Minute No. 102
Report "A" - Standing Policy Committee on Property and Development - November 30, 2004

Item No. 1 **Expropriation of the Lands west of Kenaston Boulevard required for the Kenaston Grade Separation Project**
File SC-4

COUNCIL DECISION:

Council concurred in the recommendation of the Standing Policy Committee on Property and Development and adopted the following:

1. That the City Solicitor/Manager of Legal Services be instructed to initiate expropriation proceedings, including preparing the necessary by-law for submission to Council, to acquire the properties identified in the report from the Director of Planning, Property and Development dated November 25, 2004, and required by the City for the Kenaston Grade Separation Project west of Kenaston Boulevard and to effect the associated street opening in accordance with Misc. Plan 9178/25.

2. That the Proper Officers of the City be authorized to do all things necessary to implement the foregoing, including the execution of any documents related thereto.

Report "A" - Standing Policy Committee on Property and Development - November 30, 2004

DECISION MAKING HISTORY:

Moved by Councillor De Smedt,

That the recommendation of the Standing Policy Committee on Property and Development be adopted by consent.

Carried

Councillor Smith asked to be recorded as having voted against the item in accordance with Rule 50.7 of the Procedure By-law.

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On December 8, 2004, the Executive Policy Committee concurred in the recommendations of the Standing Policy Committee on Property and Development and submitted the matter to Council

STANDING COMMITTEE RECOMMENDATION:

On November 30, 2004, the Standing Policy Committee on Property and Development concurred in the administrative recommendation with the following amendments, namely:

- That Recommendation No. 2 be deleted in its entirety
- That Recommendation No. 3 be deleted in its entirety and the words "submits draft Expropriation By-law" be incorporated in the Committee's recommendation
- That the remaining recommendations be re-numbered accordingly,

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

Re: PROPOSED EXPROPRIATION OF THE LANDS WEST OF KENASTON BOULEVARD REQUIRED FOR THE KENASTON GRADE SEPARATION PROJECT

For submission to: **Standing Policy Committee on Property and Development**

Original report signed by: **Director of Planning, Property and Development**

Report date: **November 25, 2004**

Recommendation(s):

1. That the City Solicitor/Manager of Legal Services be instructed to initiate expropriation proceedings, including preparing the necessary By-law for submission to Council, to acquire the properties herein identified and required by the City for the Kenaston Grade Separation Project west of Kenaston Boulevard; and to effect the associated street opening in accordance with Misc. Plan 9178/25.

2. That this report be referred to the Standing Policy Committee on Public Works, for its meeting scheduled for December 2, 2004, to consider this matter "In Camera" to confirm the City's need of these properties.

3. Subject to recommendations number 1 and 2 herein, that the report of the Standing Policy Committee on Property and Development with respect to this matter be submitted to Council simultaneously with the Expropriation By-law.

4. That the Proper Officers of the City be authorized to do all things necessary to implement the foregoing, including the execution of any documents related thereto.

REPORT SUMMARY

Key Issues:

- Authorization to expropriate is required immediately to ensure that the City has a legal interest in all properties prior to advertising the construction tender and to ensure possession for construction in 2005.

IMPLICATIONS OF THE RECOMMENDATION(S):

GENERAL IMPLICATIONS:

X	**None**
	For the organization overall and/or for other departments
	For the community and/or organizations external to the City of Winnipeg
	Involves a multi-year contract

Comment(s):

-

POLICY IMPLICATIONS:

X	**No**
	Yes

Comment(s):

-

ENVIRONMENTAL IMPLICATIONS:

X	**No**
	Yes

Comment(s):

- This Project is subject to a Federal Environmental Screening, which has been submitted for approval. The Public Works Department will address any resulting concerns.

HUMAN RESOURCES IMPLICATIONS:

X	**No**
	Yes

Comment(s):

-

FINANCIAL IMPLICATIONS:

X	**Within approved current and/or capital budget**
	Current and/or capital budget adjustment required

Comment(s):

- Adequate funding for this expropriation will be available in work order 63033002WL.

REASON FOR THE REPORT:

The subject properties numbered 1 through 7 as shown on the attached Misc. Plan No. 9178/25 are required for the development and implementation of the Kenaston Grade Separation Project. Council's authorization to expropriate is required immediately to ensure that the City has a legal interest in all properties prior to advertising the construction tender and to ensure possession for construction in 2005.

The Standing Policy Committee on Public Works has to consider this proposed expropriation and confirm the City's need of these properties.

HISTORY:

On March 28, 2003, Council approved the 2003 Capital Program, which included funding in the amount of $3,870,000.00 for land acquisition and preliminary engineering design for the Kenaston Grade Separation Project.

In April 2003, the Public Works Department requested the Planning, Property and Development Department to commence negotiations with four affected property owners, namely; Centra Gas, Department of National Defence (DND), Canadian National Railway (CNR) and Kenaston Intermodal Ltd. et al to acquire the necessary lands required to accommodate the Kenaston Grade Separation, which includes the Sterling Lyon Parkway.

The Planning, Property and Development Department immediately initiated preliminary data collection such as title and encumbrance searches; plan preparation; etc. In order to determine the effect of this proposed widening project on the subject properties, the required appraisal work was contracted out.

Preliminary contact was established with the four initial property owners. Purchase proposals were presented to Kenaston Intermodal Ltd., Centra Gas and CNR. Detailed discussions with DND took place concerning the alignment and effects of the Kenaston grade separation in relation to the Kapyong Barracks site.

Negotiations with Centra Gas for part of its property located at the southeast corner of Wilkes Avenue and Kenaston Boulevard have been concluded. Council, at its meeting held July 21, 2004, approved terms and conditions of a land exchange.

On September 29, 2004 the Public Works Department advised that the alignment of Sterling Lyon Parkway had been revised and that this would now affect four additional property owners. The Planning, Property and Development Department have met and discussed the overall Project with the additional affected property owners. Appraisals of these additional properties have been contracted out and should be received by November 30, 2004.

Legal survey work has been contracted out in order to have the road opening plan prepared. Particulars of the properties to be expropriated are as follows:

Property #1

File No.:	7813/2
Location:	Northwest Corner Wilkes Avenue and Kenaston Boulevard
Legal Description:	Block 7, Plan 6632
Certificate of Title:	1934121
Registered Owner:	Canadian National Railway Company
Realty Roll No.:	12-074489000
Assessment:	$27,600 (1999 value)
Zoning:	"M2" Industrial
Property Taking:	0.5929 +/-ha (1.465 +/- ac)
Description:	The entire vacant property is described within this title.

Property #2

File No.:	7813/9A
Location:	Southwest Corner of Wilkes Avenue and Kenaston Boulevard
Legal Description:	Parcel 4, Plan 8361
Certificate of Title:	1522771, 1464735 & E13475
Registered Owner:	Kenaston Intermodal Ltd. – undivided ½ interest Barbara Weigert and Hans Martin Weigert – undivided ¼ interest Each Canadian National Railway – Lease interest
Realty Roll No.:	10-001800100
Assessment:	$8,236,000.00 (1999 value)
Zoning:	M2 & M3 - Industrial
Property Taking:	5.7925 +/- ha (14.314 +/- ac)
Description:	The area of the vacant property taking forms part of a larger holding.

Property #3

File No.:	7813/11
Location:	East of McCreary Road, South of Wilkes Avenue
Legal Description:	Parcels A & B, Plan 12688 (Exc. M & M)
Certificate of Title:	E16514
Registered Owner:	Canadian National Railway
Realty Roll No.:	10-002249000
Assessment:	$297,000.00 (1999 value)
Zoning:	Agricultural
Property Taking:	2.2165 +/- ha (5.477 +/- ac)
Description:	The area of the vacant property taking forms part of a larger holding.

Property #4

File No.:	7813/10
Location:	1961 McCreary Road
Legal Description:	Part Parish Lot 12/15 St. Charles
Certificate of Title:	1920357 & 2012350
Registered Owner:	The Fort Whyte Foundation Inc.
Realty Roll No.:	10-002250100
Assessment:	$126,000.00 (1999 value)
Zoning:	Agricultural
Property Taking:	0.832 +/- ha (2.0576 +/- ac)
Description:	The area of the vacant property taking forms part of a larger holding and is improved with newly planted trees as well as mulch.

Property #5

File No.:	7813/12
Location:	1237 McCreary Road
Legal Description:	Part Parish Lots 16/17 St. Charles
Certificate of Title:	1335943 & E6261
Registered Owner:	Margaret Ellen Teske
Realty Roll No.:	10-002665000
Assessment:	$237,150.00 (1999 value)
Zoning:	Agricultural
Property Taking:	0.643 +/- ha (1.588 +/- ac)
Description:	The area of the property taking forms part of an equestrian farm and is partially improved with two horse corrals, fence and mature trees.

Property #6

File No.:	8511
Location:	1240 McCreary Road
Legal Description:	Part Lot 16, Plan 1600
Certificate of Title:	1884951
Registered Owner:	Kenneth J. Lee & Sandra L. Lepard
Realty Roll No.:	01-000038500
Assessment:	$250,100.00 (1999 value)
Zoning:	Agricultural
Property Taking:	0.295 +/- ha (0.729 +/- ac)
Description:	The area of the property taking forms part of a larger residential holding and is improved with mature trees and a buffer berm.

Property #7

File No.:	8511
Location:	West of McCreary Road and South of Wilkes Avenue
Legal Description:	Part Lot 16, Plan 1600
Certificate of Title:	1893885
Registered Owner:	Bovain Foods Ltd.
Realty Roll No.:	01-000042000
Assessment:	$53,700.00 (1999 value)
Zoning:	Agricultural
Property Taking:	0.097 +/- ha (0.241 +/- ac)
Description:	The area of the property taking forms part of a larger holding and is vacant land improved with a buffer berm and natural vegetation.

DISCUSSION:

The Public Works Department has advised that all property requirements are needed in order to accommodate the construction of the Kenaston Grade Separation Project, including the Sterling Lyon Parkway, which is scheduled to commence in the spring of 2005.
The Kapyong Barracks property, required for the Kenaston Grade Separation Project, is registered in the name of HMQ Canada, i.e. the Department of National Defence. The City does not have authority to expropriate property of a senior level of government or its agencies. Therefore, the DND property has not been included in the list of properties to be expropriated. Negotiations for the necessary property acquisition are ongoing. Attached, for information purposes, are Misc. Plan No.'s 9178/22, 9178/23 and 9178/24 illustrating the property and temporary easement requirements from DND.

Property #'s 1 and 3 form part of a large omnibus land exchange currently being negotiated between senior administration and CNR. It is anticipated that a negotiated settlement may be reached in time for spring construction. However, the two vacant properties have been included to ensure possession in sufficient time.

Discussions with the property owners of the former intermodal terminal (Property #2) have been ongoing, however their asking price is considerably higher than the appraised value. The Planning, Property and Development Department is of the opinion that a negotiated settlement will not be reached in time for spring construction.
During preliminary discussions with the representative for Fort Whyte Foundation Inc. (Property #4), it was determined that they have no major concerns regarding the property requirement and are willing to cooperate and settle this acquisition as quickly as possible once they receive a purchase proposal. However, this property has been included to ensure possession of this property in sufficient time.

The owner of Property #5 has advised that any taking of their property would be a detriment to the operation of her equestrian farm business. At this point the Planning, Property and

Development Department is of the opinion that a negotiated settlement will not be reached in time for construction of the Sterling Lyon Parkway in 2005.

The owners of Property No. #6 are the directors for the company that owns Property No. 7. These owners have advised they are not receptive or supportive of selling any portion of their properties to the City and that they are prepared to take this matter to litigation. The Planning, Property and Development Department is of the opinion that a negotiated settlement will not be reached in time for construction for the Sterling Lyon Parkway in the spring.

It is the consensus of the Planning, Property and Development and Public Works Departments that expropriation proceedings need to be initiated at the present time. This will ensure possession of these properties required for this Project and will establish one common date for evaluation purposes.

Construction of the Kenaston Grade Separation Project is slated to commence in the spring of 2005. Although the Planning, Property and Development Department is continuing to negotiate settlements with all of the property owners, there is no guarantee that the City will have an interest in the properties in time for the tendering of the project scheduled for early in 2005. In order to guarantee possession for the 2005 construction season, it is important for the expropriation process to commence immediately. The attached Schedule "A" illustrates an anticipated flow of events required in connection with this proposed expropriation.
The Public Works Department has advised that adequate funding for this acquisition program will be available from work order number 63033002WL.

Financial Impact Statement

Date: November 18, 2004

Project Name:

PROPOSED EXPROPRIATION OF THE LANDS WEST OF KENASTON BOULEVARD REQUIRED FOR THE KENASTON GRADE SEPARATION PROJECT

First Year of Program 2005

	2005	2006	2007	2008	2009
Capital					
Capital Expenditures Required	$ 2,652,250	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	2,652,250	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
External	-	-	-	-	-
Grants (Identify)	-	-	-	-	-
Reserves, Equity, Surplus, Other	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ -	$ 238,703	$ 238,703	$ 238,703	$ 238,703
Less: Incremental Revenue/Recovery	152,250	-	-	-	-
Net Cost/(Benefit)	$ (152,250)	$ 238,703	$ 238,703	$ 238,703	$ 238,703
Less: Existing Budget Amounts	(152,250)	238,703	238,703	238,703	238,703
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments:

Based on the best available information, the cost of the seven (7) properties to potentially be expropriated will be approximately $2.5 million and it is assumed this amount is paid out in 2005. Capital expenditures of $2,652,250 also include a 3% GST component, short-term financing charges, and administrative fees totaling $152,250. These costs, which will be charged to the Public Works capital budget, are offset by equal recoveries in Corporate Finance's operating budget. There is no effect on the City as a whole. Direct costs of $238,703 from 2006 onward represent debt and finance charges to Public Works' operating budget.

"Original signed by"
Mike McGinn, CA
Manager of Finance

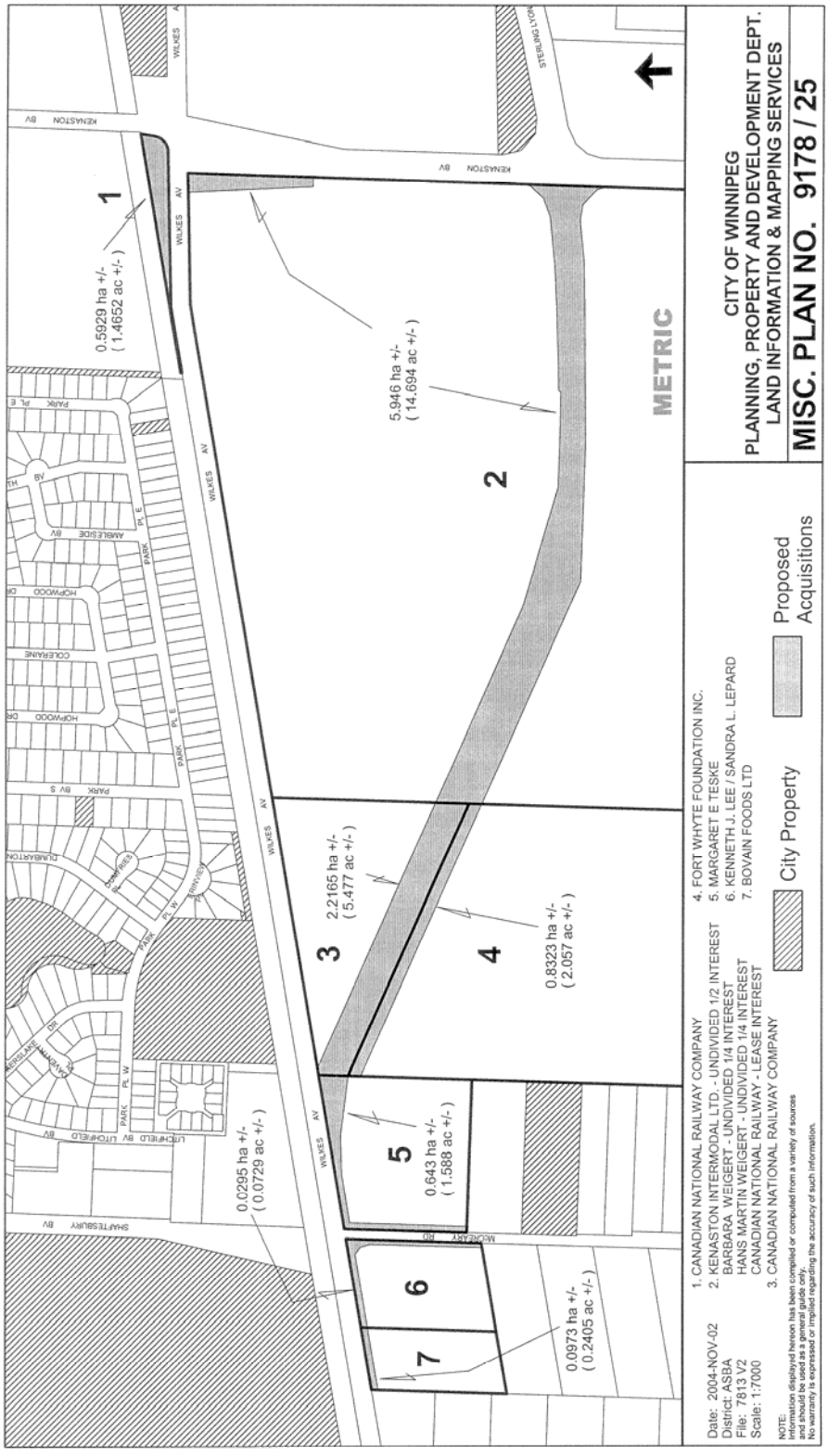
IN PREPARING THIS REPORT, THERE WAS CONSULTATION WITH AND CONCURRENCE BY:

There was consultation with the Public Works Department in preparing this report.

THIS REPORT SUBMITTED BY:

Planning, Property and Development Department
Division: Real Estate
Prepared by: Karen Cann
PPD File #: 7813 V2

Document name: o:\reports directive\real estate\acquisition\(kc)kenastongradeseparation.doc


1
0.5929 ha +/-
(1.4652 ac +/-)
2
5.946 ha +/-
(14.694 ac +/-)
3
2.2165 ha +/-
(5.477 ac +/-)
4
0.8323 ha +/-
(2.057 ac +/-)
5
0.643 ha +/-
(1.588 ac +/-)
6
7
0.0295 ha +/-
(0.0729 ac +/-)
0.0973 ha +/-
(0.2405 ac +/-)
METRIC
1. CANADIAN NATIONAL RAILWAY COMPANY
2. KENASTON INTERMODAL LTD. - UNDIVIDED 1/2 INTEREST
BARBARA WEIGERT - UNDIVIDED 1/4 INTEREST
HANS MARTIN WEIGERT - UNDIVIDED 1/4 INTEREST
CANADIAN NATIONAL RAILWAY - LEASE INTEREST
3. CANADIAN NATIONAL RAILWAY COMPANY
4. FORT WHYTE FOUNDATION INC.
5. MARGARET E TESKE
6. KENNETH J. LEE / SANDRA L. LEPARD
7. BOVAIN FOODS LTD
City Property
Proposed Acquisitions
Date: 2004-NOV-02
District: ASBA
File: 7813 V2
Scale: 1:7000
NOTE:
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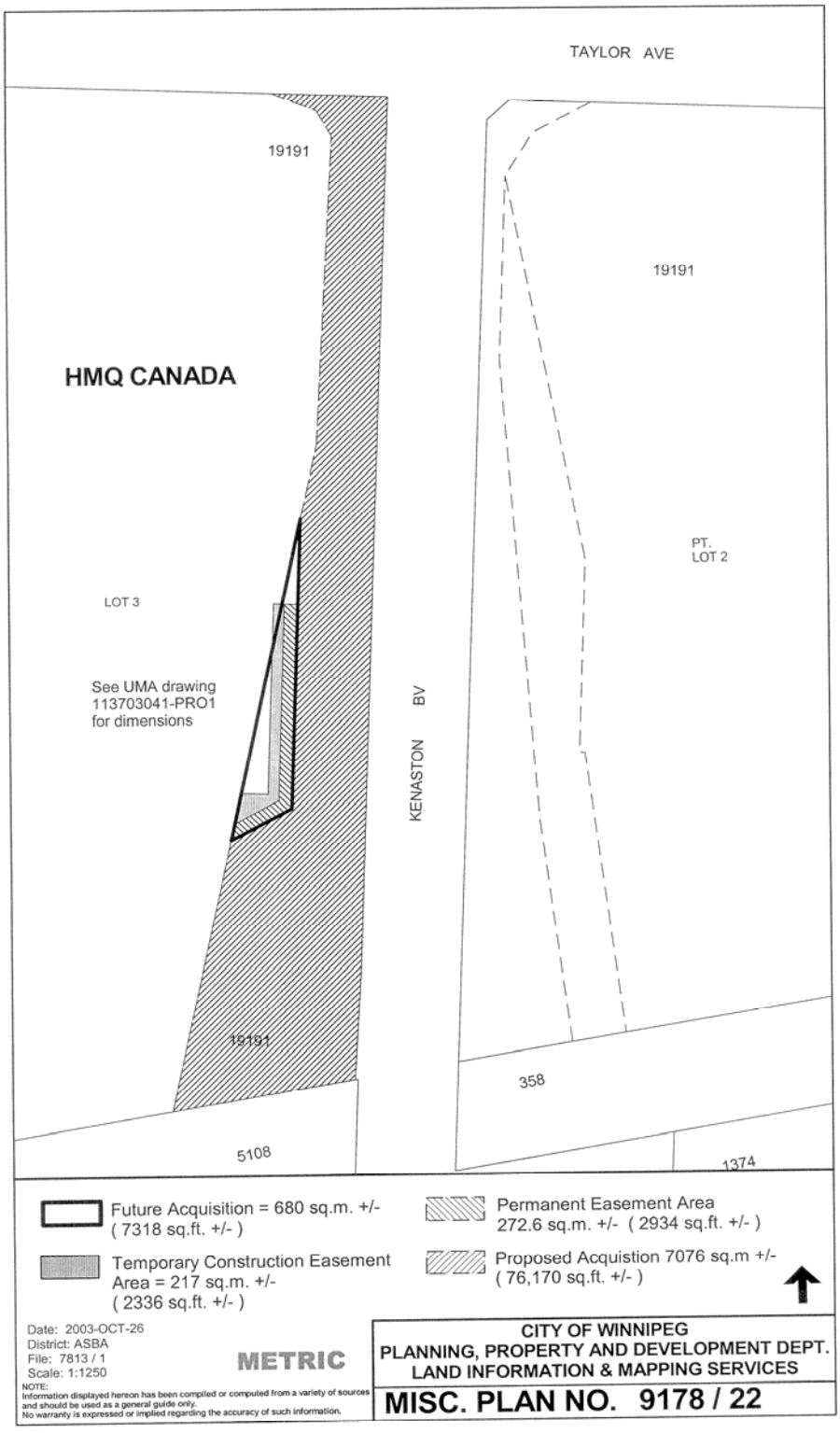
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 9178 / 25


TAYLOR AVE
19191
19191
HMQ CANADA
LOT 3
See UMA drawing
113703041-PRO1
for dimensions
KENASTON BV
PT.
LOT 2
19191
358
5108
1374
Future Acquisition = 680 sq.m. +/-
(7318 sq.ft. +/-)
Temporary Construction Easement
Area = 217 sq.m. +/-
(2336 sq.ft. +/-)
Permanent Easement Area
272.6 sq.m. +/- (2934 sq.ft. +/-)
Proposed Acquistion 7076 sq.m +/-
(76,170 sq.ft. +/-)
Date: 2003-OCT-26
District: ASBA
File: 7813 / 1
Scale: 1:1250
METRIC
NOTE:
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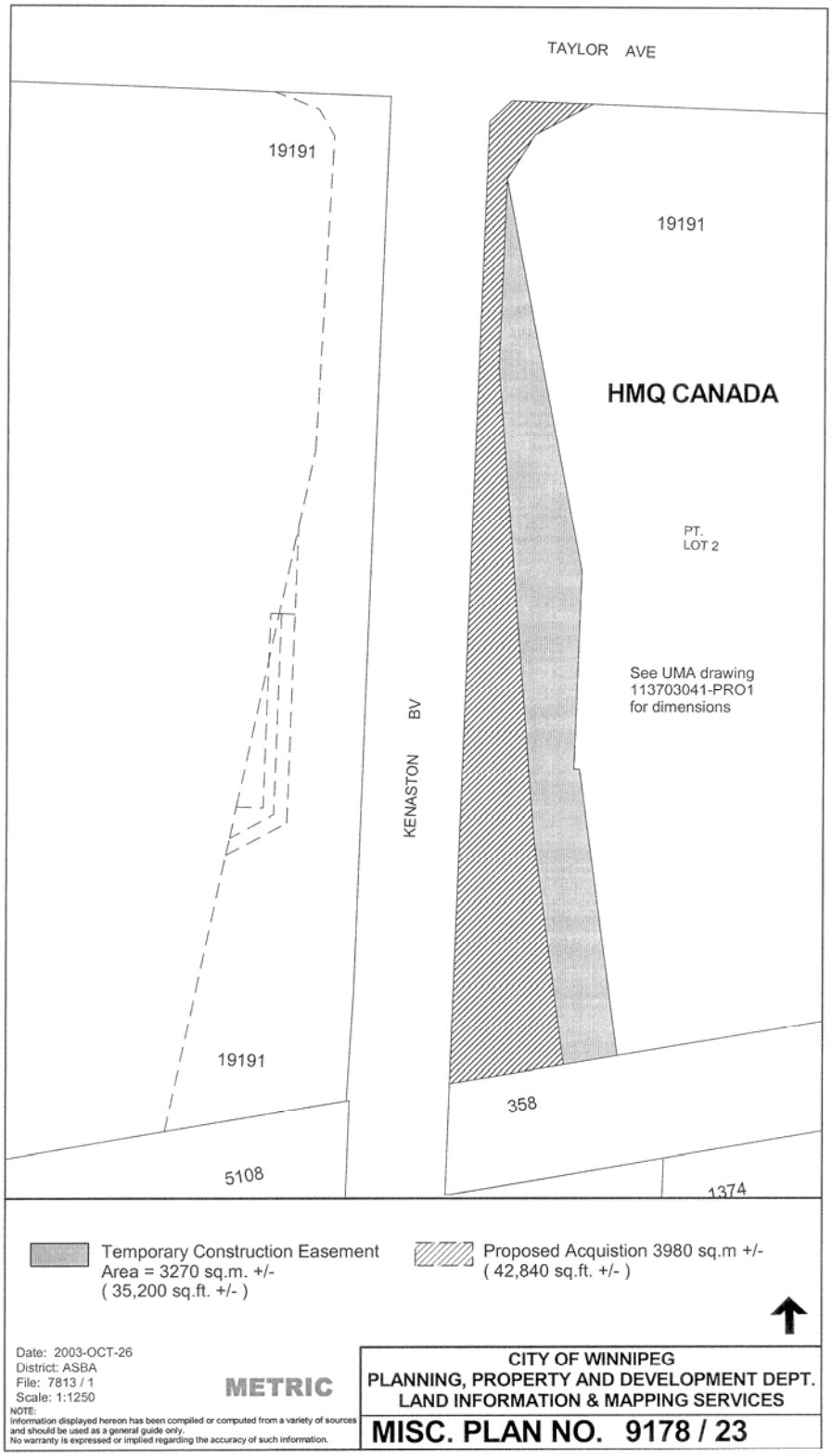
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 9178 / 22


TAYLOR AVE
19191
19191
HMQ CANADA
PT.
LOT 2
See UMA drawing
113703041-PRO1
for dimensions
KENASTON BV
19191
358
5108
1374
Temporary Construction Easement
Area = 3270 sq.m. +/-
(35,200 sq.ft. +/-)
Proposed Acquistion 3980 sq.m +/-
(42,840 sq.ft. +/-)
Date: 2003-OCT-26
District: ASBA
File: 7813 / 1
Scale: 1:1250
METRIC
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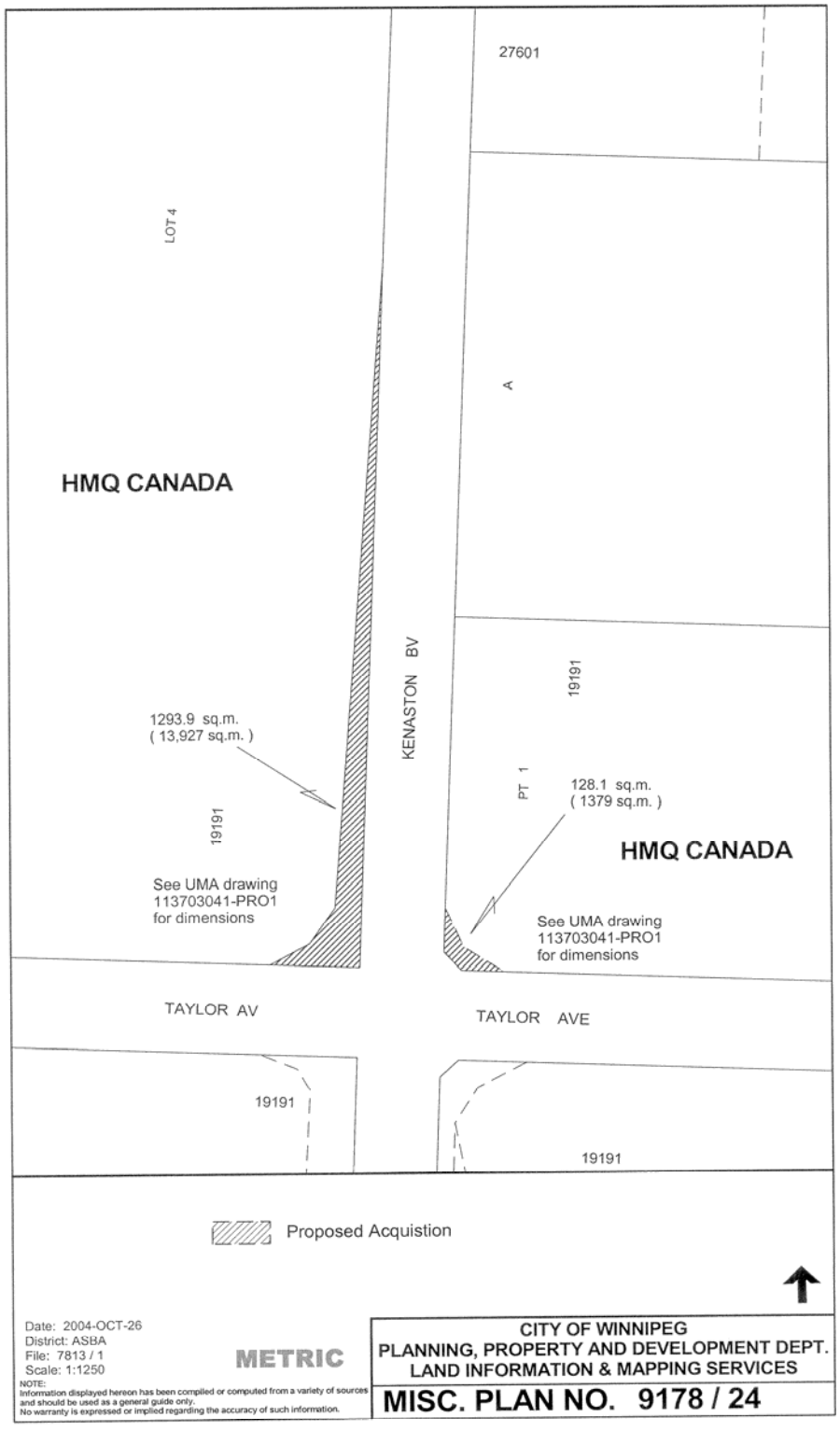
MISC. PLAN NO. 9178 / 23


27601
LOT 4
A
HMQ CANADA
KENASTON BV
19191
1293.9 sq.m.
(13,927 sq.m.)
19191
PT 1
128.1 sq.m.
(1379 sq.m.)
HMQ CANADA
See UMA drawing
113703041-PRO1
for dimensions
See UMA drawing
113703041-PRO1
for dimensions
TAYLOR AV
TAYLOR AVE
19191
19191
Proposed Acquistion
Date: 2004-OCT-26
District: ASBA
File: 7813 / 1
Scale: 1:1250
METRIC
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MISC. PLAN NO. 9178 / 24

SCHEDULE "A"

PROJECTED TIME LINE
KENASTON GRADE SEPARATION EXPROPRIATION
WITH POTENTIAL FOR AN INQUIRY*

Projected Date	**Required Event**
November 30, 2004	Standing Policy Committee on Property and Development concurs in the recommendation of the Planning, Property and Development Department to initiate the proposed expropriation
December 2, 2004	Standing Policy Committee on Public Works confirms the City's need for these properties
December 15, 2004	Council approval of the recommendation to initiate the expropriation and enactment of the Expropriation By-law
December 2004	City Signing Declaration of Expropriation
February 2005	Standing Policy Committee on Property and Development approval of Offers of Compensation
December 2004 to April 2005	Inquiry process and receipt of Inquiry Officer's report
May 2005	Council's Confirmation of the Expropriation
May 2005	Registration and service of all documents including the Service of all formal "Offers of Compensation" together With the "Notices for Possession" immediately after Council "Confirms" the Expropriation
June 2005	Advertise tender for construction
July 2005	Possession of expropriated properties
July 2005	Award construction tender
July 2005	Commence construction

*An Inquiry can be triggered by any expropriated owner (including a lessee). The Province of Manitoba has the authority to waive the Inquiry where it deems it necessary or expedient in the public interest to do so.