Agenda – Council – January 28, 2021

Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – January 18, 2021

Item No. 4 Proposed Acquisition of 425 Osborne Street (Imperial Oil Site) (Fort Rouge-East Fort Garry Ward)

STANDING COMMITTEE RECOMMENDATION:

On January 20, 2021, 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 proposed Terms and Conditions for the acquisition of private property located at 425 Osborne Street, attached hereto as Schedule A and identified as "Proposed Acquisition" on Schedule B, be approved.

2. That the City enter into, execute and deliver a Purchase and Sale Agreement with Imperial Oil Limited 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").

3. That authority be delegated to the Chief Administrative Officer to negotiate and approve the terms and conditions of the Purchase and Sale Agreement and 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.

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 – January 18, 2021

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On January 20, 2021, 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 18, 2021, 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.

Kristian Gallinger submitted a communication dated January 15, 2021, in opposition to the matter.

ADMINISTRATIVE REPORT

Title: Proposed Acquisition of 425 Osborne Street (Imperial Oil Site)

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	P. Olafson, Interim CFO	M. Ruta, Interim CAO

EXECUTIVE SUMMARY

On March 20, 2019, Council approved the 2019 Capital Budget which included $1,000,000 in funding for land acquisitions by Transit. Although not specifically identified in the Budget, 425 Osborne Street, identified as “Proposed Acquisition” on Misc. Plan 13452/5, was one of the two proposed acquisitions required near the Fort Rouge Transit Garage for a campus expansion.

Transit has indicated that this acquisition will be funded through the 2019 approved land acquisition budget project 4210010819.

The “Proposed Acquisition” is a contaminated site (listed as a Designated Impacted Site with Manitoba Conservation and Climate) that has not been remediated and is currently owned by Imperial Oil. The Public Service recommends an offer-to-purchase price of $367,000 plus G.S.T., which is the market value of the property after the estimated costs to remediate are deducted.

The Proposed Acquisition represents a critical piece of vacant real estate adjacent to the Fort Rouge Transit Garage. The Proposed Acquisition will allow for the future expansion of the Fort Rouge site and for interim parking use.

The Transit Department was consulted and supports the proposed acquisition.

RECOMMENDATIONS

1. That the proposed Terms and Conditions for the acquisition of private property located at 425 Osborne Street, attached hereto as Schedule A and identified as “Proposed Acquisition” on Schedule B, be approved.

2. That the City enter into, execute and deliver a Purchase and Sale Agreement with Imperial Oil Limited 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”).

3. That authority be delegated to the Chief Administrative Officer to negotiate and approve the terms and conditions of the Purchase and Sale Agreement and 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.

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 Policy for the Sale, Acquisition, Rental, Leasing and Management of Properties, adopted by Council on July 18, 1979, authorizes the Standing Policy Committee on Property and Development, Heritage and Downtown Development to approve the terms and conditions of acquisitions that form part of a Council approved land acquisition program.

On March 20, 2019, Council approved the 2019 Capital Budget which provided funding to the Transit Department for Land Acquisitions near the Fort Rouge Transit Garage for campus expansion.

Due to the risk involved in acquiring a contaminated site, Council approval is being requested.

IMPLICATIONS OF THE RECOMMENDATIONS

There are no regulatory, operational, human resources, or other implications of the report.

The purchase price reflects the market value of the Proposed Acquisition, less the estimated cost to remediate the site.

If the acquisition is approved, the City would be responsible to report on the environmental site conditions to the Province every three years (i.e. on-going monitoring) at a cost of $14,000 to $23,000 until the site is remediated or the Province allows reduced monitoring. The environmental liability associated with the remediation of the impacted soil is estimated to be $800,000 to $1,300,000. The City would also be required to release and indemnify the Owner from and against any claims connected with environmental matters related to the Proposed Acquisition whether arising before or after the closing date of the transaction.

The Transit Department has advised that there is adequate funding for the acquisition in the Capital Budget. Remediation of the Property Acquisition (and related costs) and/or funding for the future development of the site will require subsequent Council approval at a later date.

HISTORY/DISCUSSION

On March 20, 2019, Council approved the 2019 Capital Budget which included funding for land acquisitions by Transit. The Budget indicated that two of the acquisitions were located near the Fort Rouge Transit Garage for a campus expansion.

The Proposed Acquisition represents a critical piece of vacant real estate adjacent to the Fort Rouge Transit Garage. The Proposed Acquisition will allow for future expansion of the Fort Rouge site and for interim parking use.

The Public Service inquired whether the property was available for sale in 2016, and Imperial Oil Ltd. (the "Owner") indicated that a sale would be possible subject to certain conditions.

After preliminary discussions in 2016, the Public Service was contacted by the Owner in early 2018 who advised that the property would soon be under the control of a Real Estate Brokerage. The Owner was prepared to provide the City with an exclusive negotiation period prior to the general marketing of the property.

On April 21, 2018, the Chief Administrative Officer provided approval to commence negotiations for the acquisition. The City does not typically acquire contaminated properties and the Proposed Acquisition requires careful review of the sale conditions – in particular, the transfer of environmental liability from the Owner to the City.

The Public Service was advised that the site is contaminated but the extent of the impact remained unknown until the City conducted further investigations. The Owner required the City and the Owner to agree to the market value of the Proposed Acquisition, as if uncontaminated.

An independent appraiser completed an appraisal for the Proposed Acquisition on behalf of Imperial Oil Limited at a market value of $1,980,000. The City's external appraiser estimated a market value of $1,117,000 assuming a highest and best commercial use for re-development for the site as though un-contaminated. The negotiated purchase price of $1,400,000 was then adjusted for remediation costs of $1,033,000 and an offer of $367,000 was accepted by Imperial Oil.

On October 15, 2019, the City contracted an environmental consultant, Dillon Consulting, to study and report on the site contamination. Among other items, the environmental consultant conducted a file search with the Environmental Stewardship Division of Manitoba Conservation and Climate and obtained soil and groundwater samples for analysis. The environmental consultant's summary memorandum identified the environmental liability (City of Winnipeg Class 3 Cost Estimate Classification) associated with the remediation of the impacted soil estimated to be $800,000 to $1,300,000.

Once the purchase price was established, the Public Service entered into protracted negotiations with the Owner to determine the terms and conditions of the Purchase Agreement. The City's environmental consultant was instructed to conduct a further environmental review, provide advisory services, and complete an off-site Phase II ESA on the land surrounding the Proposed Acquisition. The City retained the right to terminate the purchase if the results of its additional due diligence were not satisfactory to the City.

Research was conducted to determine if any lawsuits had been filed against the Owner with respect to the Proposed Acquisition. As at December 7, 2020, no such lawsuits had been filed.

The Owner agreed to extending the City's due diligence period to conduct a second off-site Phase II ESA. Through the off-site testing, the City has satisfied itself that limits of the contamination are known and acceptable. If the acquisition is approved, the City will be required to perform ongoing monitoring of the site and report the conditions to the Province. The City will also be required to release and indemnify the Owner from and against any claims connected

with environmental matters related to the Proposed Acquisition whether arising before or after the closing date of the transaction.

The Transit Department was consulted and supports the proposed acquisition. The transaction, if approved, is expected to close in March 2021.

FINANCIAL IMPACT

Financial Impact Statement

Date: December 16, 2020

Project Name:

First Year of Program 2021

Proposed Acquisition of 425 Osborne Street (Imperial Oil Site)

	2021	2022	2023	2024	2025
Capital					
Capital Expenditures Required	$ 378,928	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	378,928	-	-	-	-
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	$ 20,000	$ -	$ -	$ 20,000	$ -
Less: Incremental Revenue/Recovery	11,928	-	-	-	-
Net Cost/(Benefit)	$ 8,072	$ -	$ -	$ 20,000	$ -
Less: Existing Budget Amounts	8,072	-	-	20,000	-
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Capital expenditures consist of the proposed acquisition cost of $367,000 + short-term financing charges & corporate admin fees of $11,928. The latter item is offset by an equal recovery in the current budget of the Corporate Finance Department. Net costs in 2021 represent ongoing monitoring costs, assumed to be $20,000 every three years beginning in 2021, net of the $11,928 noted recovery. Ongoing monitoring costs will be charged to Transit's budget.

Mike McGinn Dec. 16, 2020

Mike McGinn, CPA, CA
Manager of Finance

CONSULTATION

This Report has been prepared in consultation with:

Winnipeg Transit Department
Legal Services (as to legal issues)

OURWINNIPEG POLICY ALIGNMENT

Under section 1-1b of OurWinnipeg the following policies apply:

- Create a safe, efficient and equitable transportation system for people, goods and services.
- Invest strategically in new water, waste and transportation infrastructure.
- Provide sustainable asset management

The Proposed Acquisition is a strategic asset required for Transit's future campus expansion and is included in the department's long-term plan of consolidating its divisions into one location.

WINNIPEG CLIMATE ACTION PLAN ALIGNMENT

Strategic Opportunity #4
Facilitate Compact, Complete Development and Increase Density

- Complete communities and increased density throughout the City allow new growth and development to create the conditions for sustainable transportation choices leading to reduced greenhouse gas emissions.

Key Directions include:

4.3 – Pursue Transit - Oriented Development
4.4 - Support Redevelopment of Former Commercial and Industrial Lands into Active Use

This report aligns with these key directions, as the City's acquisition of this vacant commercial site for Transit's future expansion and redevelopment ensures an active future use of these lands.

SUBMITTED BY

Department: Planning, Property and Development
Division: Real Estate and Land Development
Prepared by: Leah Furedi, Senior Negotiator
Date: December 16, 2020
File No: 7614/V2

Attachments: Schedule A – Purchase Agreement Terms & Conditions
Schedule B – Misc. Plan 13452/5

Schedule A

Purchase Agreement Terms & Conditions

Purchaser:	The City of Winnipeg (the “City”)
Owner/Vendor:	Imperial Oil Limited.
Purchase Price:	$367,000 plus G.S.T. – the current market value of the acquisition of the un-remediated site. Purchaser accepts all the obligations of the Vendor, past, present and future with respect to the environmental condition and remediation of the property.
Deposit:	$18,350 – the City to pay the balance of the purchase price upon closing.
Intended Use:	A Transit Customer Services & Administrative Building and/or a Transit garage and/or a Transit parking lot.
Restrictive Covenant:	That for a period of fifteen (15) years from the Closing Date, the Real Property or any portion thereof shall not be used, nor shall the Purchaser suffer or permit any Person to use the Real Property or any portion thereof, for the purpose of the sale, marketing, storage, distribution or handling, in bulk, retail or otherwise, of oil or petroleum products or derivatives thereof, including without limitation retail or bulk quantities of gasolines and other motor fuels, diesels, lubricants, motor oils, greases and solvents. Notwithstanding the foregoing restrictive covenant, for so long as the Real Property or any portion thereof is used for the purposes of a transit customer service & administration building and/or a Transit garage and/or a Transit parking lot, such restrictive covenant shall not operate so as to prohibit the storage, in bulk, of oil or petroleum products or derivatives thereof, including without limitation, bulk quantities of gasolines and other motor fuels, diesels, lubricants, motor oils, greases and solvents, for use by vehicles owned by the City of Winnipeg, nor the production and/or storage of hydrogen for use by vehicles owned by the City of Winnipeg.
Lands to be Purchased:	Shown as “Proposed Acquisition” on Misc. Plan No. 13452/5, attached as Schedule B.
Due Diligence Period:	The Purchaser shall be allowed a period of one hundred fifty (150) days from the Acceptance Date to provide a satisfactory feasibility study and provide approval of Council or delegated authority. If these conditions are not waived or satisfied by the Due Diligence Period, the deposit shall be returned to the Purchaser and the Offer and the Agreement

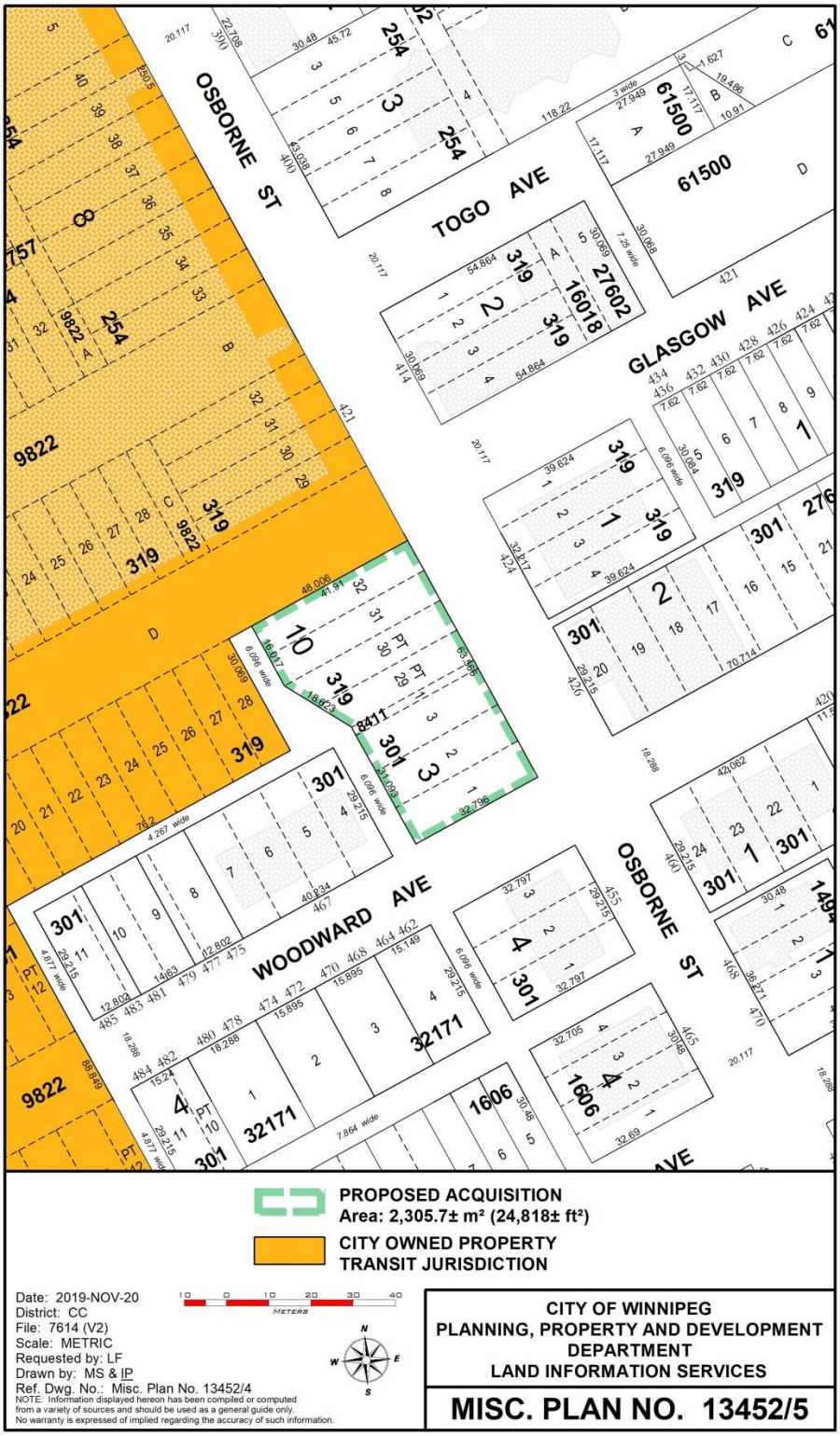
shall be null and void, and the parties shall not have any further obligations to each other. Provided, however, that, notwithstanding the foregoing or anything otherwise contained in the Offer and the Agreement, the Offer and the Agreement may be terminated by the Purchaser's Director of Planning, Property and Development, in his sole discretion, on or before the expiry of the Due Diligence Period.

Closing Date: The Closing Date shall be the thirtieth (30th) day following the date upon which it can be said that the Due Diligence Period has expired. The Due Diligence Period is to expire on February 1, 2021.

Indemnity: The Purchaser covenants and agrees to be liable for any Claim and in addition to indemnify and hold each of the Vendor Indemnified Parties (the Vendor and the partners, limited partners, subsidiaries and affiliates of the Vendor and the directors, officers, employees, agents, representatives, successors and assigns of any of the above entities) completely harmless in respect of any Claim whenever and however caused or incurred, and which is directly or indirectly incurred, sustained or suffered by or asserted against any Vendor Indemnified Party relating to, arising out of, resulting from or in any way connected with any Environmental Matters relating to the Real Property, whenever and however arising.

Release: The Purchaser covenants and agrees to release the Vendor Indemnified Parties, with effect as and from the Closing Date, from each and every Claim whatsoever that the Purchaser may now have or may have hereafter, or howsoever suffer, sustain or incur in regard to, arising out of, or in any way connected with Environmental Matters relating to the Real Property.

Schedule B


OSBORNE ST
TOGO AVE
GLASGOW AVE
WOODWARD AVE
OSBORNE ST
PROPOSED ACQUISITION
Area: 2,305.7± m² (24,818± ft²)
CITY OWNED PROPERTY
TRANSIT JURISDICTION
Date: 2019-NOV-20
District: CC
File: 7614 (V2)
Scale: METRIC
Requested by: LF
Drawn by: MS & IP
Ref. Dwg. No.: Misc. Plan No. 13452/4
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.
METERS
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPARTMENT
LAND INFORMATION SERVICES
MISC. PLAN NO. 13452/5