Minute No. 491
Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – May 9, 2022

Item No. 11 Closing – Portions of Formby Avenue East of Kenaston Boulevard and West of Waverley Street (Waverley West Ward) File DAC 9/2021 [c/r DASZ 10/2022 and DAV 105488/2022D]

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 subject to Recommendation 2, the proposed closing illustrated on Misc. Plan No. 15802/2 (attached hereto as Appendix B) be approved and the land 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 closing in accordance with Misc. Plan No. 15802/2 subject to:

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

   B. the Purchaser or assignee(s) fulfilling its obligations under the administrative conditions of approval outlined in Appendix A of this report.

3. That in the event the subject closings are 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 subject to Recommendation 2, the City convey that portion of Formby Avenue identified as "PROPOSED CLOSING" on Misc. Plan No. 15802/2 to the Purchaser or assignee(s) at no cost.

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COUNCIL DECISION (continued):

5. That subject to Recommendation 2, the City enter into, execute and deliver a Purchase and Sale Agreement with the Purchaser(s) or assignee(s) and such other agreements as determined necessary by the City Solicitor/Director of Legal Services for its conveyance of that portion of Formby Avenue identified as "PROPOSED CLOSING (NOT PART OF DASZ 10/2022)" on Misc. Plan No. 15802/2, to implement the intent of the foregoing (the "Ancillary Agreements"), failing which the City will retain ownership for future disposition.

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

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

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DECISION MAKING HISTORY:

Moved by Councillor Gilroy,

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 May 18, 2022, 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 May 9, 2022, the Standing Policy Committee on Property and Development, Heritage and Downtown Development concurred in the recommendation of the Assiniboia Community Committee and submitted the matter to the Executive Policy Committee and Council.

COMMUNITY COMMITTEE RECOMMENDATION:

On April 27, 2022, the Assiniboia Community Committee concurred in the recommendation of the Winnipeg Public Service and forwarded the matter to the Standing Policy Committee on Property and Development, Heritage and Downtown Development.

HEARING SUMMARY

File:	DAC 9/2022
Before:	Assiniboia Community Committee Councillor Gillingham, Chairperson Councillor Klein Councillor Lukes
Public Hearing:	April 27, 2022 Council Building, 510 Main Street
Applicant:	Landmark Planning and Design Inc. (Jeff Pratte)
Premises Affected:	Portions of Formby Avenue east of Kenaston Boulevard and west of Waverley Street
For submission to:	The Standing Policy Committee on Property and Development, Heritage and Downtown Development
Prepared by:	L. Cowan, Senior Committee Clerk Assiniboia Community Committee
Report date:	April 29, 2022

Community Committee Recommendation:

On April 27, 2022, the Assiniboia Community Committee concurred in the recommendation of the Winnipeg Public Service and recommended to the Standing Policy Committee on Property and Development, Heritage and Downtown Development:

1. That subject to Recommendation 2, the proposed closing illustrated on Misc. Plan No. 15802/2 (attached hereto as Appendix B) be approved and the land 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 closing in accordance with Misc. Plan No. 15802/2 subject to:

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

    B. the Purchaser or assignee(s) fulfilling its obligations under the administrative conditions of approval outlined in Appendix A of this report.

3. That in the event the subject closings are 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 subject to Recommendation 2, the City convey that portion of Formby Avenue identified as "PROPOSED CLOSING" on Misc. Plan No. 15802/2 to the Purchaser or assignee(s) at no cost.

5. That subject to Recommendation 2, the City enter into, execute and deliver a Purchase and Sale Agreement with the Purchaser(s) or assignee(s) and such other agreements as determined necessary by the City Solicitor/Director of Legal Services for its conveyance of that portion of Formby Avenue identified as "PROPOSED CLOSING (NOT PART OF DASZ 10/2022)" on Misc. Plan No. 15802/2, to implement the intent of the foregoing (the "Ancillary Agreements"), failing which the City will retain ownership for future disposition.

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

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

Exhibits Filed:

1. Report from the Real Property Officer dated March 4, 2022
2. Inspection Report
3. Communication dated April 22, 2022 from Phillip Dunphy in opposition to the application
4. Communication dated April 24, 2022 from Thi Kim Anh Pham in opposition to the application
5. Communication dated April 24, 2022 from Peter Banman in opposition to the application
6. Communication dated April 24, 2022 from Eddy Penner in opposition to the application
7. Communication dated April 24, 2022 from Mikhail Geyman in opposition to the application
8. Communication dated April 24, 2022 from Janelle Dueck in opposition to the application
9. Communication dated April 24, 2022 from Roy Penner in opposition to the application
10. Communication dated April 24, 2022 from Hilary Bodrug in opposition to the application
11. Communication dated April 24, 2022 from Lucy Reimer in opposition to the application
12. Communication dated April 24, 2022 from Marlene Cook in opposition to the application
13. Communication dated April 24, 2022 from Andres Dueck in opposition to the application
14. Communication dated April 24, 2022 from Jisung Jang in opposition to the application
15. Communication dated April 24, 2022 from Geyman Angelika in opposition to the application
16. Communication dated April 24, 2022 from Kwabena Asiamah-Yeboah in opposition to the application
17. Communication dated April 24, 2022 from Gieraldine Banman in opposition to the application
18. Communication dated April 24, 2022 from Suhjin Kang in opposition to the application
19. Communication dated April 24, 2022 from Lyle Dueck in opposition to the application
20. Communication dated April 24, 2022 from Poon Wai Kit in opposition to the application
21. Communication dated April 24, 2022 from Hui Yin Ping in opposition to the application
22. Communication dated April 24, 2022 from Nathan Bodrug in opposition to the application
23. Communication dated April 24, 2022 from Elizabeth Koop in opposition to the application

Exhibits Filed (continued):

24. Communication dated April 24, 2022 from Chris Poon in opposition to the application
25. Communication dated April 24, 2022 from Aldous Poon in opposition to the application
26. Communication dated April 24, 2022 from Katie Gupta in opposition to the application
27. Communication dated April 24, 2022 from Timothy Cook in opposition to the application
28. Communication dated April 24, 2022 from Sean Gupta in opposition to the application
29. Communication dated April, 2022 from Rosella Penner in opposition to the application
30. Communication dated April, 2022 from Susie Shelting in opposition to the application
31. Communication titled "DASZ 10/2022 Public Hearing: Requested Changes to Administrative Report" submitted by the applicant in support of the application
32. Presentation titled "Waverley West Neighbourhood B Bison Run Phase 2" dated April 27, 2022 submitted by the applicant in support of the application
33. Presentation titled "DASZ 10/2022 & DAV 22-105488/D Public Hearing" dated April 27, 2022 from John Scott Wintrup in opposition to the application

REPRESENTATIONS:

In Support:

Robert Kurylko
Dan Mages
Jeff Pratte
Bryan Ward

In Opposition:

Geyman Angelika
Thi Kim Anh Pham
Kwabena Asiamah-Yeboah
Gieraldine Banman
Peter Banman
Hilary Bodrug
Nathan Bodrug

Marlene Cook
Timothy Cook
Andres Dueck
Janelle Dueck
Lyle Dueck
Phillip Dunphy
Mikhail Geyman
Christopher Gibson
Ray Grewal
Katie Gupta
Sean Gupta
Jisung Jang
Suhjin Kang
Elizabeth Koop
Brody Osadick
Eddy Penner
Rosella Penner
Roy Penner
Hui Yin Ping
Aldous Poon
Chris Poon
Lucy Reimer
Susie Shelting
Poon Wai Kit
John Scott Wintrup

For Information:

Nil

For the City:

C. Desjardine, Traffic Assessment Engineer, Public Works Department
R. Galston, Planner, Planning, Property and Development Department
D. Patman, Manager of Transportation, Public Works Department
D. Trenchard, Land Development Engineer, Planning, Property and Development Department

Exhibit "1" referred to in File DAC 9/2021

ADMINISTRATIVE REPORT

Title: Proposed Closing of Portions of Formby Avenue east of Kenaston Boulevard and west of Waverley Street, for incorporation into DASZ 10/2022

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

AUTHORIZATION

Author	Department Head	CFO	CAO
M. Pittet			

EXECUTIVE SUMMARY

Landmark Planning & Design Inc., on behalf of Southeast Lands Corp. (the "Purchaser"), has submitted an application to close a portion of Formby Avenue east of Kenaston Boulevard and west of Waverley Street, for incorporation into DASZ 10/2022 (the "planned area") intended to establish an "R1-S" and "R1-M" residential single-family district, an "R2" residential two-family district, an "RMF-S" and "RMF-M" residential multi-family district, an "EI" Educational and Institutional district, and a "PR1" parks and recreation district. The Public Service required that the portion of Formby Avenue east of and outside of the planned area also be closed to prevent a legally opened right-of-way from being inaccessible. This portion is intended to be sold by the City.

The Public Service recommends approval of the proposed closings. Before the road may be conveyed, it must be legally closed and declared surplus to the City's needs.

RECOMMENDATIONS

1. That subject to Recommendation 2, the proposed closing illustrated on Misc. Plan No. 15802/2 (attached hereto as Appendix B) be approved and the land 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 closing in accordance with Misc. Plan No. 15802/2 subject to:

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

B. the Purchaser or assignee(s) fulfilling its obligations under the administrative conditions of approval outlined in Appendix A of this report.

3. That in the event the subject closings are 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 subject to Recommendation 2, the City convey that portion of Formby Avenue identified as “PROPOSED CLOSING” on Misc. Plan No. 15802/2 to the Purchaser or assignee(s) at no cost.

5. That subject to Recommendation 2, the City enter into, execute and deliver a Purchase and Sale Agreement with the Purchaser(s) or assignee(s) and such other agreements as determined necessary by the City Solicitor/Director of Legal Services for its conveyance of that portion of Formby Avenue identified as “PROPOSED CLOSING (NOT PART OF DASZ 10/2022)” on Misc. Plan No. 15802/2, to implement the intent of the foregoing (the “Ancillary Agreements”), failing which the City will retain ownership for future disposition.

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

7. 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

All street and lane closings must be considered by the Community Committee. Before the street may be conveyed, it must be legally closed and declared surplus to the City’s needs.

Pursuant to section 12(1)(b) of Development Procedures By-law No. 104/2020, the relevant Community Committee is the hearing body for a combined hearing where a matter relates to a site located entirely within the geographical boundaries of one community and no part of the site is within the area to which the Downtown Winnipeg Zoning By-law applies.

Pursuant to section 12(2) of Development Procedures By-law No. 104/2020, a designated employee is authorized to determine that a public hearing in respect of a development application be combined with a development application for the legal closing of a street.

IMPLICATIONS OF THE RECOMMENDATIONS

All costs associated with the closing are the responsibility of the Purchaser or assignee(s). There are no financial implications for the City of Winnipeg.

HISTORY/DISCUSSION

Landmark Planning & Design Inc., on behalf of Southeast Lands Corp. (the "Purchaser"), has submitted an application to close Formby Avenue east of Kenaston Boulevard and west of Waverley Street, for incorporation into DASZ 10/2022 (the "planned area") intended to establish an "R1-S" and "R1-M" residential single-family district, an "R2" residential two-family district, an "RMF-S" and "RMF-M" residential multi-family district, an "EI" Educational and Institutional district, and a "PR1" parks and recreation district. The Public Service required that the portion of Formby Avenue lying east of and outside of the planned area also be closed to prevent a legally opened right-of-way from being inaccessible. This portion is intended to be sold by the City.

The Declaration as Surplus and Sale of Property Policy No. PD-026 adopted by City Council on September 29, 2021 (the "Policy"), includes the following provisions:

- Section 2: "Unbuildable Land" means property that does not conform with the provisions of the Winnipeg Zoning By-law No. 200/2006 or the Downtown Winnipeg Zoning By-law No. 100/2004, or property for which the highest and best use as determined by an accredited appraiser is for consolidation with the adjacent non-City-owned property; and

- Section 3.4.A: All roads closed through a Development Application shall be purchased at market value, without credit for any other road openings unless the road intended to be closed was opened within the past 20 years or extenuating circumstances exist.

The Real Estate Branch recommends that in keeping with Policy PD-026, the portion of the closed road to be incorporated into DASZ 10/2022 be conveyed at no cost because it will be opened as part of a larger and reconfigured road within DASZ 10/2022, and that the balance of the proposed closing be sold at market value for consolidation with adjacent non-City-owned property.

The road was opened as an unnamed public right-of-way by Plan No. 1918 registered in the Winnipeg Land Titles Office October 8, 1912. By-law No. 3664/84 approved by City Council on January 9, 1984 named it Formby Avenue.

Although Formby Avenue is presently unimproved and serves no public transportation purpose, the proposed closing will eliminate access to land currently owned by the City and legally described as Lot 26 Block 1 Plan 1918 WLTO ("Lot 26"). An easement for access to Lot 26, crossing over Lot 58 Block 1 Plan 1918 WLTO which fronts Lee Boulevard, will be required until such time as future development provides direct access from a public right-of-way or completely eliminates the need for the easement.

Manitoba Hydro, Centra Gas, BellMTS, Bell Canada, Shaw Cablesystems, Rogers Communications, TC Energy, Imperial Oil, Fibre.Ca Inc., Crown Pipeline Ltd. and the Canadian Pacific Railway Company, have all indicated that they have no concerns or objections.

Telus Communications, Teraspan Networks and the Canadian National Railway Company did not respond to the request for comment on this application.

CONSULTATION

This Report has been prepared in consultation with:
Fire Paramedic Services
Legal Services Department (as to legal issues)
Police Services
Public Works Department
Transit Department
Water and Waste Department
Ward Councillor

OURWINNIPEG POLICY ALIGNMENT

Alignment with OurWinnipeg 2045 (pending third reading) for the closing area to be incorporated into the planned area for DASZ 10/2022 will be determined through that application. The closing of that portion of the road outside of the planned area under DASZ 10/2022 has no impact to the Policy.

WINNIPEG CLIMATE ACTION PLAN ALIGNMENT

Alignment with the Climate Action Plan for the closing area to be incorporated into the planned area for DASZ 10/2022 will be determined through that application. The closing of that portion of the road outside of the planned area under DASZ 10/2022 has no impact with regard to the Plan.

WINNIPEG POVERTY REDUCTION STRATEGY ALIGNMENT

Alignment with the Poverty Reduction Strategy for the closing area to be incorporated into the planned area for DASZ 10/2022 will be determined through that application. The Poverty Reduction Strategy is not applicable insofar as the closing of that portion of the road outside of the planned area under DASZ 10/2022 is concerned.

SUBMITTED BY

Department: Planning, Property and Development Department
Division: Real Estate and Land Development
Prepared by: Catherine P. Gagnon
Date: March 4, 2022
File No: DAC 9/2021

Attachments:

APPENDIX A - Administrative Approval
APPENDIX B - Miscellaneous Plan 15802/2
APPENDIX C - Aerial Diagram showing proposed closing

APPENDIX A – ADMINISTRATIVE APPROVAL

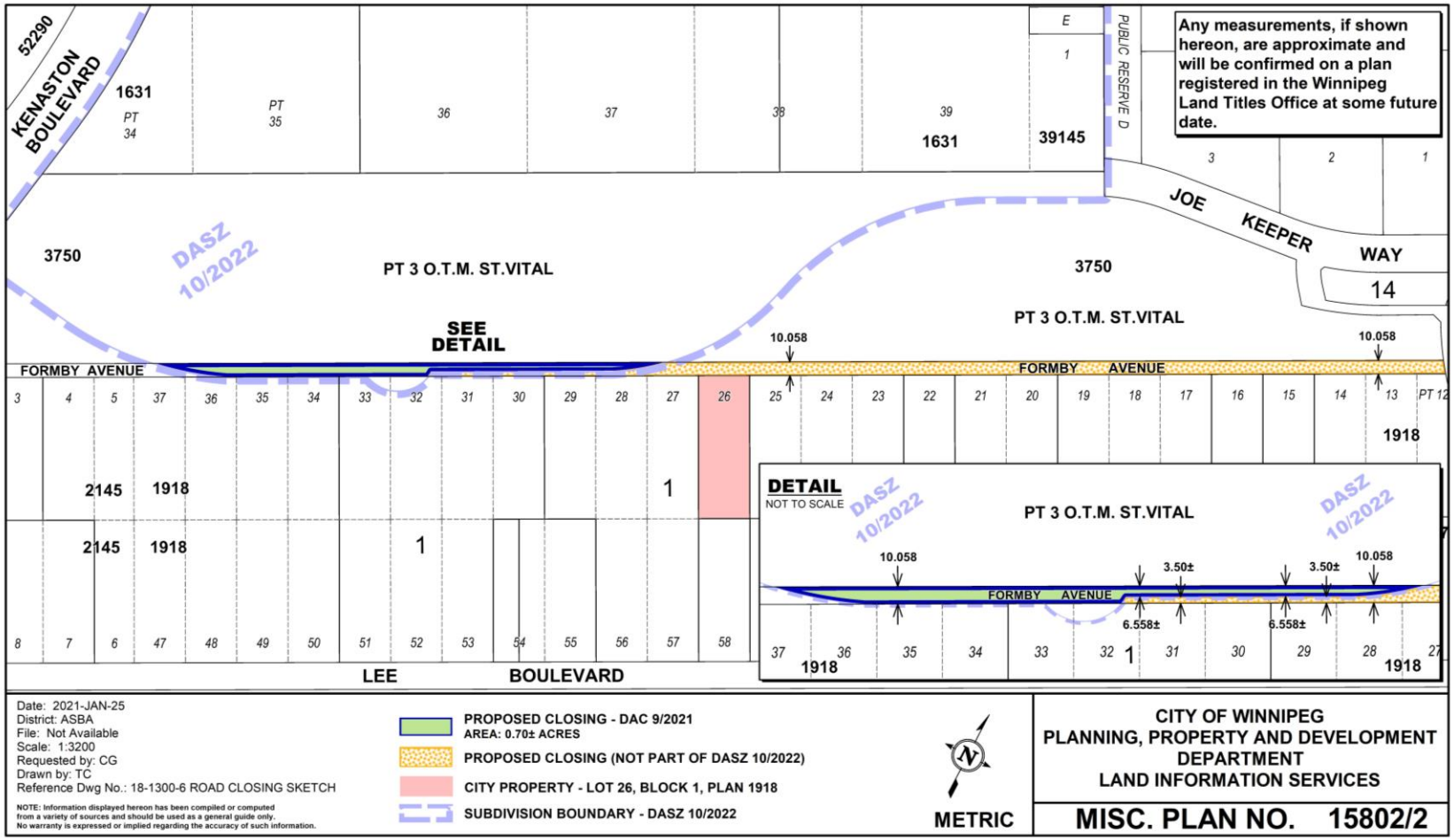
Geomatics and Land Information Services Branch

- The proposed closing is subject to approval of associated subdivision and rezoning application DASZ 10/2022.
- The closing plan mylars, closing By-law, Transfer and any other associated documents are registered in series with and prior to the associated plan of subdivision for DASZ 10/2022. The closing plan mylars, closing By-law, Transfer and any other associated documents will be released together with Plan of Subdivision mylars for DASZ 10/2022.
- The purchaser (or assignee) is responsible for all costs related to preparation of the necessary closing plan and any associated documents and registration of same at the Winnipeg Land Titles Office.

Real Estate Branch

An easement for access to Lot 26, Block 1 Plan 1918 WLTO (“Lot 26”) from Lee Boulevard over land legally described as Lot 58 Block 1 Plan 1918 WLTO will be required until such time as future development provides direct access to Lot 26 from a public right-of-way or completely eliminates the need for the easement.

APPENDIX B – MISC. PLAN NO. 15802/2



APPENDIX C – AERIAL VIEW OF SUBJECT CLOSING

