Agenda – Council – September 29, 2023

Report – Standing Policy Committee on Property and Development – September 18, 2023

Item No. 15 Development Agreement Amendment (AG 30/13)
File DASZ 30/2013

STANDING COMMITTEE RECOMMENDATION:

On September 21, 2023, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and submitted the following to Council:

1. That Schedule C of Development Agreement AG 30/13 be amended as follows:

   A. Delete Clause 5 "Regional Stormwater Management Facilities" of Section I – Servicing Conditions in its entirety and replace with the following:

      5. <u>Stormwater Retention Facilities</u>

         a) The Developer shall construct, and bridge-finance the cost of constructing, partially naturalized regional stormwater management facilities and associated works to serve the Planned Area and adjacent lands (including a piped outfall), in accordance with the "Criteria for Stormwater Management" (adopted by City Council on April 25, 2001), as determined by and to the satisfaction of the Director of Water and Waste.

         b) The Developer shall dedicate to the City any land, and shall provide to the City all easements, required to accommodate the naturalized regional stormwater management facilities, as determined by and to the satisfaction of the Director of Water and Waste in accordance with the City's Development Agreement Parameters.

         c) The Developer shall pay its share of the cost of the facilities identified in Clause (a), as determined by the Director of Water and Waste.

STANDING COMMITTEE RECOMMENDATION (continued):

d) If the Developer's share of the cost of constructing the facilities identified within and in accordance with Clause (a) is greater than the Developer's share of that cost determined under Clause (c), the City shall reimburse the Developer for the amount of the difference, as and when the amount of the difference is determined by the Director of Water and Waste, subject to approval by City Council of capital funding for that reimbursement and availability of funds recovered from third parties in accordance with this Agreement. Interest, calculated in accordance with the Development Agreement Parameters, will be added to the amount of the difference calculated from the date of the first anniversary of substantial completion of construction for the naturalized regional stormwater management facilities.

e) The Developer shall, prior to construction, provide to the City a separate Letter of Credit in an amount equal to 15% of the construction cost of the facilities identified in Clause (a), as determined by and to the satisfaction of the Director of Water and Waste. The City shall release this separate Letter of Credit to the Developer upon issuance of the Final Acceptance Certificate.

f) The Developer shall submit to the Director of Water and Waste and to the Director of Public Works for their approval construction plans and specifications for grading, leveling and vegetating the public land components of any storm water retention basins within the Planned Area prior to beginning construction of same.

g) The Developer shall, at no expense to the City, grade, level, and vegetate all public land components of all storm water retention basins within the Planned Area in accordance with approved construction plans and specifications to the satisfaction of the Director of Water and Waste and the Director of Public Works.

h) The Developer shall, at no expense to the City, construct a maintenance equipment ramp on the stormwater retention basin, to the satisfaction of the Director of Water and Waste.

STANDING COMMITTEE RECOMMENDATION (continued):

i) The Developer shall place sod over the private portion of the stormwater retention basin perimeter up the slope to 12.80 meters above the normal water level, to the satisfaction of the Director of Water and Waste.

j) The Developer shall, as part of the construction of the stormwater retention basin, cause a soil sterilant to be applied in accordance with the laws governing such applications to areas below the normal water level elevation. If, for reasons beyond the Developer's control, as determined by the Director of Water and Waste, the application of the soil sterilant cannot be accomplished, the Developer shall reimburse the City for the full cost of controlling, harvesting, and removing weed growth from the stormwater retention basin for a period of two years from the date of Construction Completion, as determined by the Director of Water and Waste.

k) The Developer shall, at no expense to the City, install, on private property, chain link fencing (or alternate treatment) approved by the Director of Water and Waste, to demarcate the public land component of the stormwater retention basin from the private land component, as determined by, and to the satisfaction of, the Director of Water and Waste.

l) The Developer shall provide construction easements on all private lots adjacent to the stormwater retention basin for such periods of time deemed necessary by the Director of Water and Waste.

m) Despite anything else in this Agreement, the Developer shall maintain all storm water retention basins within the Planned Area, including naturalized channels, as determined by and to the satisfaction of the Director of Water and Waste and the Director of Public Works, as follows:

i. 2 years (following the date of Construction Completion) for the physical construction of the storm water retention basins including excavation and hard infrastructure; and

STANDING COMMITTEE RECOMMENDATION (continued):

ii. 5 years (following the date of Construction Completion) for the vegetation planting.

n) The Developer shall, at no expense to the City, develop and provide to the City a performance specification document for the storm water retention basins within the Planned Area, to the satisfaction of the Director of Public Works, that assesses the constructed wetlands vegetative condition. The Developer shall, at no expense to the City, develop and provide to the City a performance specification document for the wetland vegetation, to the satisfaction of the Director of Public Works, and shall conduct routine vegetation assessments for 5 years following construction of the storm water retention basins to determine whether the wetland vegetation is meeting the performance specification and shall take appropriate remedial action, where necessary, as determined by the Director of Public Works.

o) As a condition of issuance of a Final Acceptance Certificate by the Director of Public Works, the Developer shall, at no expense to the City, prepare an operation manual for the storm water retention basins that will ensure the long-term viability of the wetland by maximizing ecological benefits and minimizing maintenance, to the satisfaction of the Director of Public Works.

2. 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 – September 18, 2023

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On September 21, 2023, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On September 18, 2023, the Standing Policy Committee on Property and Development concurred in the recommendation of the Lord Selkirk-West Kildonan Community Committee and submitted the matter to the Executive Policy Committee and Council.

COMMUNITY COMMITTEE RECOMMENDATION:

On September 7, 2023, the Lord Selkirk-West Kildonan Community Committee concurred in the recommendation of the Winnipeg Public Service and forwarded the matter to the Standing Policy Committee on Property and Development.

ADMINISTRATIVE REPORT

Title: Development Agreement Amendment – File DASZ 30/2013 (AG 30/13)

Critical Path: Lord Selkirk – West Kildonan Community Committee – Standing Policy Committee on Property and Development, Heritage and Downtown Development – Executive Policy Committee – Council

AUTHORIZATION

Author	Department Head	CFO	CAO
G. Jasper	N/A	N/A	N/A

EXECUTIVE SUMMARY

On November 20, 2013, Council approved the subdivision and rezoning of land located at the southwest corner of Jefferson Avenue and King Edward Street, north of Commercial Avenue, which allowed for the development and servicing of the Castlebury Meadows Community.

Pursuant to the above-referenced approval, the Developer entered into a Development Agreement (AG 30/13) with the City of Winnipeg. Clause 5 of AG 30/13 required the Developer to construct, at no expense to the City, a regional stormwater retention basin (SRB), to the satisfaction of the Director of Water and Waste and the Director of Public Works.

The Developer subsequently constructed an SRB which achieved construction completion in July 2015. Resident and migrating Canada goose populations have soiled and eroded the revetment and slope of the SRB such that final acceptance could not be granted. The Developer has attempted to repair and rehabilitate the area for acceptance by the Public Works Department and Water and Waste Department, however remedial works have not been satisfactory due to ongoing damage from the goose population.

The Developer has submitted a request to amend AG 30/13 to allow for the installation of naturalized plantings within the Public Reserve sections of the stormwater retention basin, with a modified warranty period (reduced from 5 years to 3 years) to account for the ongoing nature of the SRB.

The Public Service supports the request, subject to the conditions outlined in Recommendation 1, including the standard 5 year warranty period for naturalized plantings.

RECOMMENDATIONS

1. That Schedule C of Development Agreement AG 30/13 be amended as follows:

a. Delete Clause 5 “Regional Stormwater Management Facilities” of Section I – Servicing Conditions in its entirety and replace with the following:

5. <u>Stormwater Retention Facilities</u>

a) The Developer shall construct, and bridge-finance the cost of constructing, partially naturalized regional stormwater management facilities and associated works to serve the Planned Area and adjacent lands (including a piped outfall), in accordance with the “Criteria for Stormwater Management” (adopted by City Council on April 25, 2001), as determined by and to the satisfaction of the Director of Water and Waste.

b) The Developer shall dedicate to the City any land, and shall provide to the City all easements, required to accommodate the naturalized regional stormwater management facilities, as determined by and to the satisfaction of the Director of Water and Waste in accordance with the City’s Development Agreement Parameters.

c) The Developer shall pay its share of the cost of the facilities identified in Clause (a), as determined by the Director of Water and Waste.

d) If the Developer’s share of the cost of constructing the facilities identified within and in accordance with Clause (a) is greater than the Developer’s share of that cost determined under Clause (c), the City shall reimburse the Developer for the amount of the difference, as and when the amount of the difference is determined by the Director of Water and Waste, subject to approval by City Council of capital funding for that reimbursement and availability of funds recovered from third parties in accordance with this Agreement. Interest, calculated in accordance with the Development Agreement Parameters, will be added to the amount of the difference calculated from the date of the first anniversary of substantial completion of construction for the naturalized regional stormwater management facilities.

e) The Developer shall, prior to construction, provide to the City a separate Letter of Credit in an amount equal to 15% of the construction cost of the facilities identified in Clause (a), as determined by and to the satisfaction of the Director of Water and Waste. The City shall release this separate Letter of Credit to the Developer upon issuance of the Final Acceptance Certificate.

f) The Developer shall submit to the Director of Water and Waste and to the Director of Public Works for their approval construction plans

and specifications for grading, leveling and vegetating the public land components of any storm water retention basins within the Planned Area prior to beginning construction of same.

g) The Developer shall, at no expense to the City, grade, level, and vegetate all public land components of all storm water retention basins within the Planned Area in accordance with approved construction plans and specifications to the satisfaction of the Director of Water and Waste and the Director of Public Works.

h) The Developer shall, at no expense to the City, construct a maintenance equipment ramp on the stormwater retention basin, to the satisfaction of the Director of Water and Waste.

i) The Developer shall place sod over the private portion of the stormwater retention basin perimeter up the slope to 12.80 meters above the normal water level, to the satisfaction of the Director of Water and Waste.

j) The Developer shall, as part of the construction of the stormwater retention basin, cause a soil sterilant to be applied in accordance with the laws governing such applications to areas below the normal water level elevation. If, for reasons beyond the Developer's control, as determined by the Director of Water and Waste, the application of the soil sterilant cannot be accomplished, the Developer shall reimburse the City for the full cost of controlling, harvesting, and removing weed growth from the stormwater retention basin for a period of two years from the date of Construction Completion, as determined by the Director of Water and Waste.

k) The Developer shall, at no expense to the City, install, on private property, chain link fencing (or alternate treatment) approved by the Director of Water and Waste, to demarcate the public land component of the stormwater retention basin from the private land component, as determined by, and to the satisfaction of, the Director of Water and Waste.

l) The Developer shall provide construction easements on all private lots adjacent to the stormwater retention basin for such periods of time deemed necessary by the Director of Water and Waste.

m) Despite anything else in this Agreement, the Developer shall maintain all storm water retention basins within the Planned Area, including naturalized channels, as determined by and to the

satisfaction of the Director of Water and Waste and the Director of Public Works, as follows:

i. 2 years (following the date of Construction Completion) for the physical construction of the storm water retention basins including excavation and hard infrastructure; and

ii. 5 years (following the date of Construction Completion) for the vegetation planting.

n) The Developer shall, at no expense to the City, develop and provide to the City a performance specification document for the storm water retention basins within the Planned Area, to the satisfaction of the Director of Public Works, that assesses the constructed wetlands vegetative condition. The Developer shall, at no expense to the City, develop and provide to the City a performance specification document for the wetland vegetation, to the satisfaction of the Director of Public Works, and shall conduct routine vegetation assessments for 5 years following construction of the storm water retention basins to determine whether the wetland vegetation is meeting the performance specification and shall take appropriate remedial action, where necessary, as determined by the Director of Public Works.

o) As a condition of issuance of a Final Acceptance Certificate by the Director of Public Works, the Developer shall, at no expense to the City, prepare an operation manual for the storm water retention basins that will ensure the long-term viability of the wetland by maximizing ecological benefits and minimizing maintenance, to the satisfaction of the Director of Public Works.

2. 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

Council approval is required to amend a Development Agreement.

IMPLICATIONS OF THE RECOMMENDATIONS

If the recommendation is concurred in, the Developer will construct and install naturalized plantings in the Public Reserve portions of the stormwater retention basin, in accordance with plans submitted and approved by the Public Works Department and Water and Waste Department, with a standard warranty period of 5 years.

All existing obligations pertaining to the private land portion of the SRB will remain in force and effect under AG 30/13.

HISTORY/DISCUSSION

On November 20, 2013, Council approved the subdivision and rezoning of land located at the southwest corner of Jefferson Avenue and King Edward Street, north of Commercial Avenue, which allowed for the development and servicing of the Castlebury Meadows Community.

As a condition of approval, the Developer was required to construct, at no expense to the City, a regional stormwater retention basin (SRB), to the satisfaction of the Director of Water and Waste and the Director of Public Works. The SRB was built to plans and specifications accepted by the City, including stone revetment and sodded slopes, and achieved construction completion in July 2015.

Since construction completion, the sloped area of the SRB has been stripped and eroded by the residence and migration of Canada goose populations. Terracon Development Ltd. has invested in efforts to repair and rehabilitate the area, including spreading topsoil, seeding, fertilizer, weed control and goose deterrents. All efforts to date have failed to achieve a result satisfactory for acceptance by the Public Works Department and/or Water and Waste Department.

Terracon has proposed to remove the stone revetment from the Public Reserve areas adjacent to the SRB and replace with naturalized wetland plantings. Further, the remaining sod in the 7:1 slope will be replaced with naturalized upland plantings. The Public Works Department and Water and Waste Department have agreed in principal to the proposed solution, subject to submission and approval of a revised design for the Public Reserves, to the satisfaction of the Director of Water and Waste and the Director of Public Works.

Terracon has requested that the maintenance period for the rehabilitated area(s) be reduced to 3 years from the standard 5 year warranty period for naturalized areas. The Public Works Department and Water and Waste Department are not agreeable to a reduced warranty period for the Public Reserves and have indicated that a standard 5 year warranty period should be maintained.

The Public Service recommends approval of this request, subject to the recommendation(s) outlined in this report.

FINANCIAL IMPACT

N/A

CONSULTATION

This Report has been prepared in consultation with:

Water and Waste Department
Public Works Department
Planning, Property & Development Department – Urban Planning & Design Division

OURWINNIPEG POLICY ALIGNMENT

N/A

WINNIPEG CLIMATE ACTION PLAN ALIGNMENT

N/A

WINNIPEG POVERTY REDUCTION STRATEGY ALIGNMENT

Consideration was given as to whether this report connects to the Winnipeg Poverty Reduction Strategy (PRS) and its Goals and Objectives, and it was determined that the PRS is not applicable to this specific report.

SUBMITTED BY

Department: Planning, Property and Development
Division: Real Estate and Land Development
Prepared by: K. Kowalyk
Date: 2023-08-29
File No: DASZ 30/2013

Attachments: Appendix A – Letter request dated July 20, 2023

APPENDIX A – LETTER REQUEST

TERRACON DEVELOPMENT LTD.

1 TERRACON PLACE
WINNIPEG, CANADA R2J 4B3
TEL: 204.233.4330
FAX 204.233.5085
info@terracon.co
www.terracon.co

July 20th, 2023

City of Winnipeg
Planning, Property & Development
Land Development Branch
Main Floor, 65 Garry St.
Winnipeg, MB
R3C 4K4

Re: Development Agreement Amendment AG 30/2013
Castlebury Meadows Stormwater Retention Basin

Context

- Substantial completion of the Castlebury Meadows stormwater retention basins (SRB) was completed in 2015 using a "traditional" design approach – rock revetment over geotechnical fabric along the Normal Water Level (NWL) and sod to City of Winnipeg specifications to the top of the 7:1 slope (or 100-year flood level). **Figure 1**: Castlebury Meadows 7:1 Slope Reference Area identities the subject area.

- The SRB was built to specifications and received construction completion by the City of Winnipeg on July 21, 2015.

- In August, 2021, Terracon Development Ltd. (Terracon) made application for a Development Agreement Amendment to AG 30/2013. On January 7th, 2022, Terracon withdrew their application. Today, Terracon hereby resubmits the application for Development Agreement Amendment to AG 30/2013.

Issue

- Along the 7:1 slope of the SRB and within Public Reserve "G", Canada goose populations have stripped the vegetation and caused erosion – see **Figure 2** - Site Visit: September, 2020

- Terracon has substantially invested over the years in efforts to repair and rehabilitate the area. Such efforts have included, topsoil, seeding, fertilizer, weed control and goose deterrents. All efforts have failed as a result of the substantial Canada goose population.

- The acceptable design for SRB's by the City of Winnipeg has changed from the "traditional" design to of this SRB in 2015 to a naturalized design.

OUR VISION: Create Canada's Finest Business Communities by integrating people, nature, business and technology in an environment that enhances individual and corporate growth.
"GROW WITH US"

Proposal

- Terracon proposes to remove the stone revetment along the public reserve sides of the SRB and replace with naturalized wetland plantings. In addition, the remaining sod along the 7:1 slope will be killed off and replaced with naturalized upland plantings. The work is currently being considered between Scatliff + Miller + Murray and Native Plant Solutions, for implementation in late 2023 and Spring of 2024.

- Once completed, monitoring the naturalized plantings will occur to ensure performance metrics are met.

Community Engagement

- Terracon proposes to remove the stone revetment along the public reserve sides of the

Warranty / LOC

- Terracon and Scatliff + Miller + Murray have worked collaboratively with the City of Winnipeg administration to work towards a workable solution for both parties.

- Both Terracon and the City of Winnipeg administration have mutually agreed that at the end of year 1, the Letter of Credit that is currently being held for the SRB will be reduced by 85% following an inspection. The remaining 15% will be held for the maintenance period.

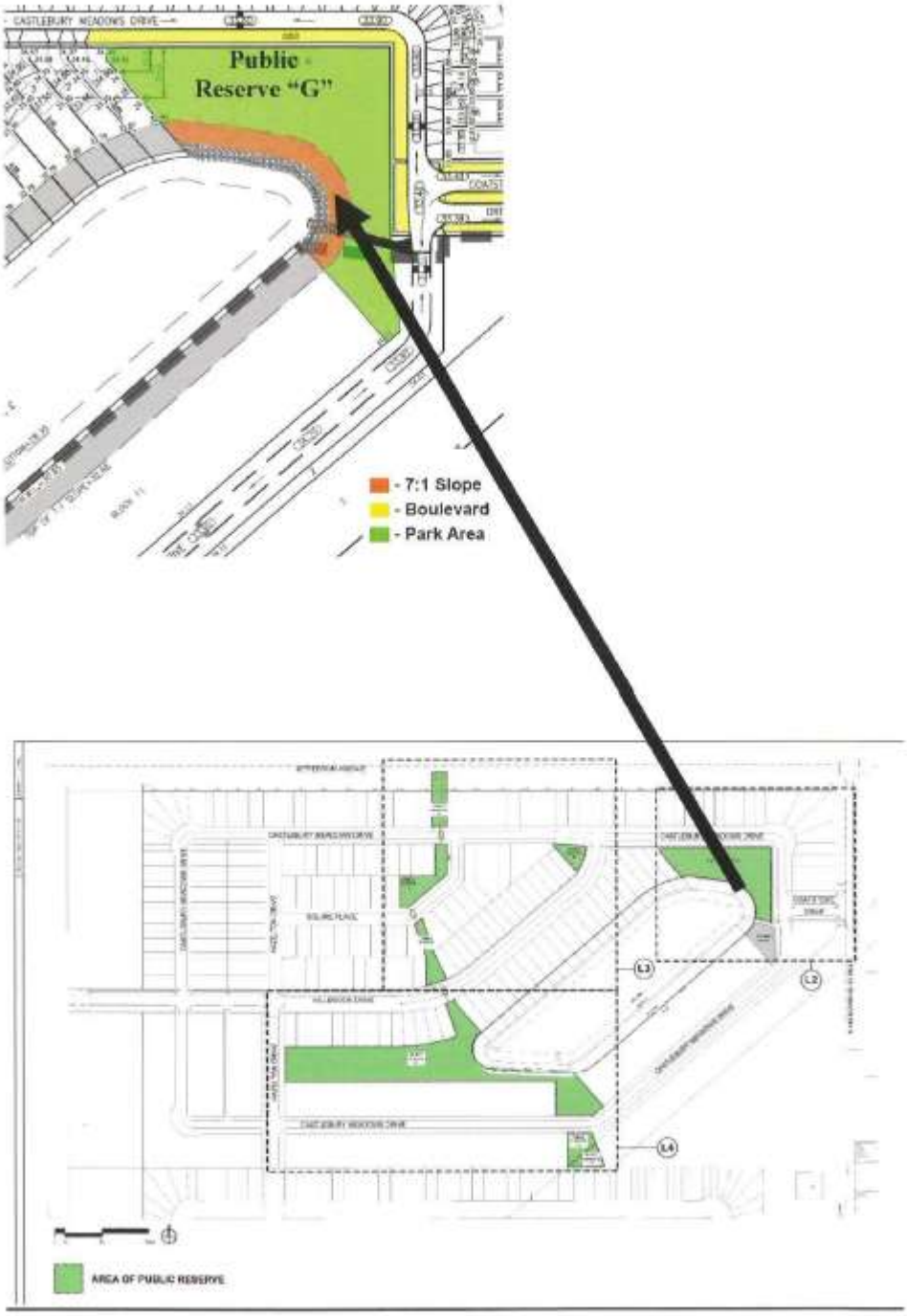
- Terracon proposes a 3-year maintenance period with a final inspection to be held that will reduce the final 15% Letter of Credit.

Yours truly,

TERRACON DEVELOPMENT LTD.

Per: Matt Glavin

Figure 1: Castlebury Meadows 7:1 Slope Reference Area



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