

ITEM	14
MANAGER'S REPORT NO.	64
COUNCIL MEETING	Oct. 12/76

Re: CENTRAL PARK LEASE
(Item 11, Report No. 54, August 30, 1976)

When Mr. Hrynyk of the Burnaby Citizens Roads Committee appeared before Council at its meeting of October 4, 1976, the Municipal Manager was asked to provide a report on the status of the excavation for a turning bay which was made on Imperial Street at Boundary.

The Burnaby delegation consisting of the Municipal Manager and Alderman Stusiak as Acting Mayor met with the Honourable James A. Nielsen, Minister of Environment on Tuesday, August 31, 1976 in connection with the turning bay in question, and the points raised in the meeting were confirmed in a letter written by the Municipal Manager to the Minister on September 3, 1976. In summary, the points made in the lengthy letter involved were as follows:

1. We must proceed with improvements to Boundary Road north of Kingsway in order to accommodate the B. C. Telephone development; the improvements north of Kingsway have been agreed to by Burnaby and Vancouver, and although they will be built for an ultimate design, the pavement will be marked to simply accommodate the extra traffic coming from the B. C. Telephone development and to improve the traffic operation through the intersection.
2. The work proposed on the south side of Kingsway on Boundary Road is required because of the present traffic volumes on the road and in substance will simply add turning lanes to facilitate the movement of traffic through the intersection.
3. It will not involve the widening of Boundary Road adjacent to the major part of Central Park which will remain at a two lane standard, and any future widening of Boundary Road that may or may not take place south of Kingsway will require future modifications to this short transition section immediately adjacent to Kingsway which can be justified right now, solely on existing traffic volumes on the street.
4. There are presently four lanes on Imperial Street and what is proposed is to provide a left-turning lane and construct a sidewalk so as to improve the efficiency at the intersection and to line up with what has been done in Vancouver; i.e., we are adding a left-turning lane and having to shift the other two lanes to the north in order to allow for that.
5. The public, in order to enjoy Central Park as a public park and pleasure-ground, has to get there and for that purpose adequate boundary highways are necessary. The public using Central Park can do so in better fashion if boundary streets already heavily travelled are developed to permit a good entry and exit to and from the park and on-street parking adjacent thereto. In the case of Central Park, we will attempt to improve this situation. A clause in the lease reserving part of the lands demised for highway purposes is surely for a public purpose and is not expressly prohibited by the Act. The power to enact such a clause arises by necessary implication and may fairly be regarded as incidental to or consequential upon that which the Legislature has authorized. We have always taken the position that the provision of the pedestrian bridge over Kingsway that is being built by the Telephone Company is fully justified within the public use and recreational terms of the Central Park lease, and it was only mentioned in our correspondence so that the Minister might be fully informed as to what is actually happening on the perimeter of the park.

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We asked that the Minister submit our letter to the Cabinet and we hoped that the Province would not take such a narrow interpretation of the Central Park Act so that the two specific right-turn bays might be authorized - one on Imperial at Boundary and the other on Boundary at Kingsway. We pointed out that if the Province felt there was an impediment permitting these turning bays because of the wording in the Act, that under Section 8 of the Highways Act, the Minister of Highways can take whatever portion of the park he deems necessary for the provision of these two turning bays, notwithstanding Section 8 of the lease from the Crown to Burnaby and Vancouver and notwithstanding its validity or otherwise.

The Municipal Manager received the attached letter dated September 23, 1976 from the Minister of Environment, and in turn wrote the attached letter dated October 7, 1976 to the Minister raising several points that the Minister had not responded to in his correspondence of September 23, 1976.

The Municipal Solicitor has reviewed the legal opinion supplied to the Department of Environment by the Attorney-General's Department, and his opinion is already set out substantially in point #5 as noted above. He has added that notwithstanding whether clause 8 of the 1959 lease is valid or invalid, a portion of the leased lands may only be taken for highway purposes by the Crown. He further states that clause 12 of the lease provided that in case of any dispute or difference arising in connection with any of the provisions of the lease or the interpretation thereof, the same shall be settled finally without appeal by the Minister. Therefore, no matter whether clause 8 is good or bad, the Municipality cannot act without the consent of the Crown.

This is for the information of Council.

SEP 23 1976

MUNICIPAL MANAGER'S
OFFICE



THE GOVERNMENT OF
THE PROVINCE OF BRITISH COLUMBIA
MINISTER OF ENVIRONMENT

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VICTORIA, B. C.

September 23, 1976

M.O. 4537

File: 0336329 #4

The Corporation of the District
of Burnaby,
Municipal Hall,
4949 Canada Way,
Burnaby, B. C.
V5G 1M2

Attention: Mr. Melvin Shelley,
Municipal Manager

Dear Sirs:

I have for acknowledgment your letter dated September 3, 1976,
dealing with certain proposed incursions into Central Park.

As pointed out in our earlier discussions, I have no statutory
authority to authorize use of Central Park for other than a
public park and pleasure-ground for the recreation and enjoyment
of the public.

Clause 8 in the lease indenture reserved unto the Crown the right
to utilize a strip of land 150 feet in width around the perimeter
of the park for road purposes without the necessity of seeking
concurrence of the lessee. However, in carrying out this option,
if ever deemed necessary, statutory authority to do so would have
to be sought.

It is noted from the minutes of your Council's meeting on August
30, 1976, Manager's Report No. 54, item 11 that with some minor
changes in design, it is physically possible to accommodate the
desired number of traffic lanes without the necessity of intruding
into the park.

Your early attention to restoration of the Crown land to its
natural condition and advice as to when the work will be completed
would be appreciated.

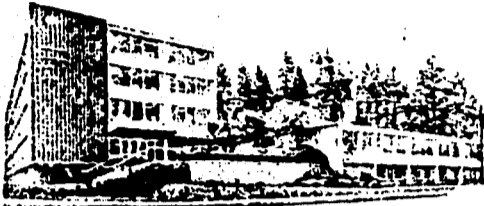
With respect to the proposed pedestrian overpass on Kingsway
from the B. C. Telephone building, the western terminus of which
will intrude into the park a distance of 80 feet, this structure
would appear to facilitate use of the park lands by the general
public.

Yours truly,

A handwritten signature in cursive script, appearing to read "James A. Nielsen".

James A. Nielsen,
Minister of Environment.

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Office of the Manager

THE CORPORATION OF THE DISTRICT OF BURNABY

MUNICIPAL HALL
4949 CANADA WAY
BURNABY B.C. V5G 1M2
294-7110

October 7, 1976.

Our File: 3-7-76.
X Ref. 18-14(a)

The Honourable J. A. Nielsen,
Minister of Environment,
Parliament Buildings,
Victoria, B. C. V8V 1X4.

Dear Sir:

Re: Central Park Lease

This will acknowledge your letter of September 23, 1976 regarding the above.

Mayor Constable, who is away on vacation until October 29, has asked that I contact you again and raise the following points on this question:

1. In your letter you make reference to Item 11, Manager's Report No. 54 which was considered by Council on August 30, 1976 and note that "...with some minor changes in design, it is physically possible to accommodate the desired number of traffic lanes without the necessity of intruding into the park." This is a valid statement, but it produces a substandard traffic design which would not be recommended unless there was no other alternative. Further, the original design proposed for Imperial Street provided for a sidewalk on the north side of the road for the length of the turning bay, and it would not be possible to construct this sidewalk on the road right-of-way; i.e., we really cannot proceed even with the modified design and keep all of the work within the present road right-of-way. You stated in our meeting in Victoria that you did not feel a public sidewalk around a park would come within the terms of the Central Park lease, and if this is the case, then this sidewalk cannot be constructed. On the other hand, the public is obviously walking in this area and has beaten a path on the grass.

One final point with respect to sidewalks generally around the park, the entire sidewalk on Kingsway, which was rebuilt by the Department of Highways many years ago, was built on Central Park and Kingsway itself was widened onto Central Park land, and the widening has never been finalized; i.e., a plan has not been registered for the widening involved.

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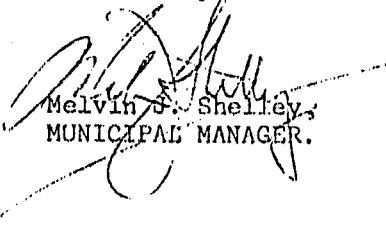
The Honourable J. A. Nielsen

October 7, 1976.

2. In my letter of September 3, 1976, I confirmed the fact that you would place the matter of the intrusion into Central Park for turning lanes on Imperial Street at Boundary and on Boundary at Kingsway before the Cabinet during its meeting which was to be held in the week of September 6. In your correspondence of September 23, 1976, you make no reference to any deliberation by the Cabinet, and I have been asked to raise this matter with you. Would you please advise us of the outcome of the Cabinet meeting.
3. In my letter of September 3, I make reference to the fact that we felt the Minister of Highways could act to take whatever portion of the park he may deem necessary for the provision of the turning bays on Imperial Street and on Boundary Road, and you have made no reference to my comments in your reply of September 23. Were you able to discuss this matter with the Minister of Highways, and if so, what conclusion was reached?
4. You have asked that we give our early attention to the restoration of the Crown land to its natural condition and that you be advised as to when the work would be completed. In this respect I am instructed to notify you of our public meeting that the Burnaby Municipal Council has called for November 3 at 7:30 p.m. in the Nelson School to discuss the whole question of Boundary Road widening. We are confident that the provision of turning bays will come up at that meeting, and we will be in a better position to answer your query once this meeting has been held.

Mayor Constable has asked me to apologize for not being able to write to you personally in this respect but he was unable to contact you by telephone prior to his departure, so he left the matter in my hands to communicate with you. Thank you for your attention.

Yours truly,


Melvin S. Shelley,
MUNICIPAL MANAGER.

MJS:bp

c.c. Mayor Constable