Minute No. 310
Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – April 12, 2016

Item No. 7 Encroachment Agreement – Land Adjacent to 165 McDermott Avenue
(Point Douglas Ward)

COUNCIL DECISION:

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

1. That the proposed terms and conditions, attached as Schedule A, for an encroachment agreement in favour of Exchange District Management Inc. (the Licensee) for the purpose of developing and maintaining a steel and concrete walkway identified as "Encroachment Area" on Misc. Plan 14980 (the Lands) be approved.

2. That the City enters 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.

Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – April 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 adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On April 20, 2016, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On April 12, 2016, the Standing Policy Committee on Property and Development, Heritage and Downtown Development concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

ADMINISTRATIVE REPORT

Title: Encroachment Agreement to Allow for the Use of Right-of-Way on Rorie Street Adjacent to 165 McDermott Avenue for the purpose of Installing and Maintaining a Walkway that will Service Street Level Apartment Units

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

AUTHORIZATION

Author	Department Head	CFO	CAO/COO
B. Erickson	J. Kiernan	M. Ruta	M. Jack COO

RECOMMENDATIONS

1. That the proposed terms and conditions, attached as Schedule A, for an encroachment agreement in favour of Exchange District Management Inc. (the Licensee) for the purpose of developing and maintaining a steel and concrete walkway identified as “Encroachment Area” on Misc. Plan 14980 (the Lands) be approved.

2. That the City enters 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

The Encroachment By-law No. 692/74, clause 4(1)(d), states:

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

Section 2 of The Encroachment By-law No. 692/74 provides:

""Designated Officer" means the Director of Planning, Property and Development or such other person as may be authorized in writing by the said Director to exercise some or all of the powers vested in him by this By-law".

In this regard, the Planning, Property & Development Department has negotiated Terms and Conditions of an Encroachment Agreement, in favour of Exchange District Management Inc.

EXECUTIVE SUMMARY

Application for an Encroachment Agreement for development and maintenance of a steel and concrete walkway, as specified in the History section of this report.

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. 14980.

The walkway will be used to access, via Rorie Street, newly built townhouse suites at 165 McDermott Avenue.

HISTORY

An application was submitted to the City's Zoning and Permits Branch to develop and maintain a steel and concrete walkway adjacent to 165 McDermott Avenue.

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 have negotiated proposed Terms and Conditions of an Encroachment Agreement in favour of Exchange District Management Inc.

This report seeks approval of the Encroachment Agreement as negotiated.

FINANCIAL IMPACT

Financial Impact Statement

Date: March 14, 2016

Project Name:

First Year of Program **2016**

Proposed Encroachment Agreement to Allow for the Use of Right-of-Way on Rorie Street Adjacent to 165 McDermott Avenue for the purpose of Installing and Maintaining a Walkway that will Service Street Level Apartment Units

	2016	2017	2018	2019	2020
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	479	344	344	344	344
Net Cost/(Benefit)	$ (479)	$ (344)	$ (344)	$ (344)	$ (344)
Less: Existing Budget Amounts	(479)	(344)	(344)	(344)	(344)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Revenues in 2016 consist of $344/annum rent pro-rated for an assumed commencement date of May 1 + a one-time $250 admin fee. Revenues from 2017 onward represent the annual rental amount only. Any business and realty taxes payable are not material and have been excluded from this analysis.

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

CONSULTATION

In preparing this report there was consultation with:

Public Works
Legal Services Department (as to legal issues)
Risk Management, Corporate Finance

OURWINNIPEG POLICY ALIGNMENT

01-1b Key Directions for the Entire City
> Support the ongoing sustainable development of Winnipeg's urban structure through heritage conservation initiatives that assist in the development of the complete community.

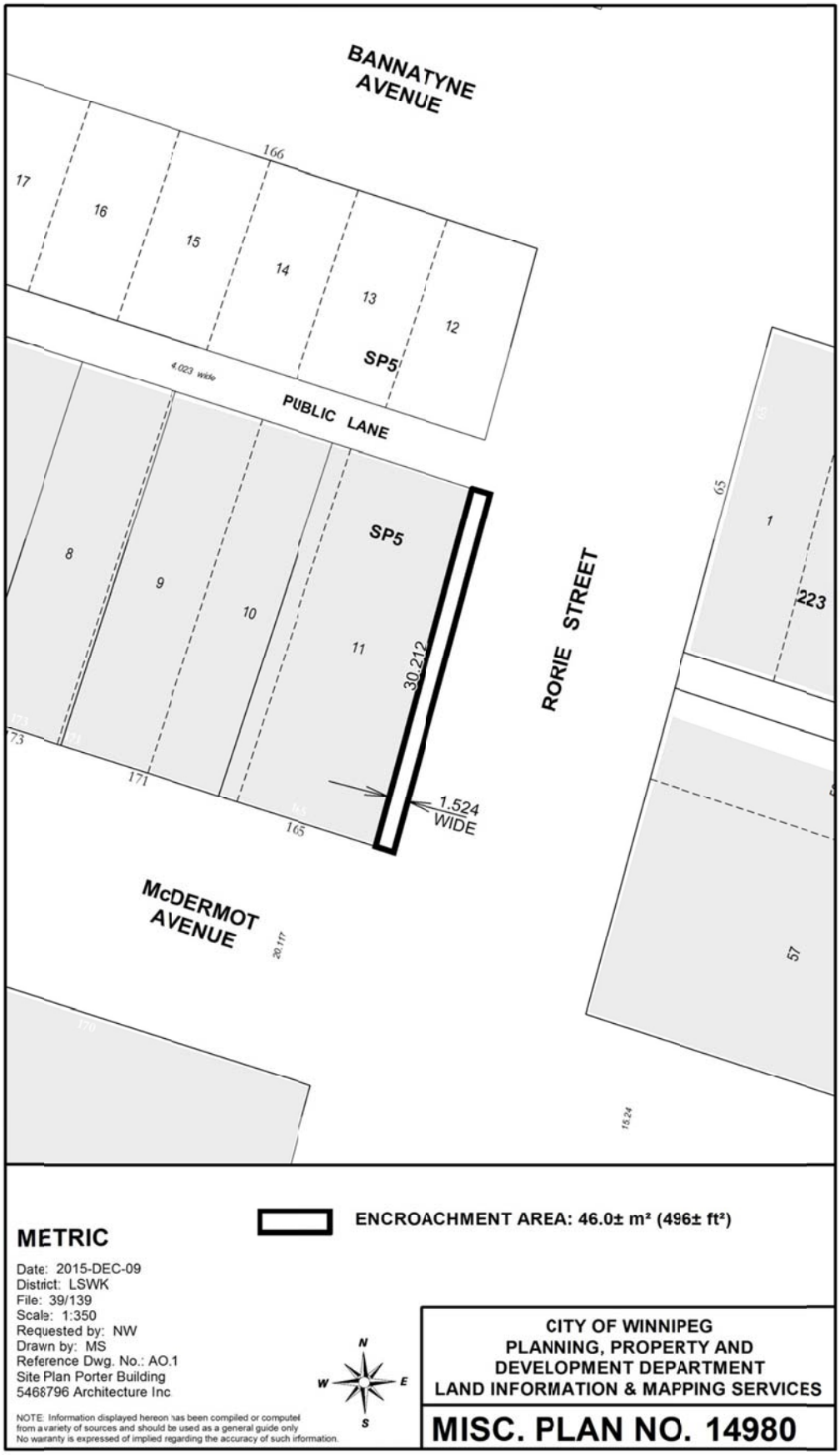
02-3 Heritage (Direction 1): Plan for Heritage Conservation.
> Support the provision of a robust package of heritage conservation incentives through agencies, partnerships and other governments to facilitate the conservation and/or adaptive reuse of designated heritage buildings.

03-1 Opportunity (Direction 9): Collaborate with Developers, Community Organizations and Other Partners to Foster an Age-Friendly and Accessible Urban Environment.
> Encourage local area plans to apply principles of Universal Design and Age-friendly Cities.

SUBMITTED BY

Department	Planning, Property and Development
Division	Municipal Accommodations
Prepared by:	Nolan Winters, Real Estate Officer
Date:	March 17, 2016
File No.:	MA2016-056

O:\Reports Directive\Municipal Accommodations\Leases\2016\MA2016-056 - Encroachment Agreement for Use of Right-of-Way on Rorie St Adjacent to 165 McDermott Ave for purpose of Installing & Maintaining Walkway that will Service Street Level Apt Units


BANNATYNE AVENUE
166
17
16
15
14
13
12
SP5
4.023 wide
PUBLIC LANE
SP5
8
9
10
11
30.212
RORIE STREET
65
1
223
173
171
165
1.524 WIDE
McDERMOT AVENUE
20.117
57
170
15.24
ENCROACHMENT AREA: 46.0± m² (496± ft²)
METRIC
Date: 2015-DEC-09
District: LSWK
File: 39/139
Scale: 1:350
Requested by: NW
Drawn by: MS
Reference Dwg. No.: AO.1
Site Plan Porter Building
5468796 Architecture Inc
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 of implied regarding the accuracy of such information.
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CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPARTMENT
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 14980

SCHEDULE A

PROPOSED TERMS AND CONDITIONS FOR AN ENCROACHMENT AGREEMENT TO ALLOW FOR THE USE OF A PORTION OF THE RORIE STREET PUBLIC RIGHT OF WAY ADJACENT TO 165 MCDERMOTT AVENUE

Use:	Development and maintenance of a Steel and Concrete Walkway on sidewalk
Licensee:	Exchange District Management Inc. (hereinafter called the "Licensee")
Area:	Shown and identified as 'Encroachment Area' on Misc. Plan No. 14980, attached;
Term:	Annually continuing, commencing the first day of the month following approval from the City's Standing Committees and Council;
Rental:	$343.75 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 five 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 the Designated Officer – Encroachments is only valid for a period of six (6) 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 obtain 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 to maintain, operate, repair, inspect or rehabilitate existing water mains, sewer lines and appurtenances located within the Encroachment Area.

The Licensee shall not assign this agreement or sublet the Lands without the prior consent of the Licensor.

That all utilities be permitted to enter the Encroachment 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.

Manitoba Hydro and/or Centra Gas Manitoba Inc. advise of the following:

(a) Manitoba Hydro have facilities in the affected area but there are no easement requirements.

(b) 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;

(c) Future electrical and/or gas service can be obtained from the local Manitoba Hydro District Office;

(d) 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;

(e) Underground street lighting conductor in area. Hydro must be able to maintain or replace conductor if necessary;

(f) Please remind Applicant they need to Call Before You Dig;

The Public Works Department does not object to this application subject to the following:

(a) That the Licensee will be responsible for keeping the surface of the walkway and the area beneath the walkway clean and clear of sand, snow, leaves and other debris;

(b) That for the purposes of maintenance or repair of facilities within the Rorie Street right-of-way a portion of the walkway may need to be removed to allow for the maintenance/repair activities;

(c) That a vertical element be added to the north and south edges and exposed corners of the walkway to ensure that snow clearing crews can identify the presence of an obstruction in their path during a heavy snowfall event;

(d) That the two trees on Rorie Street adjacent to the walkway be protected in accordance with the requirements in the City's "Tree Planting Details & Specifications Downtown Area and Regional Streets" document during construction of the walkway;

(e) That the proposed edging on the walkway be installed with a non-slip surface.

The Water and Waste Department advises of the following:

(a) Our GIS indicates that there are several catch basins and catch basin leads in proximity to the encroachment area. The Water and Waste

Department's infrastructure must be protected and maintained in working order. Any damage to the water and sewer infrastructure must be repaired at the expense of the Licensee. There must not be anything placed over top of this infrastructure.

(b) If the Water and Waste Department needs to perform maintenance, repair or replacement of this sewer infrastructure, any damage to the walkway and/or other items encompassed in the proposed encroachment area will be the Licensee's responsibility, and cost, to repair;

(c) "Click Before you Dig Manitoba" (http://www.clickbeforeyoudigmb.com/) Manitoba must be contacted to ensure located are performed, prior to construction;

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, snow 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.

The Licensee shall not assign this agreement or sublet the lands without the prior consent of the City.

The Licensee shall 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 lands 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 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 walkway, the Licensee shall be responsible to do all things necessary to relocate and/or modify and/or remove the walkway as required by the City and to pay all costs and expenses associated therewith.

That all applicable permits be obtained prior to any development;

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

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 and agreed to by the Licensee, 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.

EXCHANGE DISTRICT MANAGEMENT INC. HEREBY AGREES TO ENTER INTO AN ENCROACHMENT AGREEMENT WITH THE CITY OF WINNIPEG FOR THE USE OF THE PROPERTY IDENTIFIED AS `ENCROACHMENT AREA` ON THE ATTACHED MISC. PLAN NO. 14980 AND IN ACCORDANCE WITH THE PROPOSED TERMS AND CONDITIONS AS OUTLINED HEREIN.

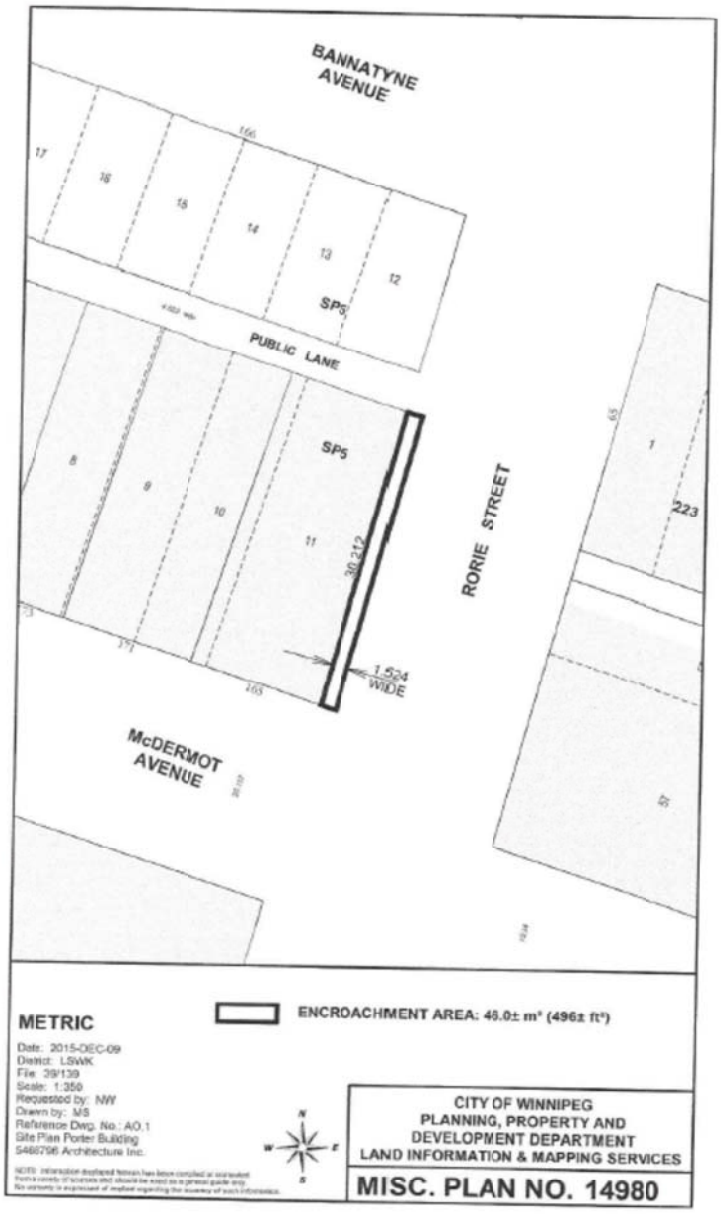
EXCHANGE DISTRICT MANAGEMENT INC.

Per: _____ 2016-02-11
DATE

BRYCE ALSTON
NAME

DIRECTOR
TITLE

I/We have been authorized to bind the Corporation


BANNATYNE AVENUE
17
16
15
14
13
12
SP5
PUBLIC LANE
8
9
10
11
SP5
30.212
RORIE STREET
1
223
1.524 WIDE
McDERMOT AVENUE
ENCROACHMENT AREA: 46.0± m² (496± ft²)
METRIC
Date: 2015-DEC-09
District: LSWK
File: 39/139
Scale: 1:350
Requested by: NW
Drawn by: MS
Reference Dwg. No.: A0.1
Site Plan Porter Building
S4662796 Architecture Inc.
CITY OF WINNIPEG
PLANNING, PROPERTY AND
DEVELOPMENT DEPARTMENT
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 14980