Agenda – Council – June 26, 2020

Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – June 16, 2020

Item No. 5 Proposed Closing of the Public Lane at the Rear of 37 Fernwood Avenue
(St. Vital Ward)
File DAC 8/99

STANDING COMMITTEE RECOMMENDATION:

On June 18, 2020, 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 subject to Recommendation 2:

    A. the proposed lane closing shown on Misc. Plan No. 9961/3 (attached as Appendix "A") and identified as "Proposed Closing – DAC 8/99" be approved and that the land be declared surplus to the City's needs, and

    B. the proposed lane closing identified as "Proposed Closing – DOAC 2/97", and the land identified as "City Owned Property – Lot 70, Plan 21980", both which are shown on Misc. Plan No. 09961/9 (attached as Appendix "C"), be declared surplus to the City's needs.

2. That the Director of Legal Services and City Solicitor be instructed to prepare and bring directly to Council for enactment a by-law to facilitate the lane closings and opening in accordance with Misc. Plan No. 09961/9, subject to:

    A. the approval of the conveyance of the land by Council or its delegated authority, and

    B. the developer and/or purchaser (or assignee) entering into a purchase and sale agreement with the City, which agreement shall include, among other things, a requirement that the developer and/or purchaser (or assignee) fulfill the administrative conditions of approval outlined in Appendix "E" of this report.

Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – June 16, 2020

STANDING COMMITTEE RECOMMENDATION (continued):

3. That in the event the subject closing is not proceeded with expeditiously and the by-law:

   A. is not enacted within two (2) years following the date the subject report is approved by Council, and

   B. is not registered in the Winnipeg Land Titles Office within one (1) year following the date it is enacted by Council,

   the matter shall be deemed to be concluded and shall not be proceeded with, unless an extension of time is applied for prior to the expiry of the two (2) year period referred to in clause (A) above and Council approves the extension.

4. That the City enter into, execute and deliver an Offer to Purchase with the developer and/or purchaser (or assignee) 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").

5. That authority be delegated to the Chief Administrative Officer to negotiate and approve the terms and conditions of the Offer to Purchase and the Ancillary Agreements, in accordance with this report and such other terms and conditions deemed necessary by the City Solicitor/Director of Legal Services to protect the interests of the City.

6. 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 – June 16, 2020

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On June 18, 2020, 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 June 16, 2020, the Standing Policy Committee on Property and Development, Heritage and Downtown Development concurred in the recommendation of the Winnipeg Public Service, with the following amendments:

- Delete Recommendations 1 and 2 in the entirety and replace with the following:

  "1. Subject to Recommendation 2, that

     A. the proposed lane closing shown on Misc. Plan No. 9961/3 (attached as Appendix "A") and identified as "Proposed Closing – DAC 8/99" be approved and that the land be declared surplus to the City's needs, and

     B. the proposed lane closing identified as "Proposed Closing – DOAC 2/97", and the land identified as "City Owned Property – Lot 70, Plan 21980", both which are shown on Misc. Plan No. 09961/9 (attached as Appendix "C"), be declared surplus to the City's needs.

  2. That the Director of Legal Services and City Solicitor be instructed to prepare and bring directly to Council for enactment a by-law to facilitate the lane closings and opening in accordance with Misc. Plan No. 09961/9, subject to:

     A. the approval of the conveyance of the land by Council or its delegated authority, and

     B. the developer and/or purchaser (or assignee) entering into a purchase and sale agreement with the City, which agreement shall include, among other things, a requirement that the developer and/or purchaser (or assignee) fulfill the administrative conditions of approval outlined in Appendix "E" of this report.

Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – June 16, 2020

DECISION MAKING HISTORY (continued):

STANDING COMMITTEE RECOMMENDATION (continued):

3. That in the event the subject closing is not proceeded with expeditiously and the by-law:

   A. is not enacted within two (2) years following the date the subject report is approved by Council, and

   B. is not registered in the Winnipeg Land Titles Office within one (1) year following the date it is enacted by Council,

   the matter shall be deemed to be concluded and shall not be proceeded with, unless an extension of time is applied for prior to the expiry of the two (2) year period referred to in clause (A) above and Council approves the extension.

4. That the City enter into, execute and deliver an Offer to Purchase with the developer and/or purchaser (or assignee) 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").

5. That authority be delegated to the Chief Administrative Officer to negotiate and approve the terms and conditions of the Offer to Purchase and the Ancillary Agreements, in accordance with this report and such other terms and conditions deemed necessary by the City Solicitor/Director of Legal Services to protect the interests of the City.

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

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

ADMINISTRATIVE REPORT

Title: Proposed Closing of the public lane at the Rear of 37 Fernwood Avenue – File DAC 8/99

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	N/A	M. Ruta, Interim CAO

EXECUTIVE SUMMARY

The Public Service recommends that the portion of the public lane at the rear of 37 Fernwood Avenue be closed.

The Planning, Property and Development Department is proceeding with the subject application in conjunction with opening/closing application DAOC 2/97, both of which were initially made by The Catholic Parish of Christ the King (the "Church") in 1997 and 1999 in order to acquire portions of the public lane to facilitate the expansion of their existing holdings. This process was not completed at the time because negotiations of terms and conditions for the required purchase and sale agreements were not finalized with the Church. The Real Estate Branch has communicated with the Church who has indicated that it is willing to reopen those negotiations.

The Church property is presently being used for public transportation purposes, and legally opened portions of public lane are currently being used by the Church for private purposes. The registration of the opening/closing plans and associated documentation will regularize the current usage of the land, whereby legally open public rights of way are closed and sold to the Church through a purchase and sale agreement, and private property currently being used as a public lane by the area residents will be legally opened for that purpose.

Before the lane may be sold, it must be legally closed and declared surplus to the City's needs.

RECOMMENDATIONS

1. That the City Solicitor be instructed to prepare the necessary by-law for submission to Council to effect the closing in accordance with Misc. Plan 9961/3 (attached hereto as Appendix A).

2. 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

In accordance with Section 3.1(a) of City Organization By-Law No. 7100/97, only Council can approve the closing of streets and lanes.

IMPLICATIONS OF THE RECOMMENDATIONS

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

All costs associated with the public lane closing are the responsibility of the developer and/or purchaser (or assignee) of the land. There are no financial implications for the City of Winnipeg.

HISTORY/DISCUSSION

On July 23, 1997, Council concurred in the recommendation of the Committee on Planning and Community Services and approved the opening and closing of the public lane south of Lennox Avenue, east of St. Mary's Road under File DAOC 2/97, as shown on Misc. Plan No. RIEL 9961/1 (attached hereto as Appendix B).

On May 11, 1999, the Riel Community Committee approved the closing of the public lane at the rear of 37 Fernwood Avenue under File DAC 8/99, as shown on Misc. Plan No. 9961/3 (attached hereto as Appendix A).

Discussion

The Planning, Property and Development Department is proceeding with the dormant application DAC 8/99 to close the public lane at the rear of 37 Fernwood Avenue as shown on Misc. Plan No. 9961/3 (attached hereto as Appendix A).

The processing and subsequent registration of the documentation required to give legal effect to the subject closing will be done in conjunction with opening/closing application DAOC 2/97.

The subject lands associated with each application are shown together, for easier referencing, on Misc. Plan No. 09961/9 (attached hereto as Appendix C).

DAOC 2/97: Public Lane Opening/Closing

In 1997, the Church submitted an application to acquire a portion of the public lane and City-owned land, each shown on Misc. Plan No. 09961/9 (attached hereto as Appendix "C") and respectively identified as "Proposed Closing – DAOC 2/97", and "City Owned Property - Lot 70, Plan 21980", to facilitate expansion of their existing holdings. In return, the Church was to provide that portion of its property illustrated and identified as "Proposed Opening – DAOC 2/97" on Misc. Plan 09961/9, for a public lane. The proposal was circulated to City Departments and Public Utilities. No objections were received but approval was subject to a number of conditions.

The Public Works Department required that the Church enter into a servicing agreement with the City to carry out required associated municipal works and to post a performance letter of credit to cover the Church's obligations under the servicing agreement. Servicing Agreement No. 400/97 was executed by the Church on November 10, 1998 and by the City on December 16, 1998. The municipal works were subsequently completed.

The Water and Waste Department required an easement for the full width of the closing area for existing facilities located therein.

MTS Netcom required an easement for its underground plant located in the City property being sold to the Church (Lot 70, Plan 21980 WLTO).

The report for application DAOC 2/97 was approved by Council on July 23, 1997, subject to the recommendation that "… *the documents effecting the opening and closing not be registered in the Winnipeg Land Titles Office until the Applicant has executed an agreement dealing with the construction of the new lane pavement and associated works to the satisfaction of the Commissioner of Works and Operations."*

Despite attempts to do so, the City and the Church were unable to successfully negotiate the terms and conditions for the sale of the City owned land (Lot 70, Plan 21980 WLTO). A purchase and sale agreement was never executed, and neither the sale of the land nor the legal closing/opening of the public lanes were completed.

<u>DAC 8/99: public lane Closing</u>

In 1999, the Church submitted an additional application to acquire the portion of public lane illustrated and identified as "Proposed Closing – DAC 8/99" on Misc. Plan 09961/9 (attached hereto as Appendix "C"). It was the Church's intention that the portion of the lane, once closed, was to form an addition to the Church's property contiguous to, and immediately to the south of, the lane at what was then known as 37 Fernwood Avenue (Lot 56, Plan 21980 WLTO), for further expansion of the Church's existing holdings.

The report for DAC 8/99 was approved by the Riel Community Committee on May 11, 1999 but the approval was never forwarded to Council for approval; similar to application DAOC 2/97, the terms and conditions for the purchase and sale agreement were not successfully negotiated with the Church. Consequently, application DAC 8/99 still requires Council authority to proceed.

The Real Estate Branch has recently communicated with representatives from the Church who have indicated that they are interested in reopening negotiations regarding acquisition of the City-owned land.

Considering the significant time that elapsed since the 1999 approval, the proposal was recirculated to City Departments and Public Utilities in 2019. The responses to the recirculation are found in the administrative comments outlined in Appendix "E".

Current Situation

As to Misc. Plan No. 09961/9 (attached hereto as Appendix “C”):

- The property shown as “Proposed Opening – DAOC 2/97” is gravel surfaced, maintained by the City and used for public transportation purposes. It comprises land owned by the Church and has never been legally opened as a public lane. The Public Service still has authority, through previous approvals, to finalize this opening.

- The property shown as “Proposed Closing – DAOC 2/97” is used by the Church. It comprises land owned by Her Majesty the Queen in Right of the Province of Manitoba, and is presently a legally opened public right of way. The Public Service has authority, through previous approvals, to finalize this closing

- The property shown as “Proposed Closing – DAC 8/99” is also used by the Church. It too is comprised of land owned by Her Majesty the Queen in Right of the Province of Manitoba, and is presently a legally opened public right of way. The legal closing of this land requires the approval of Council.

Subject to Council approval of this application, it is the City’s intent to regularize the existing situation, whereby legally open public rights of way are closed and sold to the Church through a purchase and sale agreement, and private property currently being used as a public lane by the area residents will be legally opened for that purpose.

FINANCIAL IMPACT

Financial Impact Statement **Date:** May 4, 2020

Project Name:

Proposed Closing of the public lane at the Rear of 37 Fernwood Avenue – File DAC 8/99

COMMENTS:

There are no financial implications associated with this report.

"Original Signed By" Mike McGinn May 4, 2020

Mike McGinn, CPA, CA
Manager of Finance

CONSULTATION

This Report has been prepared in consultation with:

Internal Consultation:

Legal Services (as to legal issues)
Corporate Finance
Public Works
Water and Waste
Transit
Fire Department

External Consultation:

Manitoba Hydro, Centra Gas, BellMTS, Shaw Cablesystems, Bell Canada and Crown Utilities.

OURWINNIPEG POLICY ALIGNMENT

The subject closing does not contravene *OurWinnipeg* or the *Complete Communities Direction Strategy* and generally aligns with their overall vision and key directions.

WINNIPEG CLIMATE ACTION PLAN ALIGNMENT

N/A

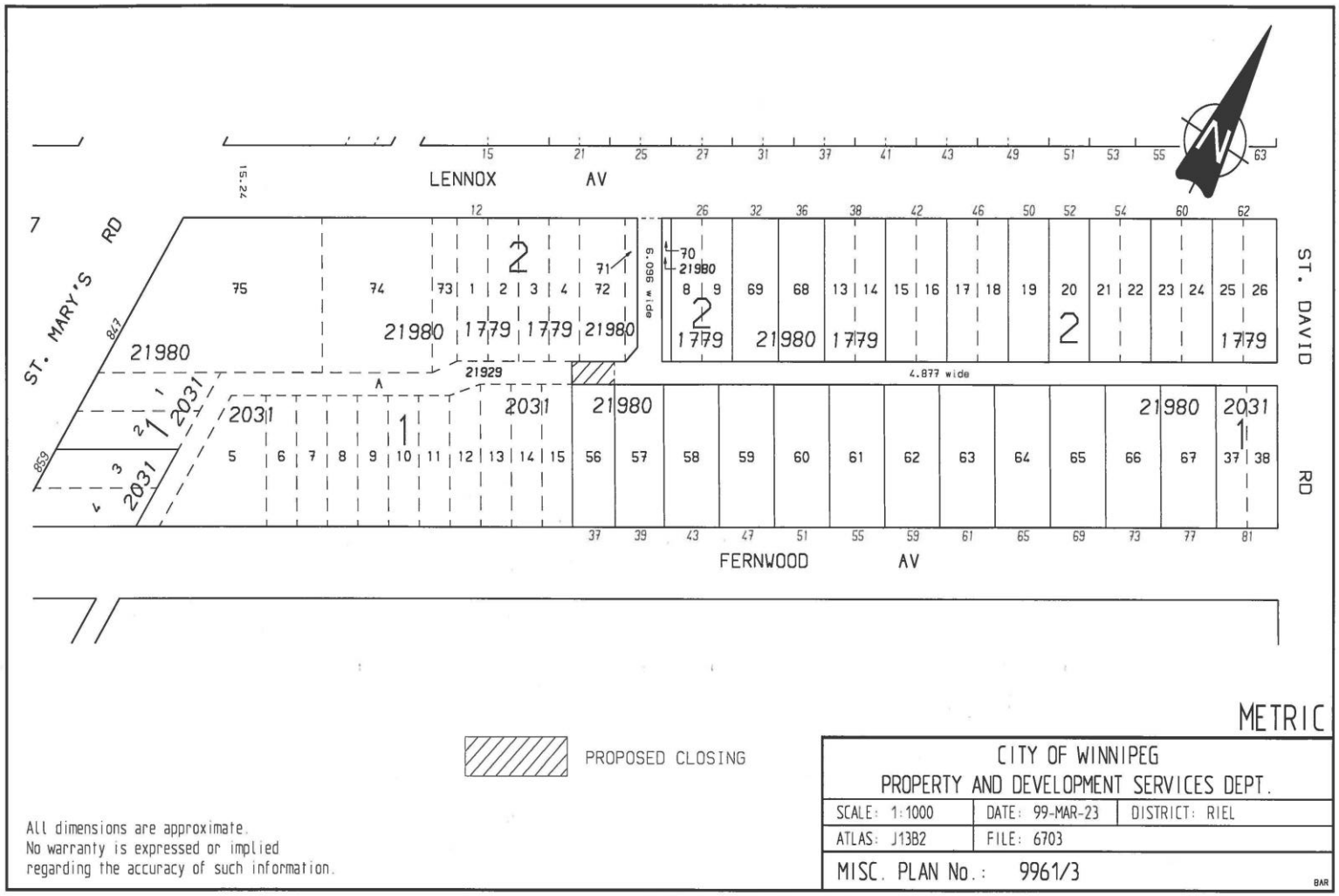
SUBMITTED BY

Department: Planning, Property and Development
Division: Real Estate and Land Development
Prepared by: Catherine Gagnon, Real Property Officer
Date: May 5, 2020

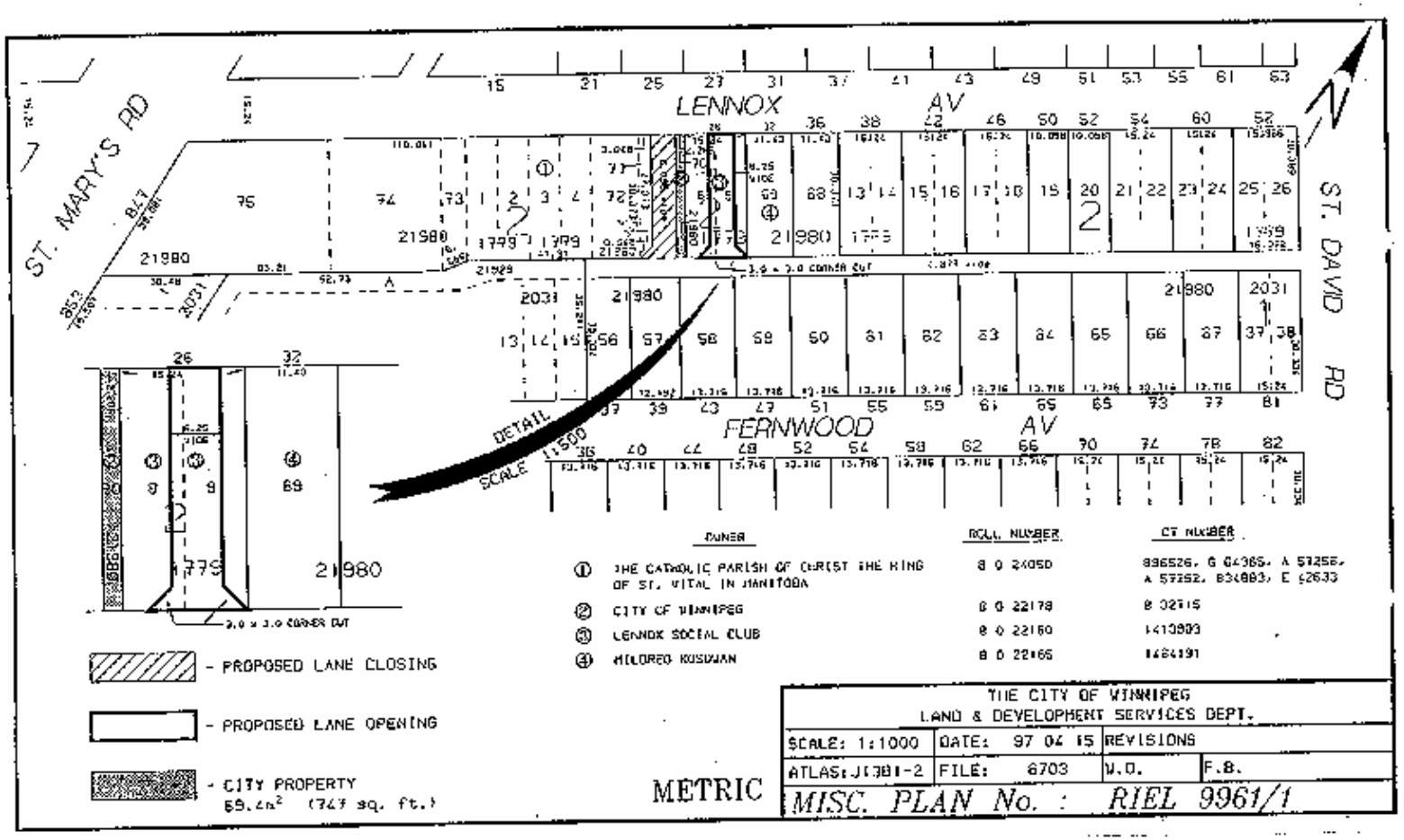
Attachments:

Appendix A - Miscellaneous Plan 9961/3
Appendix B - Miscellaneous Plan RIEL 9961/1
Appendix C - Miscellaneous Plan 09961/9
Appendix D - Aerial View of DAC 8/99 and DAOC 2/97
Appendix E - Administrative Approval/Comments

APPENDIX A - MISCELLANEOUS PLAN NO. 9961/3



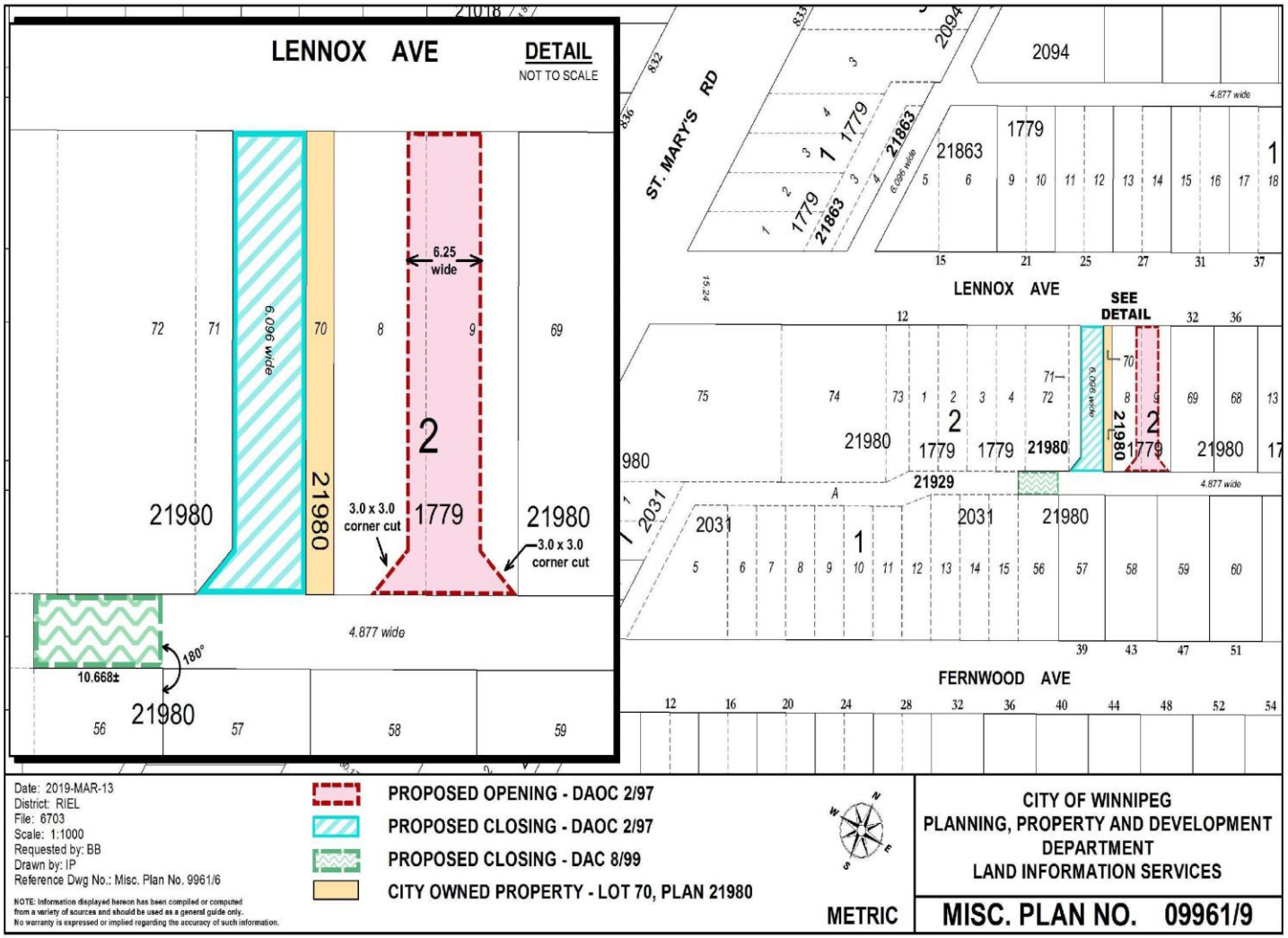
APPENDIX B - MISCELLANEOUS PLAN NO. RIEL 9961/1



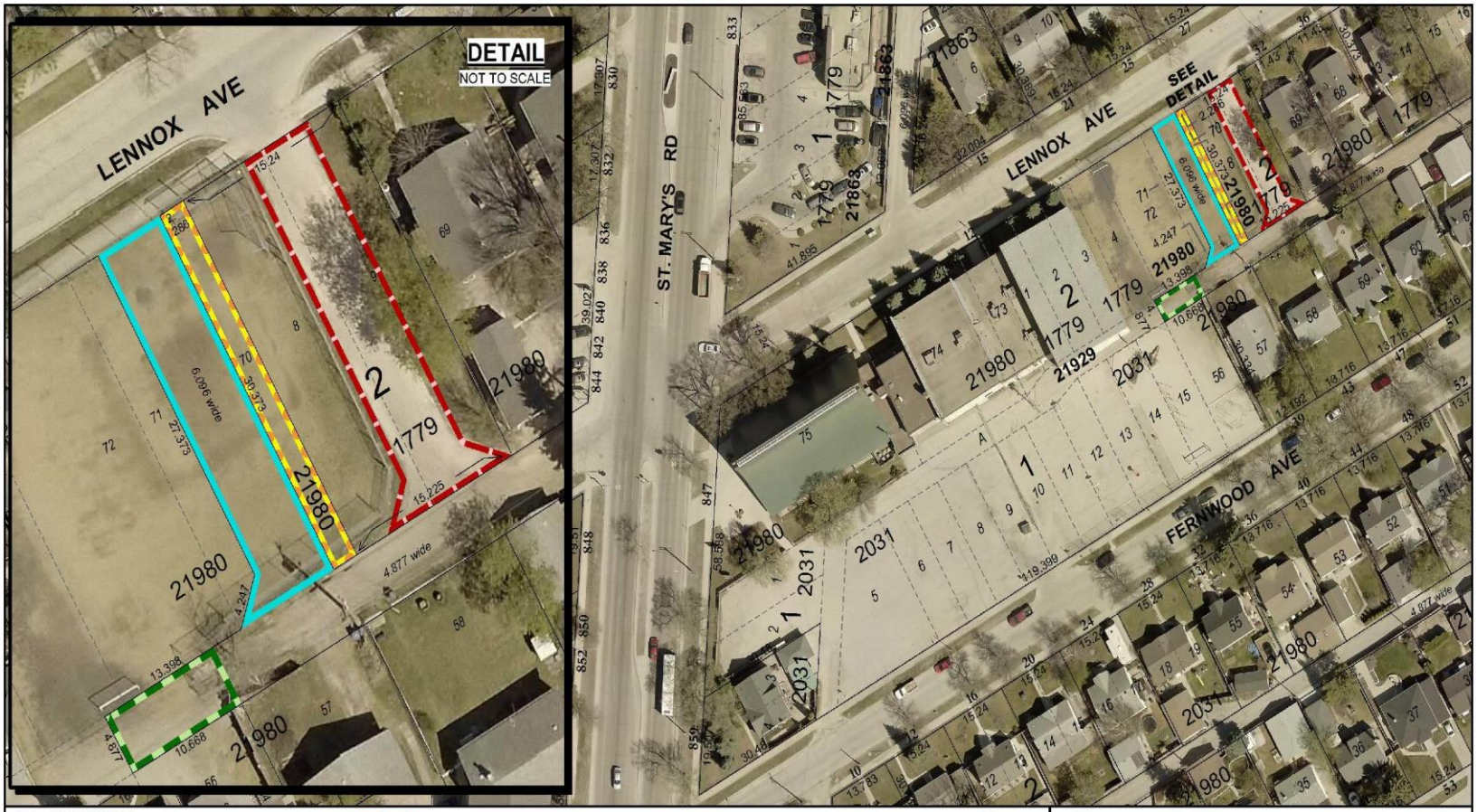
SCHEDULE "A" FOR THE REPORT TO THE RIEL COMMUNITY COMMITTEE FOR FILE NO. DAOC 2/97

DATED: MAY 21, 1997

APPENDIX C - MISCELLANEOUS PLAN NO. 09961/9



APPENDIX D - AERIAL VIEW OF DAC 8/99 CLOSING AND DAOC 2/97 OPENING/CLOSING



APPENDIX E - ADMINISTRATIVE APPROVAL/COMMENTS

The subject proposal, along with the opening/closing under File DAOC 2/97, has been re-circulated and considered by all affected City departments and public utilities. There are no administrative objections to the public lane closing.

Administrative Comments

Approval is subject to the following conditions:

Geomatics Branch

- The provision of Discharges for any Instruments, other than those in favour of the City of Winnipeg or a Utility, that affect the subject opening area for application DAOC 2/97.

- The developer and/or purchaser (or assignee) is responsible for all costs associated with the preparation of the necessary opening and closing plan(s) and any associated documents and registration of same at The Property Registry.

Water and Waste Department

- A 300mm land drainage sewer is located within the lane closing area for DAOC 2/97 along with catch basins connected to this pipe, located in the Lennox Avenue right of way. An easement of 1.5m on each side of the pipe is required.

- The purchaser of the City of Winnipeg property (Lot 70, Plan 21980 WLTO) will be required to submit a lot grading plan to the Water and Waste Department for approval if they plan to change the grading of the property in any way.

Easements

Manitoba Hydro, BellMTS and Shaw Cablesystems Limited have identified existing services within the closing areas and will require easements for these 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 purchaser of the land.

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.