Agenda – Executive Policy Committee – December 6, 2017

Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – November 27, 2017

Item No. 10 City-owned Surplus and Approval to Sell Control Strip to Adjacent Property Owner – Strip East of Fultz Boulevard (River Heights-Fort Garry Ward)

STANDING COMMITTEE RECOMMENDATION:

On November 27, 2017, the Standing Policy Committee on Property and Development, Heritage and Downtown Development concurred in the recommendation of the Winnipeg Public Service and recommended to Council:

1. That the City-owned property located east of Fultz Boulevard, identified as "Subject City Property" on Misc. Plan No. 11375/4 (attached as Schedule B) (hereinafter referred to as the "City Property"), be declared surplus to the needs of the City.

2. That, subject to the approval of Recommendation #1, the sale of the City Property be approved based on the proposed terms and conditions attached as Schedule A.

3. That the City enter into, execute, and deliver an Offer to Purchase with 7314290 Manitoba Ltd., or nominee, and such other agreements as determined necessary by the City Solicitor/Director of Legal Services to implement the intent of the foregoing (the "Ancillary Agreements").

4. That the Chief Administration Officer be authorized to negotiate and approve the terms and conditions of the Offer to Purchase and any Ancillary Agreements in accordance with this report and such other terms and conditions determined necessary by the Director of Legal Services and City Solicitor to protect the interests of the City.

5. That the proper officers of the City be authorized to do all the things necessary to implement the intent of the recommendations.

Agenda – Executive Policy Committee – December 6, 2017

Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – November 27, 2017

DECISION MAKING HISTORY:

STANDING COMMITTEE RECOMMENDATION:

On November 27, 2017, 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: To obtain Council approval to declare City-owned control strip east of Fultz Boulevard surplus to the needs of the City and approval to sell control strip to adjacent property owner

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

AUTHORIZATION

Author	Department Head	CFO	CAO
M. Pittet	J. Kiernan	M. Ruta	D. McNeil

EXECUTIVE SUMMARY

Declaring the City-owned control strip east of Fultz Boulevard surplus to the needs of the City will enable the Department to sell the land to the adjacent owner of the land to the west, for consolidation with their current holdings.

The terms of the proposed sale will require the adjacent owner to pay $6,000 for the City to undertake the legal opening of a right-of-way at Henlow Bay and Fultz Boulevard (shown as Parcel G on Misc. Plan No. 11375/4).

RECOMMENDATIONS

1. That the City-owned property located east of Fultz Boulevard, identified as “Subject City Property” on Misc. Plan No. 11375/4 (attached as Schedule B) (hereinafter referred to as the “City Property”), be declared surplus to the needs of the City.

2. That, subject to the approval of Recommendation #1, the sale of the City Property be approved based on the proposed terms and conditions attached as Schedule A.

3. That the City enter into, execute, and deliver an Offer to Purchase with 7314290 Manitoba Ltd., or nominee, and such other agreements as determined necessary by the City Solicitor/Director of Legal Services to implement the intent of the foregoing (the “Ancillary Agreements”).

4. That the Chief Administration Officer be authorized to negotiate and approve the terms and conditions of the Offer to Purchase and any Ancillary Agreements in accordance with this report and such other terms and conditions determined necessary by the Director of Legal Services and City Solicitor to protect the interests of the City.

5. That the proper officers of the City be authorized to do all the things necessary to implement the intent of the recommendations.

REASON FOR THE REPORT

According to the "Policy for Sale, Acquisition, Rental, Leasing and Management of Properties", Council approval is necessary to declare the land surplus to the City's requirements.

The approval of the Standing Policy Committee on Property and Development, Heritage and Downtown Development is required for the sale of the City Property, as the Offer to Purchase will include non-standard terms and conditions (payment to the City by the Purchaser for the City to legally open a right-of-way).

IMPLICATIONS OF THE RECOMMENDATIONS

There are no regulatory, environmental, operational, or human resource implications to this report.

The City's standard terms and conditions of sale will include provisions to protect the City's interests in the event contamination is discovered.

The declaration of surplus will allow the Department to sell the City Property to the adjacent owner, for consolidation with its adjacent holdings.

HISTORY/DISCUSSION

The City Property, identified as "Subject City Property" on Misc. Plan No. 11375/4 (measuring 0.3m wide by 24m long ($7.2m^2$ or ±930ft²)), was acquired by the City as part of a development application that took place in the early 2000s. Since that time, the properties to the east of the control strip have been developed extensively and the properties west of the control strip only partially.

The owner of the land west of the City Property has made an application to develop its property (DAPS 06/2017) and as a result will be required to purchase the City Property.

City Departments were canvassed to determine if they had any need or objection to declaring the City Property surplus to the City's needs:

- Water and Waste identified the need to retain an easement on the City Property to protect existing sewer and water mains.
- In order to provide legal access to the applicant's proposed development, the applicant will pay $6,000 for the City to proceed to open Parcel G, Plan 57553 as a legal right-of-way.

The Ward Councillor was consulted and concurs with the intentions of the Department.

The Department has concluded its negotiations to sell the City Property for $1.00 to the adjacent property owner, as set out in the attached proposed Terms and Conditions (attached as Schedule A). The following terms are included:

1) The City Property will be consolidated with the adjacent land to its west.

2) The City will retain an easement over the City Property, in order to protect its sewer and water infrastructure.

3) The purchaser shall pay $6,000 for the City to legally open Parcel G, Plan 57553 as right-of-way, to provide access to its proposed development.

FINANCIAL IMPACT

Financial Impact Statement

Date: October 23, 2017

Project Name:

Approval to declare City-owned control strip east of Fultz Boulevard surplus to the needs of the City and approval to sell control strip to adjacent property owner

First Year of Program 2017

	2017	2018	2019	2020	2021
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	6,001	-	-	-	-
Net Cost/(Benefit)	$ (6,001)	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts	(6,001)	-	-	-	-
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Revenue conists of the nominal $1 sale price + $6,000 to be paid to the City for legally opening the right-of-way.

"Original signed by"

Mike McGinn, CPA, CA
Manager of Finance

CONSULTATION

This Report has been prepared in consultation with:

Legal Services, as to legal issues.
Water and Waste Department
Ward Councillor

OURWINNIPEG POLICY ALIGNMENT

N/A

SUBMITTED BY

Department: Planning, Property and Development
Division: Real Estate and Land Development
Prepared by: Simone Clayton, Real Estate Officer
Date: October 26, 2017
File Name: (sc2) Declare Surplus – Fultz Boulevard Control Strip (7343) – October 23 2017

Attachments:

Schedule “A” – Signed Proposed Terms and Conditions for sale of Fultz Boulevard Control Strip (Lot 3 Block 1 Plan 26133 WLTO)
Schedule “B” – Miscellaneous Plan Number 11375/4

SCHEDULE A

PROPOSED TERMS AND CONDITONS FOR SALE OF FULTZ BOULEVARD CONTROL STRIP (LOT 3 BLOCK 1 PLAN 26133 WLTO)

Owner:	1. The City of Winnipeg (the "City")
Purchaser:	2. 7314290 Manitoba Ltd., or nominee (the "Purchaser")
Subject Lands:	3. The lands legally described as LOT 3 BLOCK 1 PLAN 26133 WLTO IN OTM LOTS 16 TO 19 PARISH OF ST VITAL, as shown shaded and outlined in a dashed line and identified as "Subject City Property" on Misc. Plan No. 11375/4, attached hereto as Schedule "B".
Date of Closing, Possession and Adjustments	4. Sixty (60) days following the later of: a. Date of approval of the sale by the City's Council or its delegated authority; or b. Date of satisfaction or waiving of the environmental site assessment clauses found at Clause 19; or c. The date that the Plan of Survey referred to in Clause 21 has been completed and approved for registration by the Winnipeg Land Titles Office and the City; or OR such other date as mutually agreed to by the parties and approved by the City's Director of Planning, Property and Development (hereinafter called the "Director").
Purchase Price:	5. $1.00 If the Purchaser fails to pay the balance of the purchase monies before the Date of Closing, Possession and Adjustments, the City may at its option cancel the sale and retain the deposit as liquidated damages.
Interest	6. The Purchaser shall pay interest in lawful money of Canada on all monies remaining outstanding and payable to the City as of the Date of Closing, Possession and Adjustments.
Goods and	7. The Purchaser agrees to pay to the City all G.S.T.

Initials

Services Tax

applicable on the sale of the Lands or, if the Purchaser is a registrant under the G.S.T. legislation, the Purchaser shall advise the City in writing of its registration number.

Municipal Taxes

8. The Purchaser is responsible for payment of the taxes applicable to the Lands on and after the Date of Closing, Possession and Adjustments or transfer of title, whichever is the earlier, and will be sent a statement of, and demand for payment of, taxes in accordance with the provisions of The Municipal Assessment Act and The City of Winnipeg Charter.

Default

9. In the event that the purchase is not completed by reason of default of the Purchaser, the deposit and any interest earned thereon shall be forfeited immediately to the City and the City may exercise whatever other remedies are available to the City at law.

Conditions:

10. The Purchaser is purchasing the Subject Lands on an "as is" basis and will accept title to the Subject Lands subject to all exceptions, reservations and encumbrances expressed or implied in the City's title.

11. The Purchaser will obtain possession of the Subject Lands at the Purchaser's own expense, which includes, without limiting the generality of the foregoing, obtaining their own Surveyor's Building Location Certificates, Surveyor's Staking Certificates, and Zoning Memorandum.

12. The sale of the Lands to the Purchaser shall be subject to the provisions of the By-laws of The City of Winnipeg and all amendments thereto.

13. The Purchaser will not file any caveat or other encumbrance against the Subject Lands before the transfer of the Subject Lands to the Purchaser.

14. The Purchaser shall pay the applicable Land Titles Office registration fees and Land Transfer Tax.

15. The sale of the Lands shall be subject to any easement which may be required by a public utility, including, but not limited to, The Manitoba Hydro-Electric Board, Bell

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MTS Inc., Centra Gas (Manitoba) Inc., Shaw Cablesystems Limited, or the City, and the Purchaser shall enter into agreements satisfactory to said public utilities at its own cost and expense. The Purchaser acknowledges that the City may grant the easement before the Transfer of Land issues.

a. The Purchaser shall grant an easement to the City of Winnipeg over the Subject Lands for the City-owned water main and waste water sewer main. No permanent structure is to be allowed in the easement areas, but paving and other surface improvements are permitted. The City must have 24/7 access to the easement area. The final form of the Easement Agreement to be approved by the City's Director of Water and Waste.

16. The Purchaser relies entirely upon its own knowledge and personal inspection, examination or investigation of the Subject Lands, the title thereto, the permitted encumbrances, any tenancies and all other matters material to the Purchaser and the proposed use of the Subject Lands and also relies solely upon the advice of its own consultants, independent of any representation made by or on behalf of the City or any agent of the City.

17. The City has made no representation, warranties or guarantees of any nature or kind whatsoever as to the quality, condition or suitability of the Subject Lands for any use or purpose, nor as to any environmental conditions which may exist.

18. The Purchaser will release, indemnify and save the City harmless from and against ay and all claims for damages or injuries, including death, which may arise from the transaction. This provision shall survive any termination, cancellation or expiration of this Agreement.

19. In the event the Purchaser, at its sole cost, conducts or causes to be conducted an environmental site assessment and/or soil testing (the "Assessment") of the Subject Lands, the Purchaser shall:

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(a) Ensure that all work done in connection with the Assessment is completed no later than ninety (90) days from the Date of Approval and, in any event, before the Date of Closing, Possession and Adjustments;
(b) Maintain the Subject Lands in a safe condition at all times during the conduct of any work done for the Assessment;
(c) Restore the Subject Lands to the same condition as prior to the Assessment;
(d) Indemnify and save harmless the City from and against all damages and claims arising out of or in any way attributable to the Assessment; and
(e) Provide copies of Assessment reports to the City, at no cost the City, within (90) days from the Date of Approval and, in any event, before the Date of Closing, Possession and Adjustments.

In the event that the Assessment reveals contamination level exceeding provincial environmental standards for the intended use of the Subject Lands, the City shall be entitled to take remedial action or to cancel the sale and return all monies paid in respect of the proposed sale by the Purchaser to that date, provided that the Purchaser shall have first satisfied all conditions of this Clause.

If the City has not been advised of any non-compliance of the Subject Lands with provincial environmental standards within ninety (90) days from the Date of Approval, or in any event, before the Date of Closing, Possession and Adjustments, the Purchaser agrees to complete its purchase as herein contemplated and to indemnify the City against any and all claims arising from, or in any way connected with, the existence of contaminants of any kind on the Subject Lands.

20. The Purchaser shall have the right to nominate, assign, transfer and convey its rights, obligations and interests under this Agreement, in writing, to any person, firm or corporation, subject to the consent and any additional requirements of the Director.

21. The Purchaser shall at its sole cost, effort and expense, do all things as are necessary, including, but not limited to, cause to have prepared a Plan of Survey, in accordance with DAPS 6/2017, and register same,

Initials

along with any other required documentation, at the Winnipeg Land Titles Office on or immediately following the Date of Closing, Possession and Adjustment.

22. The Purchaser will pay the City the amount of $6,000.00 plus G.S.T., on or before the Date of Closing, Possession and Adjustments, for the City to undertake all necessary action to open Parcel G, Plan 47553 as a Right of Way. If the Purchaser fails to pay this amount before the Date of Closing, Possession and Adjustments, the City may at its option cancel the sale.

Other:

23. The Purchaser shall enter into a formal agreement with the City embodying the foregoing terms and conditions in the City's standard form agreeement and such other terms and conditions as the City Solicitor/Director of Legal Services deems necessary.

24. All terms and conditions contained herein are subject to the approval of the City's Council, or its delegated authority, and are not binding until such time as that approval is obtained.

Initials

I/We, _____, **being** duly
(Please print)

Authorized to act on behalf of **7314290 Manitoba Ltd.**, hereby agree to enter into a formal agreement with the City of Winnipeg in accordance with the terms and conditions as outlined herein.

Per: _____
Name: W.G. HARBOTTLE
Title: PRESIDENT

I am authorized to bind the Corporation

6/10/17
Date

Per: _____
Name:
Title:

I am authorized to bind the Corporation

_____
Date

Please provide the following Purchaser contact information:

Contact Person: W.G. HARBOTTLE

Daytime: ___ Phone No.: 604-495-4190

After Hours: _____ Phone No.: 778-994-5467

E-mail Address: BILLH@JPAUTOGROUP.COM

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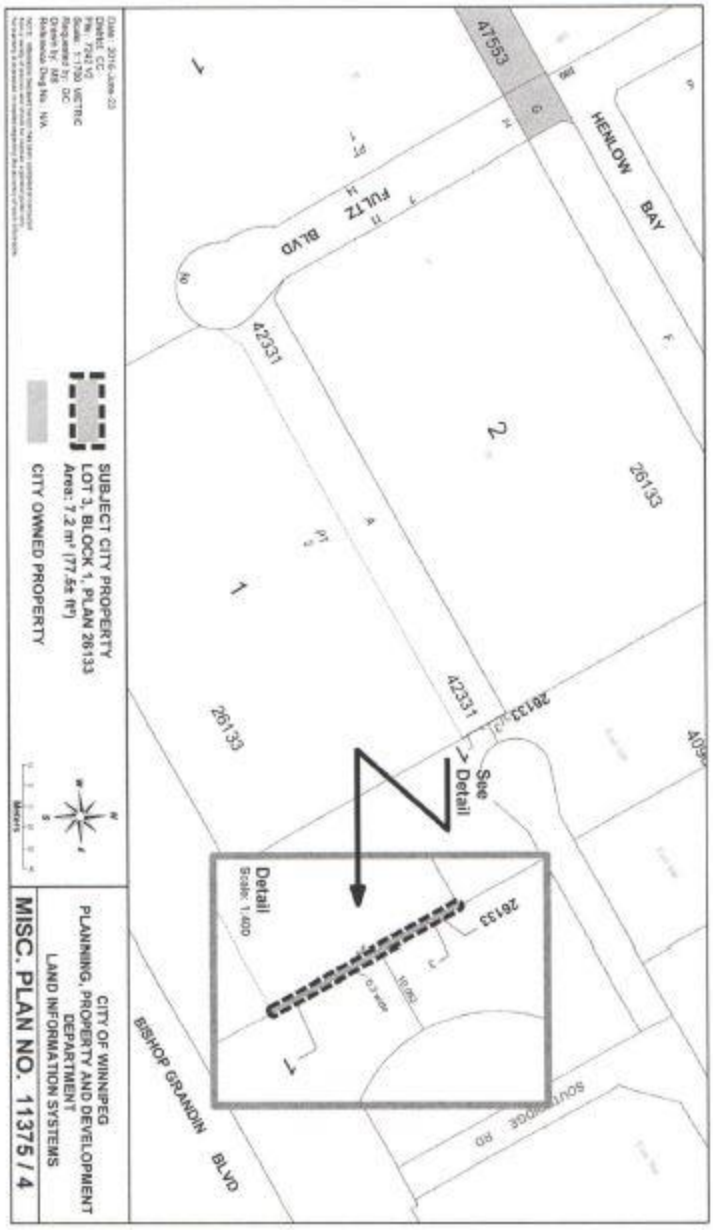
SCHEDULE B



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