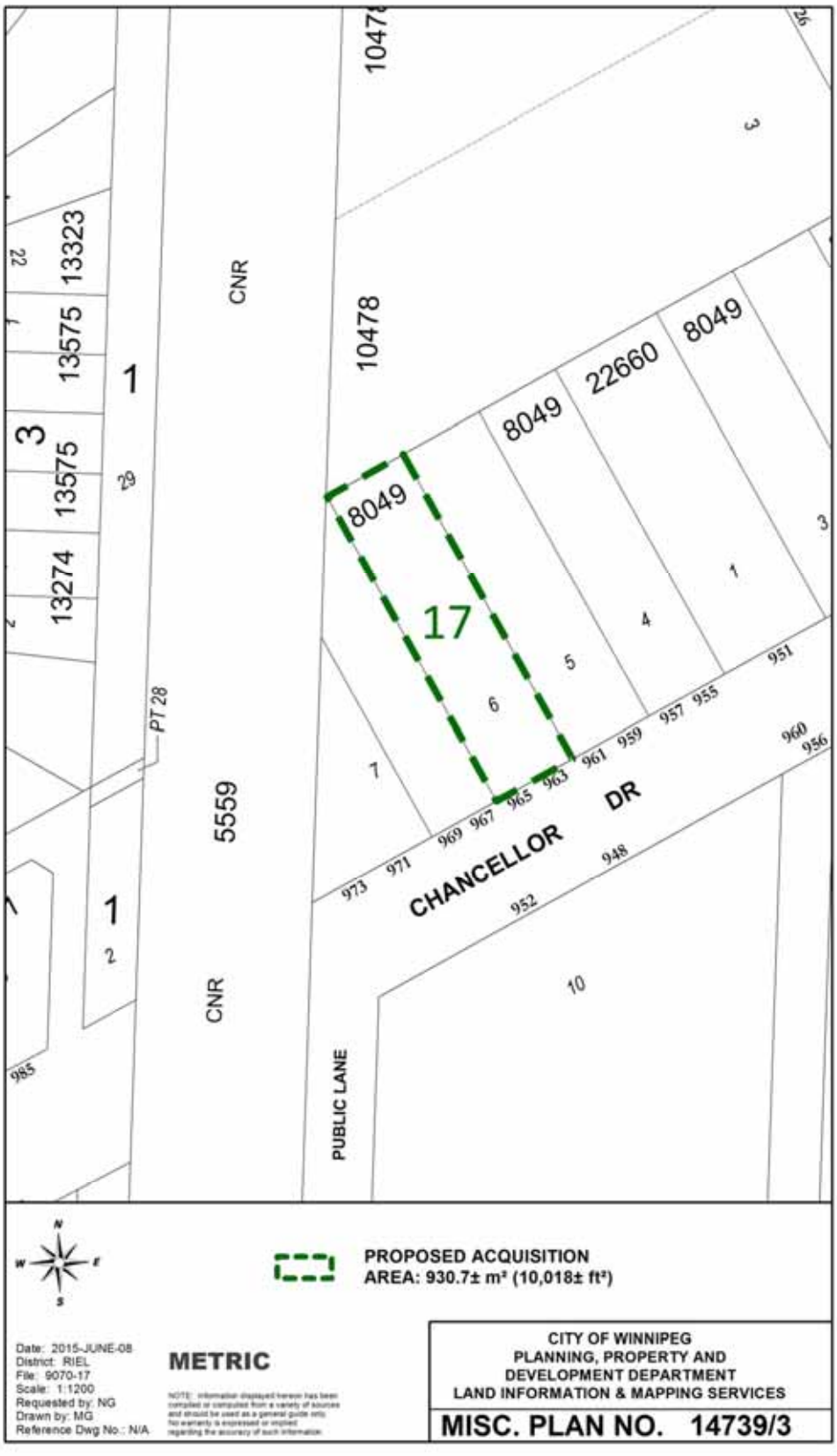
Holding #15 – Removed from Expropriation



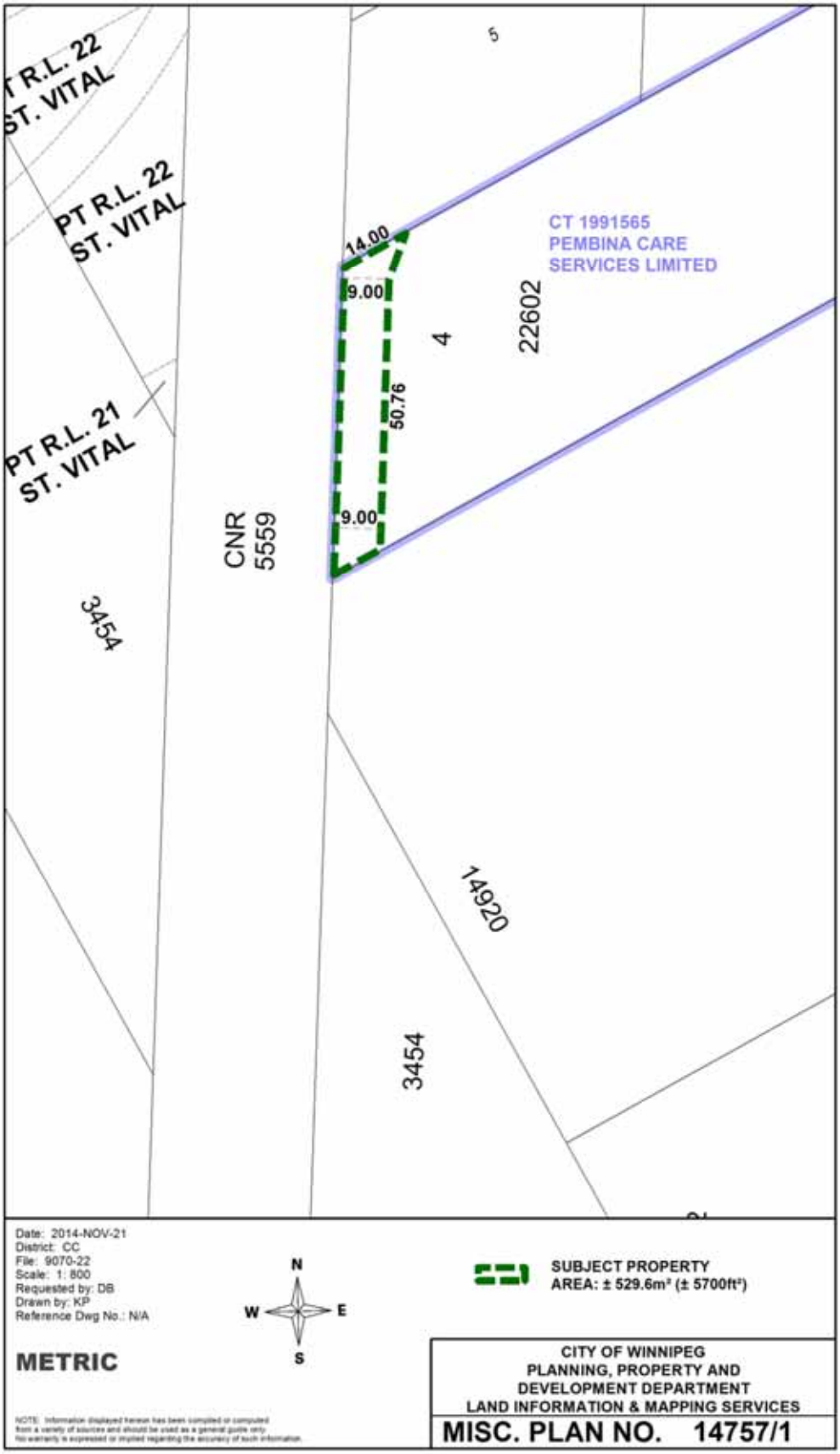
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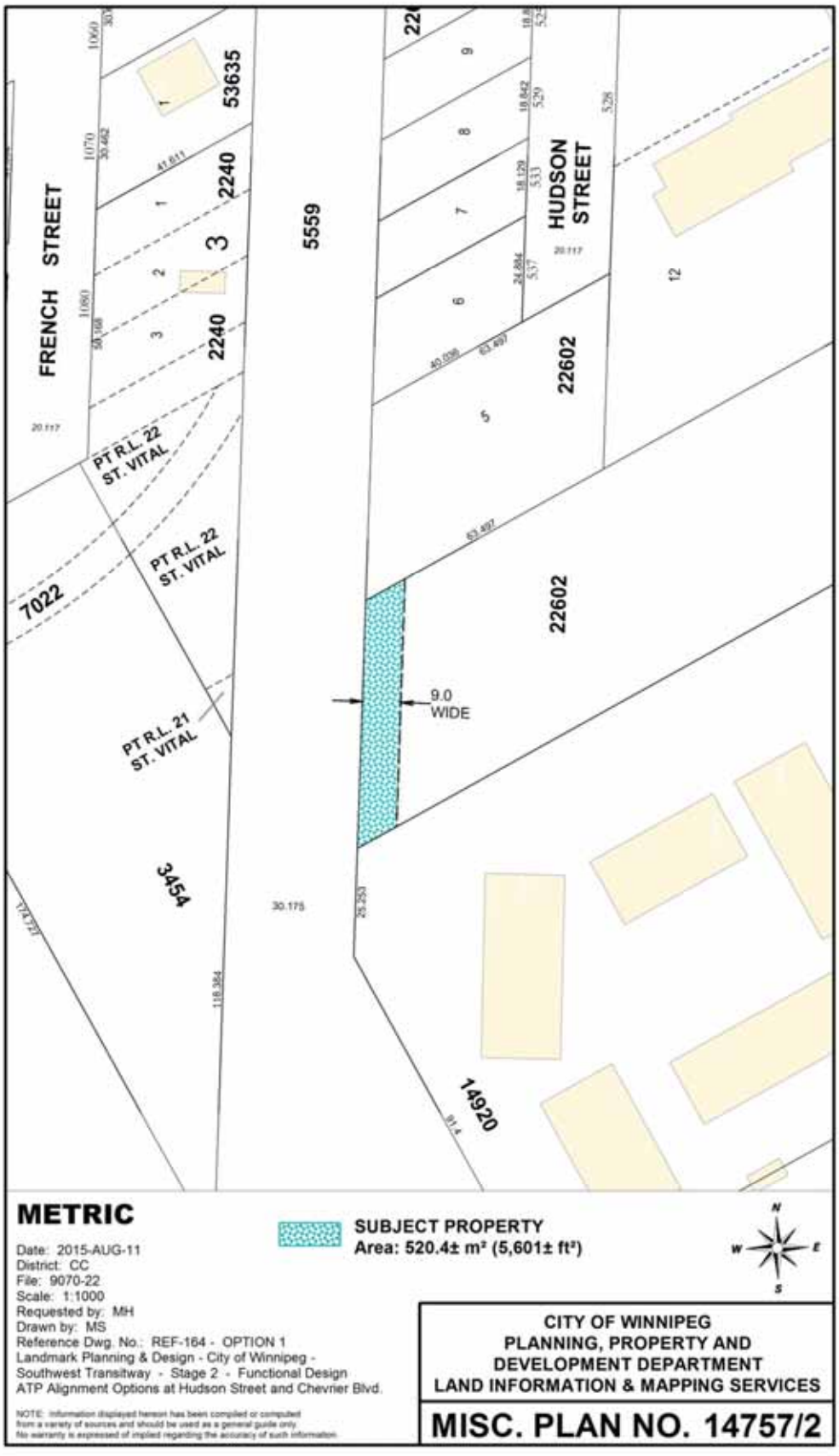
Holding #17 – Removed from Expropriation



Holding #22 Original Taking



Holding #22 Revised Taking



Holding #23 Original Taking



Holding #23 Revised Taking

