



**STAFF REPORT
ACTION REQUIRED
Confidential Attachment**

**17, 19, 21 and 23 Kenaston Gardens - OPA, Rezoning
and Site Plan Control Applications**

Date:	October 1, 2009
To:	City Council
From:	City Solicitor
Wards:	Ward 24 Willowdale
Reason for Confidential Information:	Solicitor-client Privilege
Reference Number:	

SUMMARY

City Council 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. Council directed the City Solicitor and Planning staff 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.

The owner has now put forward a settlement offer on a “without prejudice” basis (the “Settlement Offer”). The confidential attachment presents and comments on the Settlement Offer, for Council’s consideration. This Report must be considered on an urgent basis as the OMB hearing is scheduled for Monday, October 5, 2009.

RECOMMENDATIONS

It is recommended that:

1. Council provide instructions to City staff based on the confidential recommendations contained in Attachment 1;
2. Council authorize the public release, at the end of this Council meeting, of the confidential instructions and the balance of the report to remain confidential; and
3. attachment 2 remain confidential in its entirety.

FINANCIAL IMPACT

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

ISSUE BACKGROUND

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.

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 to remain confidential