



**STAFF REPORT
ACTION REQUIRED
Confidential Attachment**

**Acquisition of 17 Kenaston Gardens
15, 19 and 23 Kenaston Gardens - OPA, Rezoning and
Site Plan Control Applications**

Date:	September 30, 2009
To:	City Council
From:	City Solicitor
Wards:	Ward 24 Willowdale
Reason for Confidential Information:	Solicitor-client Privilege
Reference Number:	

SUMMARY

This report deals with the potential acquisition of a property known municipally as 15 Kenaston Gardens, and with a settlement offer in respect of a development proposal at the neighbouring property at 15, 19 and 23 Kenaston Gardens which is the subject matter of an upcoming OMB hearing.

RECOMMENDATIONS

It is recommended that:

1. Council adopt the confidential instructions to staff in Attachment 1 of this report;
2. the confidential information contained in Attachments 1 and 2 remain confidential; and
3. City Council delete the condition for the acquisition of 15 Kenaston Gardens as set out in recommendation (1) of GM24.46.

FINANCIAL IMPACT

The recommendations will have no financial impact beyond what has already been approved in the current year's budget.

ISSUE BACKGROUND

On September 17, 2009, Government Management Committee considered Item GM24.46, which was a report dated September 14, 2009, from the Chief Corporate Officer seeking approval to acquire the property known municipally as 15 Kenaston Gardens. Committee made the following recommendation to Council:

- “1. The acquisition of 15 Kenaston Gardens be conditional upon an agreement for the sale of the associated density having been entered into, to the satisfaction of the Chief Corporate Officer and the City Solicitor, such that the acquisition price be recovered.
2. The confidential information contained in Attachment 1 to the report (September 14, 2009) from the Chief Corporate Officer, remain confidential excepting the purchase price of the Property which shall be available for public release upon the completion of all terms of the purchase and sale agreement to the satisfaction of the City Solicitor.”

The acquisition of 15 Kenaston Gardens would secure part of the lands required to construct a new east-west road connection connecting Kenaston Gardens to Barberry Place. This road connection is shown in a Context Plan for this area, as adopted by Council in 2001.

In a related matter, Council has previously considered a Request for Direction report from City Planning dated April 15, 2009, which dealt with an application by the owner of 17-23 Kenaston Gardens for an Official Plan Amendment and Rezoning to allow the construction of an 8 storey condominium apartment building with ground floor commercial use.

On May 25 and 26, 2009, Council adopted the following recommendation with respect to Item NY26.44 regarding the planning applications:

- “1. City Council not support the applications, regarding 17-23 Kenaston Gardens, in their current present form.
2. City Council authorize the City Solicitor to attend the OMB hearing in opposition to the applications and to hire such outside planning and other consultants as necessary to support the refusal, and that, in particular:

- a. the density be reduced to 3 times coverage;
- b. there be no commercial component, and if a commercial component is approved there be no reduction in the number of parking spaces for the commercial component;
- c. the building height be 6 storeys as required by the Context Plan and if a higher height is permitted, the elevation in meters of the building including all roof top amenities and features be no taller than that of the immediate neighbouring buildings;
- d. in the event that density of more than 3.0 times coverage is approved, that the owner be required, prior to the issuance of the final Order approving such rezoning, to enter into an agreement with the City pursuant to Section 37 of the Planning Act, to provide the following:
 - i. a monetary contribution of \$135,000.00 by certified cheque to be issued for the purpose of park improvements and/or construction of a community centre in the immediate area, in consultation with the General Manager, Parks, Forestry and Recreation Division and the Ward Councillor, such payment to be made prior to the issuance of first above grade building permit; and
 - ii. require the owner to enter into a Site Plan Control agreement under Section 41 of the Planning Act to the satisfaction of the City Solicitor;
- e. there be no sale of the residual portion of the former cul-de-sac adjacent to 19 and 21 Kenaston Gardens; and
- f. the number of visitor parking spaces be provided at a rate of 0.25 spaces per unit.”

City Council further requested the applicant to meet with City staff to negotiate a settlement on a number of matters and report back to Community Council. Negotiation discussions took place, but no settlement was achieved.

On September 23, 2009, the City Solicitor, received a confidential and Without Prejudice Offer from solicitors for the applicant, Daniels HR Corporation, to settle their appeal to the Ontario Municipal Board. The Ontario Municipal Board hearing is scheduled to commence on October 5, 2009.

The Confidential Attachment to this report contains confidential advice from the City Solicitor with respect to the Offer to Settle which is subject to solicitor-client privilege.

CONTACT

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SIGNATURE

Anna Kinastowski, City Solicitor

ATTACHMENTS

1. Attachment 1 – Confidential Information
2. Attachment 2 – Letter from Goodmans dated September 22, 2009