

TO: CITY MANAGER 1995 JANUARY 9

FROM: DIRECTOR PLANNING AND BUILDING

SUBJECT: REQUEST TO RELEASE COVENANT
KENSINGTON SHOPPING CENTRE
6500 HASTINGS STREET (SEE ATTACHED SKETCH)

PURPOSE: To propose a process for Council consideration of a request to release a covenant registered against the Kensington Shopping Centre site.

RECOMMENDATION:

1. THAT any consideration of release of the covenant restricting fast food take-out operations on the Kensington Shopping Centre site, include referral of the matter to a Public Meeting to provide an opportunity for public input prior to Council approving or rejecting the request.

R E P O R T

1.0 BACKGROUND INFORMATION

- 1.1 Appearing elsewhere on this agenda is a request from Mr. Brian Kask to appear as a delegation regarding a covenant which is registered against the Kensington Shopping Centre site. This report provides background on the origin of this covenant and recommends a procedure to deal with this request.
- 1.2 On 1986 April 22, a Public Hearing was held for Rezoning Reference #13/86, which involved rezoning the subject site to CD Comprehensive Development District (based on C2 District guidelines) in order to develop a shopping centre. At the Public Hearing, a number of area residents expressed concern regarding the type of restaurant proposed for the site, with particular concern about fast food restaurants and litter problems.

In response to these concerns, Council directed that, as a prerequisite condition of rezoning, the owner of the property enter into a covenant which determines that the restaurant in the subject shopping centre be a family, sit-down restaurant, without take-out facilities. The covenant was subsequently prepared by the City Solicitor, executed by the property owner and registered in the Land Title Office prior to Final Adoption of the rezoning.

2.0 GENERAL DISCUSSION:

- 2.1 In November 1995, Planning staff were approached by the management company for the Kensington Shopping Centre regarding the possible release of a covenant restricting fast food operations on the subject property, in order to permit a McDonald's Restaurant on the property. Mr. Brian Kask had also approached staff regarding the possibility of establishing a Dairy Queen Brazier Restaurant within a vacant tenant space on the site. The covenant basically does not permit or encourage, through service, facilities or packaging, the sale of food or drink for immediate consumption outside the restaurant, including within automobiles or fast food take-out operations.
- 2.2 In response to both enquiries, Planning staff advised that both McDonald's and Dairy Queen restaurants would not be permitted by the covenant on the subject site, that Council would need to decide if the covenant were to be released and, due to the covenant being placed on the property in light of area resident concerns expressed at a zoning Public Hearing, staff would recommend that public input be sought by Council on this matter. In discussing this matter with the City Solicitor, it was confirmed that the Dairy Queen Restaurant proposal falls within the scope of the covenant and that Council's permission would be required to release the covenant.
- 2.3 In terms of the appropriateness of the covenant, this Department acknowledges that there could be some question as to its necessity and its reasonableness. Fast Food take-out type restaurants are already restricted somewhat by the Zoning Bylaw which permits Drive-In Restaurants only in the C7 Drive-In Restaurant District. Drive-In Restaurant is defined in the Zoning Bylaw as follows:

"DRIVE-IN RESTAURANT means an eating establishment with facilities for attracting and servicing prospective customers travelling in motor vehicles which are driven on the site where such establishment is located, and where the customer is permitted or encouraged, either by the design of the restaurant facilities or by service and/or packaging procedures, to:

- (a) *remain in his vehicle for service and for consuming the food which is purchased,*
or
- (b) *leave his vehicle to purchase food and is given the choice of either consuming the food in his vehicle or within the drive-in restaurant building."*

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The practical applicability of the covenant could also be questioned due to the fact that most restaurants today offer a take-out component or packaging of foods on request, to permit removal from the restaurant.

- 2.4 If Council is prepared to consider release of the covenant, in staff's view it would be appropriate to seek public input on the release due to the area residents' involvement with the covenant's original registration through the Public Hearing process.

It is suggested that the public input process be similar to that required for amendments for covenants on R"a" zoned properties, where a Public Meeting is held on the proposed amendment. In order to consider this request at a Public Meeting, Mr. Kask would need to submit a Certificate of Title for the property, an authorization form signed by the property owner and the nominal rezoning fee. Public notification would then be arranged identical to that required for a Public Hearing. Once the Public Meeting is concluded, the Planning and Building Department would report to Council on the matter, providing a recommendation on the request.

3.0 CONCLUSION:

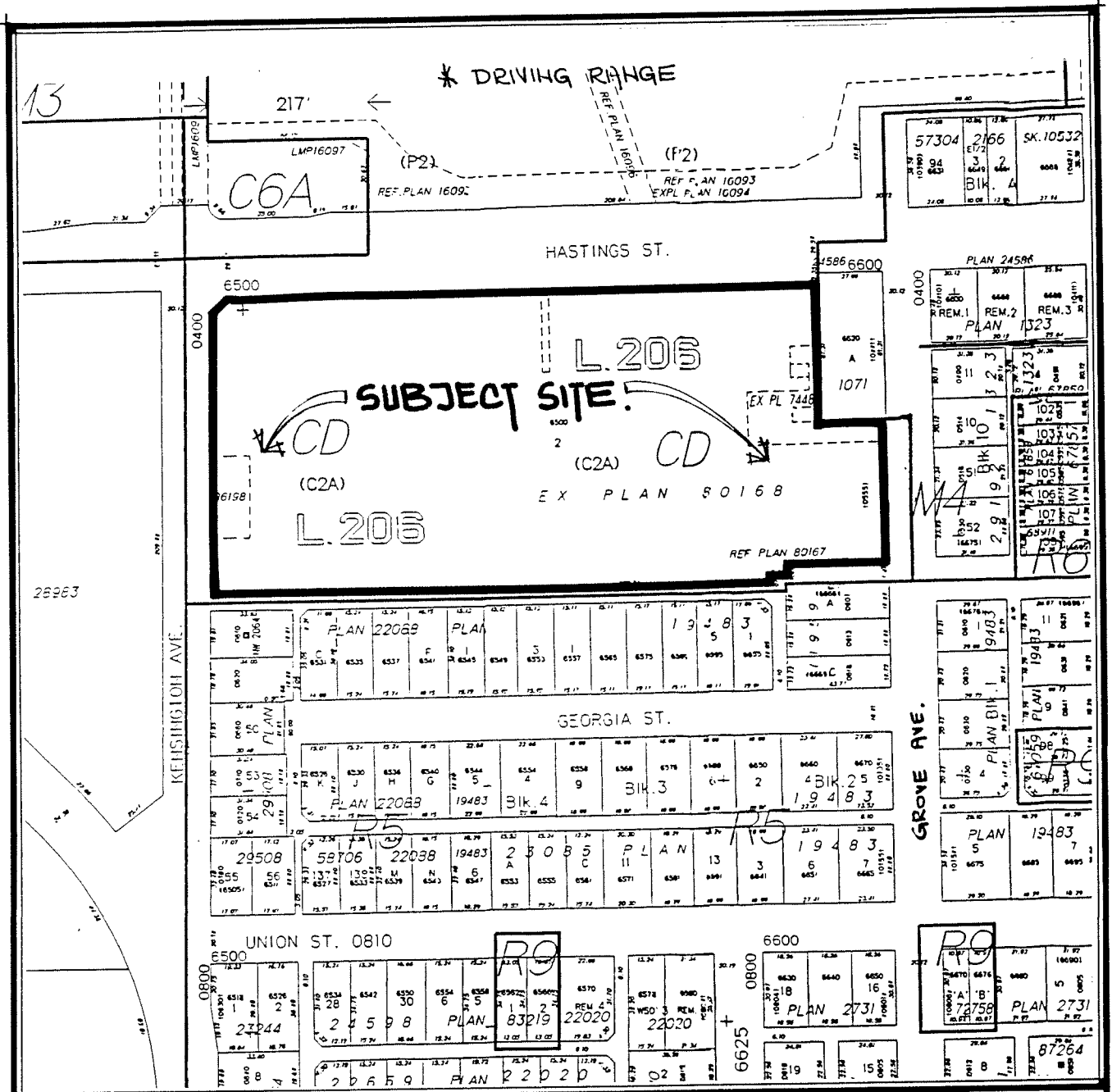
- 3.1 In light of the origin of the covenant on the subject site, which does not permit fast food, take-out operations, registered in response to area residents' concerns about this type of restaurant, it is recommended that release of the covenant be considered at a Public Meeting to be held after the Public Hearing scheduled for 1996 February 20..



D. G. Stenson
Director Planning and Building

BW:gk
Attach

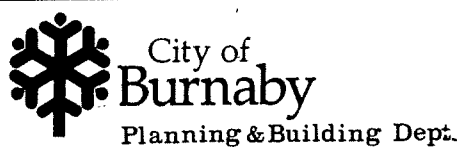
cc: City Clerk
City Solicitor



Date:
 JANUARY 1996

Scale:
 1:3000

Drawn By:
 J.F.C.



KENSINGTON SHOPPING CENTRE.

SKETCH #