Minute No. 134
Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – January 12, 2016

Item No. 18 Expropriation of Lands – Cockburn-Calrossie Combined Sewer Area – Drainage Upgrade Project

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 expropriation of lands for the Cockburn-Calrossie Combined Sewer Area - Drainage Upgrade Project, approved at the February 25, 2015 Council Meeting, be confirmed as outlined in the Declaration of Expropriation submitted on February 25, 2015.

2. That the denial of the proposed taking as stated in 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.

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 adopted.

Moved by Councillor Wyatt,
Seconded by Councillor Schreyer,

BE IT RESOLVED that the Report of the Standing Policy Committee on Property and Development, Heritage and Downtown Development dated January 12, 2016, Item 18 "Expropriation of Lands-Cockburn-Calrossie Combined Sewer Area-Drainage Upgrade Project" be referred back to the Standing Policy Committee with the following instructions that are consistent with the closing comments made by the Inquiry Officer, G.E. Ulyatt, dated November 23, 2015, that the City of Winnipeg be instructed to consider all other options and alternatives for the proposed project, in light of the circumstances concerning this proposed expropriation as outlined in this report;

AND BE IT FURTHER RESOLVED that all of these options and costs be subject to a Class 3 cost budget estimation and that they be outlined both in terms of their budget detail for scope and costs and that this be reported back via the Standing Policy Committee on Water and Waste, Riverbank Management and the Environment prior to any consideration by the Standing Policy Committee on Property and Development, Heritage and Downtown Development.

The motion moved by Councillors Wyatt and Schreyer was put.

Councillor Wyatt called for the yeas and nays, which were as follows:-

Yea: Councillors Dobson, Eadie, Schreyer and Wyatt 4

Nay: His Worship Mayor Bowman, Councillors Allard, Browaty, Gerbasi, Gillingham, Gilroy, Lukes, Mayes, Morantz, Orlikow, Pagtakhan and Sharma 12

and the motion moved by Councillors Wyatt and Schreyer was declared lost.

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

DECISION MAKING HISTORY (continued):

The motion for the adoption of the item was put

The Speaker called for the yeas and nays as follows:

Yea: His Worship Mayor Bowman, Councillors Allard, Browaty, Gerbasi, Gillingham, Gilroy, Lukes, Mayes, Morantz, Orlikow, Pagtakhan and Sharma 12

Nay: Councillors Dobson, Eadie, Schreyer and Wyatt 4

and the motion for the adoption of the item was declared carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On January 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 January 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.

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. File GL-4

ADMINISTRATIVE REPORT

Title: **Expropriation of Lands – Cockburn-Calrossie Combined Sewer Area - Drainage Upgrade Project**

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

AUTHORIZATION

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

RECOMMENDATIONS

1. That the expropriation of lands for the Cockburn-Calrossie Combined Sewer Area - Drainage Upgrade Project, approved at the February 25, 2015 Council Meeting, be confirmed as outlined in the Declaration of Expropriation submitted on February 25, 2015.

2. That the denial of the proposed taking as stated in 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

At its February 25, 2015 meeting, Council considered and approved the Property, Planning and Development Department's report to initiate expropriation proceedings to acquire the land interest needed for the Cockburn-Calrossie Combined Sewer Area - Drainage Upgrade Project.

The expropriated party (6165347 Manitoba Inc.) objected to the expropriation, as did the holder of a mortgage and several other caveats registered against the property (First National Financial GP Corporation).

An inquiry hearing was held on September 24th, 25th and October 2nd, 2015 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 23, 2015, the Inquiry Officer completed the Inquiry Report which denied the proposed taking of the lands identified in the attached Misc. Plan No. 12251/13 (referred to as the "Parker Lands") --. (Inquiry Report attached).

Failure to proceed with the expropriation will deny the City of the opportunity for the City to proceed with Basement Flood Relief work in the Cockburn West and Jessie South East Drainage districts in a manner that best considers the overall social, environmental, and economic sustainability for the City. The City would also be unable to provide Manitoba Hydro with access to the lands to complete the necessary transmission tower relocations required to maintain existing construction timelines and costs as they relate to the Southwest Transitway (Stage 2) and Pembina Highway Underpass project.

EXECUTIVE SUMMARY

Under The Expropriation Act of Manitoba, an owner of a property being expropriated can object to the expropriation of his property. An objection was received from this property owner and a mortgagor/caveat holder. 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 23, 2015, the Inquiry Officer completed the Inquiry Report which recommended the denial of the proposed taking.

IMPLICATIONS OF THE RECOMMENDATIONS

Confirming the expropriation will allow the City to maintain construction timelines and costs as they relate to the Cockburn-Calrossie Combined Sewer Area - Drainage Upgrade Project.

In addition, confirming the expropriation will allow Manitoba Hydro access to the Parker Lands to complete the necessary transmission tower relocations required to maintain existing construction timelines and costs as they relate to the Southwest Transitway (Stage 2) and Pembina Highway Underpass project.

Choosing not to endorse the Inquiry Officer's recommendation for denial of the proposed taking will not affect the ability of the property owner to seek additional compensation through the LVAC.

HISTORY

On February 25, 2015, Council approved the administrative report titled *"Expropriation of Lands - Cockburn-Calrossie Combined Sewer Area - Drainage Upgrade Project"*.

On July 17, 2015, an Order was endorsed by the Manitoba Court of Queen's Bench granting the Inquiry Officer an extension of time to November 16, 2015 to submit his report under The Expropriation Act, thereby extending the confirmation date for the Confirming Authority to November 26, 2015. A further Consent Order was granted, dated November 12, 2015, which extended the submission date for the Inquiry Officer's Report to November 23, 2015 and the confirmation date for the Confirming Authority to February 29, 2016. This extension was requested by the inquiry officer and was necessary due to the length of time it took to conduct the Inquiry.

On September 12th, 2015, a Notice of Public Hearing for the inquiry was published in the Winnipeg Free Press.

On September 22th, 2015, George Ulyatt was appointed as an Inquiry Officer by the Manitoba Minister of Justice.

On November 23, 2015, the Inquiry Officer (as appointed by the Manitoba Minister of Justice) completed the Inquiry Report which included a recommendation to the expropriating authority that the expropriation of the Parker Lands be denied. (Inquiry Report attached).

The Public Service does not endorse the denial of this proposed taking.

The Water and Waste Department has provided the following information relating to the benefits of moving forward with the expropriation of the proposed taking for the construction of a 6.7 hectare Storm Retention Basin (SRB):

- ***Provides the best technical solution at an acceptable level of risk*** - After an extensive technical review of various options of SRB locations, size, outfall piping size and combination of the above; the Department determined that the construction of single 6.7 ha pond on the Parker Lands with a 1200mm outfall piping to the Red River was the most efficient and with the least amount of construction risk and disruption to the public during construction phases. The development of this SRB requires the expropriation of 8.3 ha of land.

- ***Provides earlier relief to the residents of Cockburn West and Southeast Jessie*** – The combined sewers in these neighbourhoods have a low level of service with respect to basement flooding during severe rain events.

- ***Achieves complete separation of Cockburn West and Southeast Jessie sewer districts*** –The planned LDS system including the 6.7 ha SRB provides sufficient capacity to completely separate the Cockburn West and Southeast Jessie Combined Sewer systems. Total separation of these sewer districts satisfies both of the goals of the project, Basement Flood Relief (BFR) and Combined Sewer Overflow (CSO) abatement. Earlier evaluations considered "no pond" options, however the size of the downstream piping associated with these options to achieve total separation was deemed not practical from the perspective of the degree of required utility relocations and the construction costs of the very large diameter pipe (3,000 –3,600mm). The largest pipe considered practical within the City R.O.W. was a 2,550 mm pipe. Given this maximum pipe size, further analysis indicated that relief would be reduced to 70 %

separation. This level of separation would improve the level of service for BFR but would not achieve total separation. Furthermore, the elimination of combined sewer overflows would not be achieved with this level of separation.

- ***Reduced Construction Risk*** – Implementation of the current design (SRB with 1,200 mm outlet to the river) will result in a project with a lower construction risk. Over 70 SRB's exist within City of Winnipeg. Construction of SRB's is commonplace in Manitoba and familiar to local contractors. Furthermore, the 1,200 mm outlet pipes can be installed using conventional construction equipment commonly used in Winnipeg. Alternatively high risk and large potential cost overruns could be anticipated with the construction of large diameter pipes associated with a design that does not consider an SRB. There is limited construction experience and there are inherent risks associated with the use of Tunnel Boring Machines (TBM's) required for the construction of the large diameter pipes. As well, there are limited vendors with demonstrated expertise in North America to construct these large diameter pipes.

- ***Provides required Naturalized Land required under the Environmental Act License for Southwest Transitway (Stage 2) Project (SWRT)*** – The Environmental Review and Assessment report prepared for Manitoba Water Stewardship and Conservation lists the construction of the naturalized SRB in the Parker Lands as a mitigation measure for the loss of wet meadow and cattail stand areas. Since the SRB provides these mitigation measures, the City will need to find an alternate method of achieving these mitigation measures if it is not constructed

- **Accommodates development timelines of the Parker Lands -** The Parker lands fall within the Cockburn West Sewer District. The lands are undeveloped and not serviced by sewers. No existing sewers in the vicinity of the Parker Lands (south of the rail lines) can accept runoff flows from the development of the Parker Lands. Any development on these lands would require an outlet to the river (that currently does not exist). This includes the private development and may include public development (SWRT). The proposed land drainage scheme permits development of the Parker Lands once completed.

  Accommodates earlier development Taylor Lands - The Taylor Lands located north of the CN lines cannot be fully developed without a connection to the river to accept the allowable runoff flows. The City permitted the initial development of the Walmart Building on the Taylor Lands with the use of temporary dry pond to restrict the rate of runoff to the existing Cockburn combined sewer district. The approval is temporary with the understanding that the allowable flows from the Taylor lands are to be connected to the future LDS connection to the river once constructed.

- ***Additional CSO Benefits*** – In addition to the total separation benefits, the construction of a naturalized SRB, as planned, provide the following additional benefits with respect to the City's Combined Sewer Abatement Program:
  - SRB settle out suspended solids that would be released into the Red River
  - The Naturalized plant life provide biological uptake of some nutrients
  - The ultraviolet impacts of the sun on the SRB can result in the decomposition of some bacteria.

These added CSO benefits are not achieved without the construction of a SRB.

- ***Provides additional storage under flood conditions*** – The SRB provides additional storage for rain event when the Red River is experiencing elevated river levels.

- ***Provides an esthetically pleasing enhancement public facility*** – The construction of the SRB will be landscaped to enhance the area in the lands it will be constructed. There are opportunities for pathways and pleasing landscaping enhancements.

The Water and Waste Department also advised of the additional risks of not moving forward with the current design – assumes that a future design will go forward that does not consider expropriated lands for the construction of a SRB as follows:

- ***Impacts the proposed cost and schedule for the P3 Project (SWRT & Pembina Underpass Project)*** – The current LDS Design (SRB and downstream piping) receive development flows from the Pembina Underpass, the SWRT Underpasses below the CN Letellier rail lines, and the portion of the SWRT corridor within the Parker Lands. Decisions on how to deal with these flows may impact the planned construction costs and schedule of the P3 Project.

- ***Additional Parker Lands owned 6165347 Manitoba Inc. (o/a GEM Equities) will need to be expropriated for the SWRT project*** – The existing Manitoba Hydro lattice transmission towers located on the Parker Lands are being modified to tubular towers to allow for sufficient space to build the SWRT Corridor. The tubular towers have a shorter span length and require approximately 1.3 acres of land north of the proposed SRB (and south of the CN Rail line) for a new set of tubular towers to be installed. This land is currently being expropriated under the Cockburn Project. If an alternate design is explored that does not require expropriation of the lands for the SRB, then this portion of the land will need to be expropriated for the SWRT project. This additional expropriation process would impact the schedule of the SWRT project.

- ***Additional Parker Lands owned by 6165347 Manitoba Inc. (o/a GEM Equities) will need to be expropriated for the construction of underground Trunk Sewers –*** Should the requested expropriation not go forward, there will still be a requirement for Parker Lands to accommodate the construction of large Diameter Sewers as there is no other practical option for the routing of a single trunk sewer to another location.

- ***The City will need to acquire a Consent to Enter and Construct Agreement to complete work for the SWRT Project*** – The Hydro Transmission tower relocations associated with the SWRT project involve the relocation of two transmission towers located on portion of the Parker Lands Owned by 6165347 Manitoba Inc. (o/a Gem Equities). This land was being expropriated under the Cockburn Project. The City would require a Consent to Enter and Construct Agreement to undertake this portion of the relocations, which could impact the schedule of the SWRT project. The property owner may not agree to provide its Consent to Enter to Construct thereby jeopardizing the project.

- ***Development restrictions will remain on one quarter of Parker Lands*** – Approximately 25% of the land being expropriated as part of the Cockburn project involves a historic Hydro Utility corridor that restricts above grade development. The corridor currently includes three Transmission towers and Manitoba Hydro anticipates requiring 3 additional towers to satisfy its future needs in providing power to Manitobans. Construction of an SRB below the grade in the vicinity of the transmission towers is acceptable (and already approved by Manitoba Hydro). Development of residential and commercial development above grade in these locations is understood to not be permitted.

FINANCIAL IMPACT

Financial Impact Statement Date: December 9, 2015

Project Name:

Expropriation of Lands – Cockburn-Calrossie Combined Sewer Area - Drainage Upgrade Project

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)
Water and Waste Department
Transit

OURWINNIPEG POLICY ALIGNMENT

OurWinnipeg enables the intensification of land-uses through the development application process only when a full range of municipal services is provided. A full range of municipal services includes piped water, piped wastewater, an urban standard roadway, and piped land drainage. Cockburn-Calrossie Combined Sewer Area - Drainage Upgrade Project is a part of the piped land drainage system for this area.

SUBMITTED BY

Department: Planning, Property and Development
Division: Real Estate
Prepared by: Marlene Haderer
Date: December 11, 2015
File No.: 5775 AE

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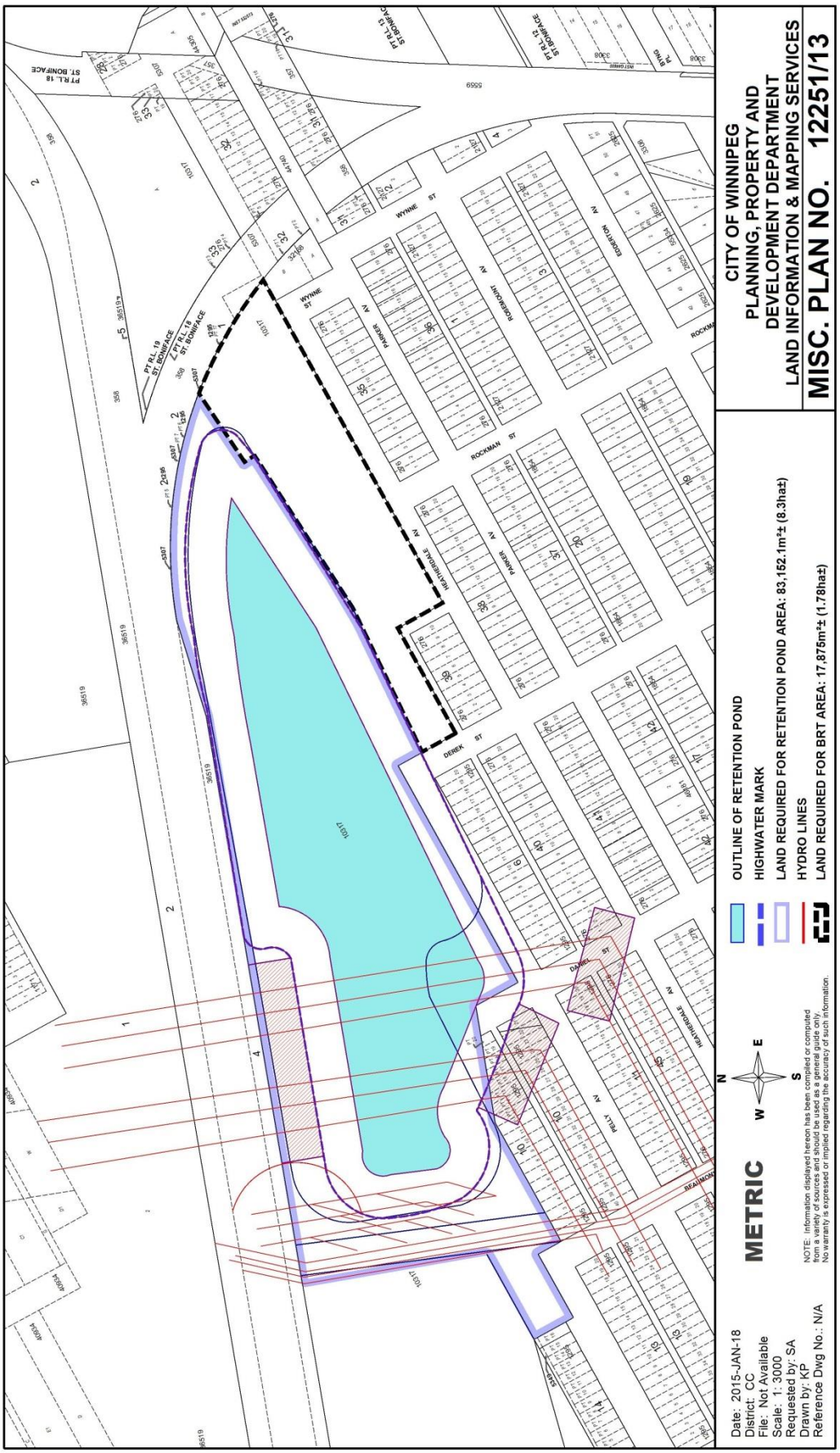
CITY OF WINNIPEG
PLANNING, PROPERTY AND
DEVELOPMENT DEPARTMENT
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 12251/13
OUTLINE OF RETENTION POND
HIGHWATER MARK
LAND REQUIRED FOR RETENTION POND AREA: 83,152.1m²± (8.3ha±)
HYDRO LINES
LAND REQUIRED FOR BRT AREA: 17,875m²± (1.78ha±)
METRIC
Date: 2015-JAN-18
District: CC
File: Not Available
Scale: 1:3000
Requested by: SA
Drawn by: KP
Reference Dwg No.: N/A
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.
WYNNE ST
PARKER AV
ROCKMAN ST
HEATHERDALE AV
DEREK ST
DANIEL ST
PELLY AV
ROSEMOUNT AV
EDDERTON AV
PT R.L. 19 ST. BONIFACE
PT R.L. 18 ST. BONIFACE
PT R.L. 13 ST. BONIFACE
PT R.L. 12 ST. BONIFACE