

2000 August 17

TO: CITY MANAGER

FROM: DIRECTOR PARKS, RECREATION & CULTURAL SERVICES

SUBJECT: CONFEDERATION PARK - STATUTORY RIGHTS OF WAY FOR B.C. HYDRO BEAUTIFICATION PROGRAM 2000/2001

PURPOSE: To request Council to grant two Statutory Rights-of-Way over a portion of Confederation Park, Parcel 1, D.L. 122 & 188, Group 1, Plan NWP87902 in favour of B.C. Hydro & Power Authority under the terms and conditions outlined in the attached report and to authorize the execution of the subject Statutory Rights-of-Way.

RECOMMENDATIONS:

1. THAT two Statutory Rights-of-Way over a portion of Confederation Park, Parcel 1, D.L. 122 & 188, Group 1, Plan NWP87902 be granted in favour of B.C. Hydro & Power Authority under the terms and conditions outlined in the attached report.
2. THAT authorization be given to execute the subject Statutory Rights-of-Way.

REPORT

At its meeting of 2000 August 16, the Parks, Recreation and Culture Commission received the attached report and adopted the two recommendations contained therein.



Kate Friars
PARKS, RECREATION
AND CULTURAL SERVICES

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Attachment

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cc: City Solicitor
Director Engineering
Director Planning & Building

**SUBJECT: CONFEDERATION PARK - STATUTORY RIGHTS OF WAY
FOR B.C. HYDRO BEAUTIFICATION PROGRAM 2000/2001**

RECOMMENDATION:

1. THAT Council be requested to grant two Statutory Rights-of-Way over a portion of Confederation Park, Parcel 1, D.L. 122 & 188, Group 1, Plan NWP87902 in favour of B.C. Hydro & Power Authority under the terms and conditions outlined in this report.
2. THAT Council be requested to authorize the execution of the subject Statutory Rights-of-Way.

REPORT

INTRODUCTION

At its meeting of 2000, July 19 the Commission received and referred back to staff a report on the proposed granting of three small statutory rights of way (SRW's) in favour of B.C. Hydro and Power Authority for the purpose of installing 3 hydro kiosks as part of the second phase of a joint City/B.C. Hydro 2000/2001 Beautification Program to underground overhead telephone lines on the Willingdon Avenue frontage of Confederation Park. This report responds to questions raised by the Commission.

PROPOSED EASEMENT REQUIREMENT

At its regular meeting of 2000 March 13, Council received a report from the Director Planning which notified Council that the Willingdon Avenue underground wiring project (Phase II - lane north of Pandora Street to Penzance Drive) submitted by the City of Burnaby for cost sharing under the B.C. Hydro Beautification Program had been approved.

In order for the current work approved for the 2000/2001 Beautification Program to proceed, B.C. Hydro staff advise that it is necessary for B.C. Hydro to place one pad mounted, and two underground, switching kiosks on land within Confederation Park. The proposed equipment is required to service the underground wiring to be installed beneath the roadway on Willingdon Avenue. For this purpose, B.C. Hydro has requested three small statutory right-of-way easements as indicated on the attached sketch (Attachment #1). The easements requested measure 5.7 m by 3.7 m, 4.0 m by 3.3 m and 6.0 m by 1.2 m respectively. It should be noted that the easements requested include an extra metre in depth to accommodate the future planned urban trail to be constructed along the east side of Willingdon Avenue and legal access from Willingdon Avenue to the works.

Parks Design staff have reviewed the proposed right-of-way locations to ensure that park trees and adjacent park uses are not affected. The kiosks are to be located on a grass slope between a proposed urban trail and the all-weather sportsfield. Lawn and path areas disturbed by the works will be restored to their original condition.

The preparation of the right-of-way agreement and review of its terms by the City Solicitor will be coordinated by the Engineering Department as part of the B.C. Hydro Beautification Project. Because the project is being pursued jointly by the City of Burnaby and B.C. Hydro and is of benefit to the City through beautification of the street, compensation for the rights-of-way has not been requested.

RESPONSES TO QUESTIONS RAISED BY THE COMMISSION

Question # 1: What is the park dedication status of this part of Confederation Park?

The status of park land dedications at Confederation Park is complex due to the changing configuration of the land parcels(lots) within the park through consolidations and subdivisions over time. Many of the lots, or blocks of lots, designated as park in the earlier half of the century were the subject of park dedication bylaws, the earliest of these being Bylaw No. 365, dated June 1922 and the latest being Bylaw No. 11001, dated November 1999. On the attached sketch (Attachment #2), the areas covered by park dedication bylaws are superimposed on the current lot base within the park boundary. As can be seen, the majority of Confederation Park is now contained within two large lots, Lot 1, Plan 15301 to the north of Penzance Drive and Lot 1, Plan 87902 to the south. In November 1999, the portion of the north lot not covered by previous park dedications was included in the Park Dedication Bylaw 1999, Bylaw No. 11001, which was taken to the public in a referendum ballot as required under current legislation. The large lot south of Penzance Drive was not put forward for dedication because of the existence of a number of leases within the Burnaby Heights Resource Centre Complex and the presence of McGill Library, both of which are located in the southwest corner of the lot.

The proposed kiosk locations are within the western portion of Lot 1, Plan 87902 (south lot). This area, along with a portion of Lot 1, Plan 15301(north lot) fronting Willingdon Avenue, was dedicated for park purposes under Bylaw No. 986, in November 1929. Also note that a portion of this dedicated area was later dedicated as road for Penzance Drive. The dedicated status of this area has implications for the granting of the requested rights of way. The City Solicitor has been consulted on several occasions to determine if it is possible to grant new easements over dedicated park lands at other sites. In those cases, where the City would not be introducing a new utility into the park, the Solicitor has advised that there is no impediment to granting additional right of way area over dedicated parkland. The terms of the documentation recognize that the surface vegetation and amenities in the park are to be retained and protected, with the rights in favour of B.C. Hydro restricted as much as is practicable.

In this instance, the proposed kiosks are replacing an existing utility which also services the park. The easements proposed have been kept to a minimum and the negotiation of terms for the proposed SRW agreement will reflect the new City Policy for granting of SRW's. The under-grounding of the utility for which the kiosks are required is being done at the request of the City to beautify the Willingdon Avenue frontage of Confederation Park. As this project is of direct benefit to the park, the granting of the two small SRW's for the proposed kiosks is considered acceptable.

Question # 2: What is the time frame for the SRW and can it be for a specific term rather than in perpetuity?

On 1999 December 15, Council adopted a policy for the negotiation and granting of SRW's over City owned land. The standard form of SRW agreement for easements over City property stipulates that the easement is granted for the "life of the works". When BC Hydro no longer needs the land, the SRW would expire, and the land would revert back to City use. At the termination of the project, BC Hydro would be responsible for removal of the facilities and any park property restoration required.

Question # 3: Can the project be accomplished under a Park Use Permit (PUP) instead of a SRW?

In discussions with the City solicitor, a PUP license agreement allows only temporary use of the land, whereas, a SRW allows a party a type of ownership over the property for the life of the project. Agencies generally prefer a SRW over a PUP, because it gives long term security over use of the land, even if the property was sold or put under a new agreement. A SRW is considered the appropriate form in this instance for the following reasons:

- The works are of a long term nature.
- Under a SRW agreement, B.C. Hydro assumes the liability for the works and the associated risk.
- Under a SRW agreement, B.C. Hydro is responsible for maintaining and servicing the works.
- The costs associated with maintenance and risk are the responsibility of B.C. Hydro.

Another difference between the two agreements is that the SRW is registered against the land title, and would be evident on a title search, whereas, the PUP is not registered against the land title, and would not be evident on a title search. A registered SRW provides a record of the permitted use(s), the location of the works (a reference plan is attached to the SRW agreement) and the maintenance responsibility. This is of benefit to the City should any questions arise in the future about the works.

Question # 4: Are there any other options for locating the BC Hydro switching kiosks?

a) **In the boulevard off park property:**

In order not to interfere with the planned urban trail and tree strip, the kiosks need to be located to the east of the boulevard, within park property.

Also, the works are more susceptible to damage from vehicles when they are located on the boulevard. This often results in loss of power to the community.

b) **Locate all kiosks underground:**

The north kiosk will be located underground with a plate that is flush with the ground, and the second transformer kiosk is similar to transformers on residential lawns which could be partially screened with vegetation. The second, a transformer kiosk, must be above ground for easy access. Placing control boxes underground is also detrimental due to moisture and risk of shorts in the wiring in a damp environment.

c) **Locating all transformers under the road:**

It is possible to locate the south (third) kiosk on Willingdon Street, however, it is not feasible nor practical to locate the other two kiosks in the street, because they would be awkward to access. In addition, locating the switches in the road would require major infrastructure development costs for conduits and manholes. One of the kiosks contains switching for the Confederation Park sports fields and needs to be within easy access of the fields.

CONCLUSION

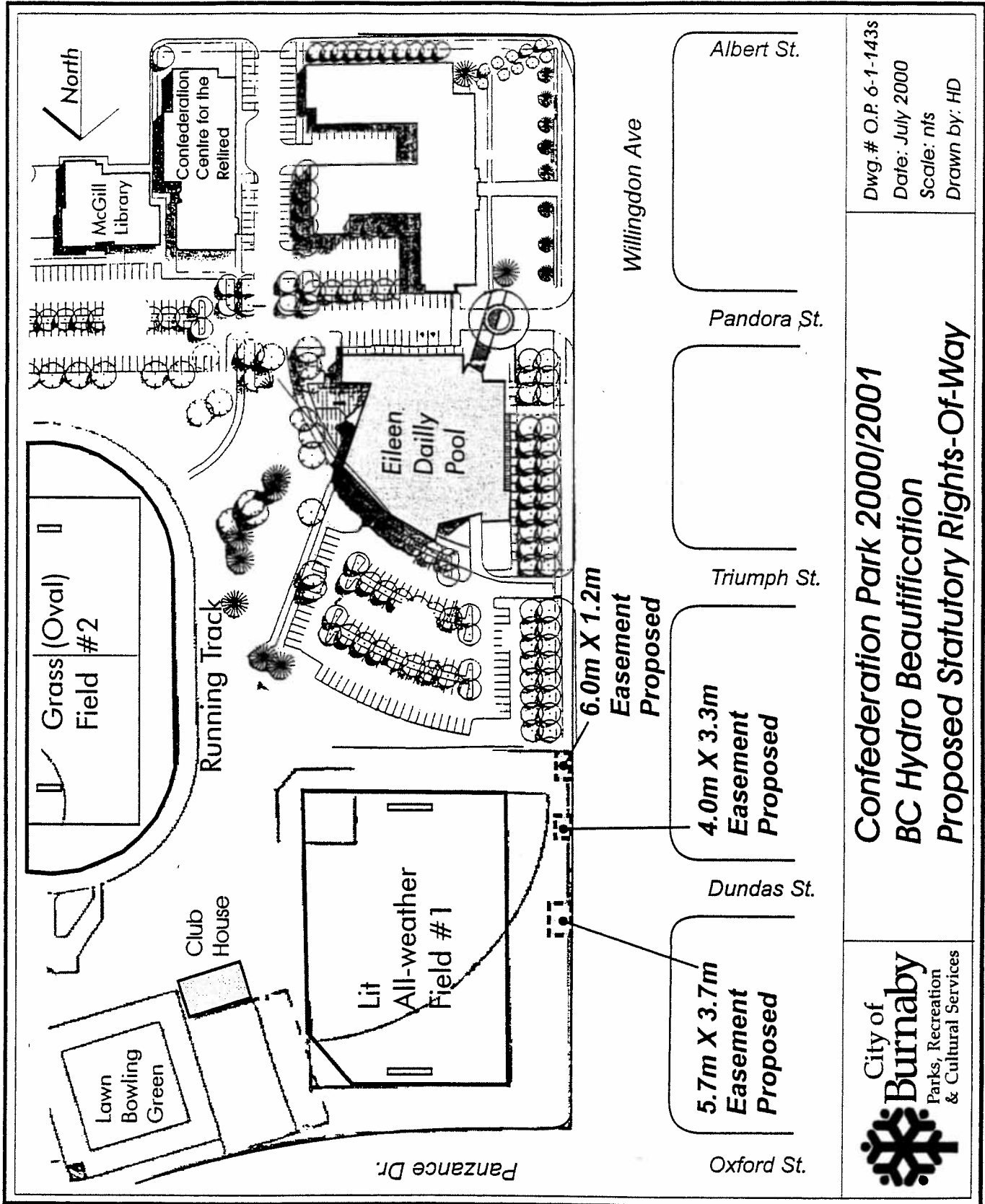
The removal of overhead utility lines along the Willingdon Avenue frontage of Confederation Park is considered to be a desirable and worthwhile endeavor for the City of Burnaby to pursue jointly with B.C. Hydro through the B.C. Hydro Beautification Program. It has been determined that the dedicated park status of the lands involved is not an impediment to the granting of the requested Statutory Rights of Way because the works are required to replace an existing utility which services the Park and are being placed underground for the purpose of beautifying the Willingdon Avenue frontage of Confederation Park. Staff have explored other options for siting the proposed kiosks and have concluded that it is only practicable to relocate the southern most kiosk to a location under Willingdon Street. The granting of two SRW's is, therefore, still requested to cover the two northern most kiosks.

ATS:MP:dl

Attachments (2)

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cc: City Solicitor
Director Engineering
Director Planning and Building

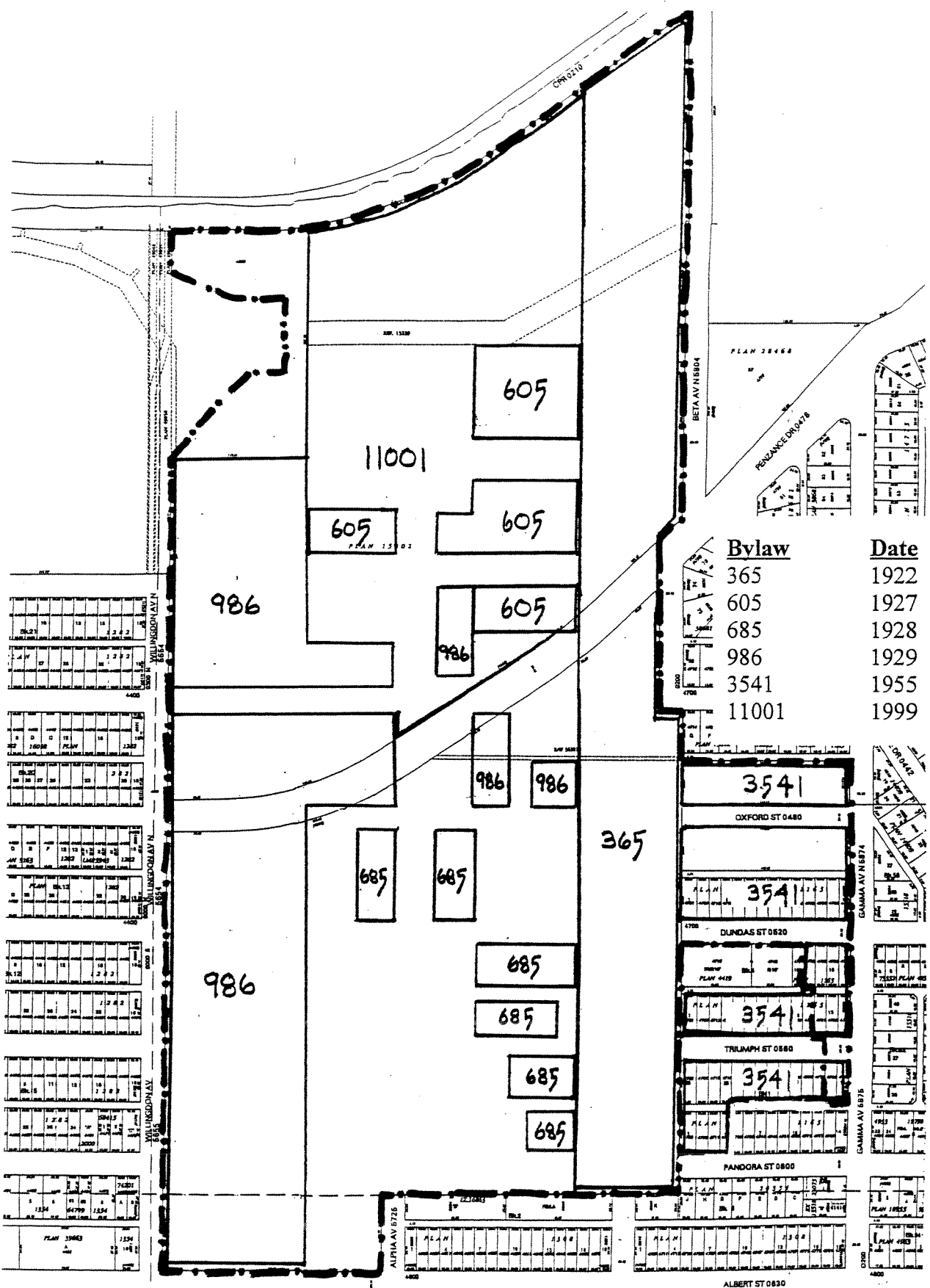


Dwg. # O.P. 6-1-143s
 Date: July 2000
 Scale: nfs
 Drawn by: HD

**Confederation Park 2000/2001
 BC Hydro Beautification
 Proposed Statutory Rights-Of-Way**



D: Data/small plans/montrose park 1.cdr



SKETCH OF CONFEDERATION PARK BYLAW DEDICATIONS

ATTACHMENT # 2

