

Supplementary Report - 3850 and 3900 Sheppard Avenue East and 2350 to 2362 Kennedy Road - Zoning By-law Amendment and Draft Plan of Subdivision Applications

Date: November 25, 2021

To: Scarborough Community Council

From: Director, Community Planning, Scarborough District

Wards: Ward 22 - Scarborough Agincourt

Planning Application Number: 19 236435 ESC 22 OZ and 19 236443 ESC 22 SB

SUMMARY

A Final Report dated November 4, 2021 was submitted by the Director, Community Planning to Scarborough Community Council and the Director, Housing Policy & Strategy, recommending approval of a comprehensive redevelopment of the lands at 3850 and 3900 Sheppard Avenue East and 2350 to 2362 Kennedy Road. The proposal would allow for the replacement of the existing mall with a new community that will include a new road network, residential, commercial, parks and community uses. In addition to reviewing and recommending approval of the proposed applications, the report contained a number of recommendations related to the implementation of the proposed development, including recommending securing a number of community benefits via Section 37 of the *Planning Act*. The required Section 37 Agreement also was intended to secure matters related to implementation as a legal convenience.

Since the submission of the Final Report, City Planning staff have had discussions with the applicant about implementation. In the course of those discussions, it was determined that some of the recommended terms that would have been finalized through City Council adoption of the Final Report required additional clarity. As such, this Supplementary Report proposes minor and technical refinements to the recommendations in the November 4, 2021 Final Report on the subject applications to allow for a clearer and more certain path to implementation. City staff from various commenting Divisions and Legal Services have reviewed and assisted with the preparation of the refined recommendations contained herein.

City Planning therefore recommends that the recommendations of the Final Report as amended by the recommendations of this Supplementary Report be adopted.

RECOMMENDATIONS

The City Planning Division recommends:

1. That Scarborough Community Council amend Recommendation 4 of the Final Report to delete the words that are struck out and to add the underlined words so it reads as follows:

"4. The Parkland shall be conveyed to the City in phases, and ~~shall~~may be improved with Above Base Park Improvements, generally as follows:

a. Sheppard Park (2,480 square metres) generally as shown as Block 8 in Attachment 17 shall ~~to~~ be conveyed in Phase 1 prior to the issuance of above grade building permit for any ~~uses~~ residential use on the lands Blocks 5, 6, and 7;

b. Central Park (12,100 square metres) is to be conveyed in 2 park blocks generally as shown as Blocks 9 & 10 in Attachment 17 to the report dated November 4, 2021 from the Director, Community Planning, Scarborough District and the Director, Housing Policy and Strategy, Housing Secretariat;

c. Block 9 shall be conveyed prior to the issuance of any above grade building permits for any residential uses on Blocks 1 or 2 generally as ~~show~~ shown on Attachment 17; and

d. Block 10 will be conveyed prior to the issuance of any above grade building permit for residential uses on Block 3 in Phase 4- 3."

2. That Scarborough Community Council amend Recommendation 5 of the Final Report to delete the words that are struck out and to add the underlined words so it reads as follows:

"5. The Owner shall design and construct Base Park Improvements, and may design and construct Above Base Park Improvements on each of the Blocks comprising the Parkland-~~Park~~, which shall not exceed the Parks and Recreation component of the Development Charges. Should the General Manager, PFR and the Owner agree that the Owner shall design and construct Above Base Park Improvements, which election must be made prior to the issuance of the first above grade building permit for any part of the Development, then prior to the issuance of any above-grade building permit for any part of the Development, the owner shall submit a design and cost estimate for the Above Base Park Improvements, to be approved by the General Manager, PFR, and a letter of credit equal to 120 percent of the Parks and Recreation Development Charges payable for the development."

3. That Scarborough Community Council amend Recommendation 6 to delete the words that are struck out and to add the underlined words so it reads as follows:

"6. City Council approve a development charge credit against the Parks and Recreation component of the Development Charges for the design and construction by the owner of the any Above Base Park Improvements to the satisfaction of the General Manager, Parks, Forestry and Recreation. The development charge credit shall be in an amount that is the lesser of the cost to the owner of designing and constructing the Above Base Park Improvements, as approved by the General Manager, PFR, and the Parks and Recreation component of Development Charges payable for the development in accordance with the City's Development Charges By-law, as may be amended from time to time."

4. That Scarborough Community Council amend Recommendation 9.b. to delete the words that are struck out and to add the underlined words so it reads as follows:

"9. Prior to introducing the necessary bills to City Council for enactment the owner shall, at its sole cost and expense~~;~~:"

b. address all outstanding engineering issues identified in the Engineering Reports by the Chief Engineer and Executive Director, Engineering and Construction Services, in consultation with the General Manager, Toronto Water, and any other comments that may arise further to the review of materials submitted as part of the process to address the issues set out in the memorandum from Engineering and Construction Services, and the General Manager, Transportation Services~~;~~:"

5. That Scarborough Community Council amend Recommendation 10.a.1.dd to delete the words that are struck out and to add the underlined words so it reads as follows:

"10. Prior to introducing the necessary Bills for enactment, City Council require the Owner to enter into an Agreement pursuant to Section 37 of the *Planning Act*, to secure the following facilities or matters, which shall also be secured in the Zoning By-law Amendment, all to the satisfaction of the Chief Planner and Executive Director, City Planning and the City Solicitor:

a. the community benefits recommended to be secured in the Section 37 Agreement are as follows:

1. the design, construction, finishing, maintenance and provision of at least 272 affordable rental housing dwelling units comprised of at least 16,864 square metres of residential Gross Floor Area on the lands at 3850 and 3900 Sheppard Avenue East and 2350 to 2362 Kennedy Road (the "Affordable Housing Units"), provided that the Affordable Housing Units approved for the City of Toronto's Open

Door Affordable Housing Program incentives all to the satisfaction of the Chief Planner and Executive Director, City Planning Division, and the Executive Director, Housing Secretariat, in accordance with the following terms:

dd. the Affordable Housing Units shall be phased such that a minimum of 114 of the Affordable Housing Units shall be provided on ~~Block~~ Blocks 5 and ~~Block 6~~ /or 6 as part of Phase 1; a minimum of 101 of the Affordable Housing Units shall be provided on Blocks 1, 2 and/or 3 as part of Phase 2 of the development; and any remaining Affordable Housing Units shall be provided on Block 4 as part of Phase 3 of the development. Notwithstanding the foregoing, the owner shall be permitted to deliver the Affordable Housing Units at an earlier stage of the development upon arrangements satisfactory to the Chief Planner and Executive Director, City Planning and the Executive Director, Housing Secretariat;"

6. That Scarborough Community Council amend Recommendation 10.a.1.ee to add the underlined words so it reads as follows:

10. Prior to introducing the necessary Bills for enactment, City Council require the Owner to enter into an Agreement pursuant to Section 37 of the *Planning Act*, to secure the following facilities or matters, which shall also be secured in the Zoning By-law Amendment, all to the satisfaction of the Chief Planner and Executive Director, City Planning and the City Solicitor:

a. the community benefits recommended to be secured in the Section 37 Agreement are as follows:

1. the design, construction, finishing, maintenance and provision of at least 272 affordable rental housing dwelling units comprised of at least 16,864 square metres of residential Gross Floor Area on the lands at 3850 and 3900 Sheppard Avenue East and 2350 to 2362 Kennedy Road (the "Affordable Housing Units"), provided that the Affordable Housing Units approved for the City of Toronto's Open Door Affordable Housing Program incentives all to the satisfaction of the Chief Planner and Executive Director, City Planning Division, and the Executive Director, Housing Secretariat, in accordance with the following terms:

ee. the location and layouts of the Affordable Housing Units shall be to the satisfaction of the Chief Planner and Executive Director, City Planning and the Executive Director, Housing Secretariat, provided that the City will not require

the location of any such unit be on the sixth floor or higher in any Block;"

7. That Scarborough Community Council amend Recommendation 10.a.1.ii to delete the words that are struck out and to add the underlined words so it reads as follows:

"10. Prior to introducing the necessary Bills for enactment, City Council require the Owner to enter into an Agreement pursuant to Section 37 of the *Planning Act*, to secure the following facilities or matters, which shall also be secured in the Zoning By-law Amendment, all to the satisfaction of the Chief Planner and Executive Director, City Planning and the City Solicitor:

a. the community benefits recommended to be secured in the Section 37 Agreement are as follows:

1. the design, construction, finishing, maintenance and provision of at least 272 affordable rental housing dwelling units comprised of at least 16,864 square metres of residential Gross Floor Area on the lands at 3850 and 3900 Sheppard Avenue East and 2350 to 2362 Kennedy Road (the "Affordable Housing Units"), provided that the Affordable Housing Units approved for the City of Toronto's Open Door Affordable Housing Program incentives all to the satisfaction of the Chief Planner and Executive Director, City Planning Division, and the Executive Director, Housing Secretariat, in accordance with the following terms:

jj. Notwithstanding the annual rent increases permitted in ii. above, the rent (inclusive of utilities) charged to any first tenants or new tenants occupying an Affordable Housing Unit shall not be increased to an amount that exceeds 100% of the average rent for the same unit type in the City of Toronto, as reported by Canada Mortgage and Housing Corporation in its most recent annual Rental Market Report;"

8. That Scarborough Community Council amend Recommendation 10.a.1.II to delete the words that are struck out and to add the underlined words so it reads as follows:

"10. Prior to introducing the necessary Bills for enactment, City Council require the Owner to enter into an Agreement pursuant to Section 37 of the *Planning Act*, to secure the following facilities or matters, which shall also be secured in the Zoning By-law Amendment, all to the satisfaction of the Chief Planner and Executive Director, City Planning and the City Solicitor:

a. the community benefits recommended to be secured in the Section 37 Agreement are as follows:

1. the design, construction, finishing, maintenance and provision of at least 272 affordable rental housing dwelling units comprised of at least 16,864 square metres of residential Gross Floor Area on the lands at 3850 and 3900 Sheppard Avenue East and 2350 to 2362 Kennedy Road (the "Affordable Housing Units"), provided that the Affordable Housing Units approved for the City of Toronto's Open Door Affordable Housing Program incentives all to the satisfaction of the Chief Planner and Executive Director, City Planning Division, and the Executive Director, Housing Secretariat, in accordance with the following terms:

II. The new Affordable Housing Units to be constructed as part of each phase shall be made ready and available for occupancy no later than the date by which seventy percent (70%) of the new dwelling units ~~erected on each phase as described in d~~ as part of the construction of that phase. above are available and ready for occupancy, or to the satisfaction of, the Chief Planner and Executive Director, City Planning and the Executive Director, Housing Secretariat."

9. That Scarborough Community Council amend Recommendation 10.a.1.mm to delete the words that are struck out and to add the underlined words so it reads as follows:

"10. Prior to introducing the necessary Bills for enactment, City Council require the Owner to enter into an Agreement pursuant to Section 37 of the *Planning Act*, to secure the following facilities or matters, which shall also be secured in the Zoning By-law Amendment, all to the satisfaction of the Chief Planner and Executive Director, City Planning and the City Solicitor:

a. the community benefits recommended to be secured in the Section 37 Agreement are as follows:

1. the design, construction, finishing, maintenance and provision of at least 272 affordable rental housing dwelling units comprised of at least 16,864 square metres of residential Gross Floor Area on the lands at 3850 and 3900 Sheppard Avenue East and 2350 to 2362 Kennedy Road (the "Affordable Housing Units"), provided that the Affordable Housing Units approved for the City of Toronto's Open Door Affordable Housing Program incentives all to the satisfaction of the Chief Planner and Executive Director, City Planning Division, and the Executive Director, Housing Secretariat, in accordance with the following terms:

mm. The owner shall provide all tenants of the ~~Affordable Housing Units~~ affordable rental dwelling units with access to, and use of, all indoor and outdoor amenities in the ~~development building in which such tenant resides~~ at no extra charge; access to, and use of, these amenities shall be provided on the same terms and conditions as any other resident of the building without the need to pre-book or pay a fee, unless specifically required as a customary practice for private bookings

10. That Scarborough Community Council amend Recommendation 10.a.4.aa and 10.a.4.bb to add the underlined words so it reads as follows:

"10. Prior to introducing the necessary Bills for enactment, City Council require the Owner to enter into an Agreement pursuant to Section 37 of the *Planning Act*, to secure the following facilities or matters, which shall also be secured in the Zoning By-law Amendment, all to the satisfaction of the Chief Planner and Executive Director, City Planning and the City Solicitor:

a. the community benefits recommended to be secured in the Section 37 Agreement are as follows:

4. the preparation of a public art plan, in accordance with City Planning's Percent for Public Art process, and with approval from City Council, including that:

aa. prior to the issuance of the first above-grade building permit for any residential use on Block 7, the owner shall submit a public art plan, to the satisfaction of the Chief Planner and Executive Director, City Planning, in consultation with the Ward Councillor, detailing the design and construction of an on-site public art installation with a minimum value of \$250,000.00, with such value upwardly indexed in accordance with the Non-Residential Construction Price Index for the Toronto, calculated from the date of the Section 37 Agreement to the date of delivery of the financial security required by this Recommendation; and

bb. prior to the issuance of the first above grade building permit for any residential use on Block 7, the owner shall provide a letter of credit in the amount sufficient to guarantee 120 percent of the estimated indexed cost of the design and construction of the public art to be installed in accordance with the public art plan; ."

11. That Scarborough Community Council amend Recommendation 10.b.1 through 10.b.9, inclusive, and 10.b.11 through 10.b.13, inclusive, to delete the words that are struck out and to add the underlined words so they read as follows:

"10. Prior to introducing the necessary Bills for enactment, City Council require the Owner to enter into an Agreement pursuant to Section 37 of the *Planning Act*, to secure the following facilities or matters, which shall also be secured in the Zoning By-law Amendment, all to the satisfaction of the Chief Planner and Executive Director, City Planning and the City Solicitor:

b. The following matters are also recommended to be secured in the Section 37 Agreement as a legal convenience to support the development:

1. prior to the earlier of the issuance of the first above grade building permit for any residential use on Block 5, 6 and Block 7, the owner shall provide to the city the municipal services necessary for Phase 1, and convey to the City the Park Block 8, all associated with the first phase registration of the plan of subdivision pursuant to the approval of application 19 236443 ESC 22 SB;

2. prior to the earlier of the issuance of the first above grade building permit for any residential use on Block 1, Block 2 and Block 4, the owner shall provide to the city the municipal services necessary for Phase 2, and convey to the City the Park Block 9, all associated with the second phase registration of the plan of subdivision pursuant to the approval of application 19 236443 ESC 22 SB;

3. prior to the earlier of the issuance of the first above grade building permit for any residential use on Block 3 the owner shall provide to the city the municipal services necessary for Phase 3, and convey to the City the Park Block 10, all associated with the third phase registration of the plan of subdivision pursuant to the approval of application 19 236443 ESC 22 SB;

4. the owner shall develop the municipal services for the site in accordance with the following sequence, to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services:

aa. all municipal services necessary for Phase 1, as described in the Phasing Plan, shall be the provided first phase;

bb. all municipal services necessary for Phase 2, as described in the Phasing Plan, shall be ~~the~~ provided second phase;

cc. all municipal services necessary for Phase 3, as described in the Phasing Plan, shall be ~~the~~ provided third phase; and

dd. ~~But~~ in any event, the construction of the municipal services for a subsequent phase Phase shall not commence prior to the owner having satisfied the requirements of Recommendation 10(b)1 through 10(b)3, inclusive;

5. the construction and maintenance, at the owner's expense, an area of not less than 2,348 square metres across the north side of Blocks 1 and 7, connecting Public Street "D" with Public Street "F," for use by the general public as ~~Privately Owned~~ Publicly Accessible Open Space (POPS) with the specific location, configuration, and design to be determined and secured in the context of Site Plan Approval to the satisfaction of the Chief Planner and Executive Director, City Planning;

6. the construction and maintenance, at the owner's expense, an area of not less than 665 square metres at the south end of Block 7 near the intersection of Public Street "A" and Public Street "B," for use by the general public as ~~Privately Owned~~ Publicly Accessible Open Space (POPS) with the specific location, configuration, ~~and~~ design, and programming to be determined and secured in the context of Site Plan Approval to the satisfaction of the Chief Planner and Executive Director, City Planning;

7. the construction and maintenance, at the owner's expense, an area of not less than 385 square metres at the southeast corner of Block 5 near the intersection of Kennedy Road and Sheppard Avenue East for use by the general public as ~~Privately Owned~~ Publicly Accessible Open Space (POPS) with the specific location, configuration, and design to be determined and secured in the context of Site Plan Approval to the satisfaction of the Chief Planner and Executive Director, City Planning;

8. the construction and maintenance, at the owner's expense, an area of not less than 2,366 square metres on the lands along the west side of Public Street "C," for use by the general public as ~~Privately Owned~~ Publicly Accessible Open Space (POPS) with the specific location, configuration, and design to be determined and secured in the context of Site Plan Approval for

Block 3 to the satisfaction of the Chief Planner and Executive Director, City Planning;

9. as a pre-approval condition to Site Plan Approval for residential use on any block on the development site which includes a POPS as described in Recommendation 9a., the Owner shall convey to the City, for nominal consideration, on terms set out in the Section 37 Agreement, easement(s) in favour of the City in perpetuity, including support rights as applicable, for public use of the POPS, all to the satisfaction of the Chief Planner and Executive Director, City Planning and the City Solicitor;

11. the design and construction ~~the above base park improvements of any Above Base Park Improvements~~ to the new ~~park~~ parks by the owner in exchange for the Development Charge Credit against the Parks and Recreation component of the Development Charges;

12. prior to issuance of Notice of Approval Conditions for the first residential development of the lands the Owner shall produce Urban Design Guidelines to the satisfaction of the Chief Planner and Executive Director, City Planning Division that will ensure a high quality public realm, ~~allow for~~ address the incremental development of each phase and foster design excellence including innovative architecture and landscape design;

13. prior to the issuance of the first building permit for a residential use any part of the site, including permits for excavation and shoring, the owner shall enter into a municipal capital facility agreement with the City ("Contribution Agreement"), for the Affordable Housing Units that are approved for Open Door incentives, on terms satisfactory to the Executive Director, Housing Secretariat and in a form satisfactory to the City Solicitor. The owner shall provide such Affordable Housing Units in accordance with such agreement(s);"

COMMENTS

The Recommendations of this Supplementary Report provide greater clarity with respect to the intent of the Recommendations of the Final Report dated November 4, 2021 from the Director of Community Planning, Scarborough District and the Director of Housing Policy & Strategy. They do change the intent of the Recommendations of the Final Report as they relate to the way in which community benefits will be provided to the City, or the way in which the various matters of legal conveniences are to be secured.

Tying Obligations to Residential Building Permit

Largely, the refinements contained herein provide clarity in timing. The purpose of Recommendations 1, 10 and 11 of this Supplementary Report is to ensure that the issuance of a building permit for residential uses is used as a trigger for conveyance of parkland, and the delivery of required Section 37 benefits or matters of legal convenience. This is an appropriate change as the new development is intended to be built out over a number of years, during which the existing retail centre use will largely continue and potentially construct improvements for which a building permit would be required. Without the refinements as recommended by this Supplementary Report, any building permit for improvements to the existing mall could trigger Section 37 or parkland obligations, whereas the intent was to secure them as part of the redevelopment of the site with residential uses.

Refinements to Terms of Above-Base Parkland Improvements

The purpose of Recommendations 2 and 3 of this Supplementary Report is to ensure that the approach to the construction of above base park improvements, secured through potential development charge credits, is aligned with Parks, Forestry and Recreation's approach to applying these credits. The refinements ensure that the cost of the above base park improvements, should the applicant choose to construct them in exchange for development charge credit, does not exceed the parks component of the development charges generated by the site. The refinements proposed Recommendations 2 and 3 of this Supplementary Report also time the election by the applicant to pursue the aforementioned development charge credit to the issuance of the first building permit on site. Parks, Forestry and Recreation staff have reviewed and concur with the refined Recommendations of this Supplementary Report.

Engineering Reports

The purpose of Recommendation 4 of this Supplementary Report is to refine the scope of the engineering matters that are to be addressed through a report submitted and reviewed to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services and General Manager, Toronto Water. This is an appropriate adjustment in light of submissions that have already been made by the applicant and reviewed by City staff.

Delivery of Affordable Housing

The purpose of Recommendations 5 through 9 of this Supplementary Report is to provide clarity and improvement to the delivery of the Affordable Housing Units recommended to be secured as part of this approval, as follows:

- Recommendation 5 of this Supplementary Report allows flexibility for the Owner to deliver the Affordable Housing Units earlier than the proposed phasing recommended to be secured as a community benefit. City Planning staff support

providing the flexibility as it would allow for the earlier delivery of affordable housing units.

- Similarly, staff support the purpose of Recommendation 6 of this Supplementary Report, which ensures the Affordable Housing Units are provided below the sixth storey of any proposed development. This is an appropriate outcome, as base buildings and lower floors of midrise buildings provide improved opportunities for the provision of larger units;
- Recommendation 7 of this Supplementary Report corrects a cross-referencing error in the Final Report Recommendations;
- Recommendation 8 of this Supplementary Report provides additional clarity to ensure that Affordable Housing Units are delivered on a pace that is in step with the delivery of market-rent dwelling units in each phase of development;
- Recommendation 9 of this Supplementary Report provides greater clarity that affordable unit holders will have access to amenity spaces within the building in which they live (replacing the word "development"). If the word "development" were used, it would refer to the entire development of the subject lands which is intended to consist of multiple towers on multiple blocks. The intent was always that residents of affordable housing units have access to amenities in their building, not all buildings.

Technical Amendments

Aside from timing various legal conveniences to the issuance of a residential building permit as discussed above, the remainder of Recommendations 10 of this Supplementary Report corrects some typographic errors.

Conclusion

The adoption of this Supplementary Report will ensure that the appropriate and orderly development of the lands, as outlined in the Final Report dated November 4, 2021 from the Director, Community Planning, Scarborough District and the Director of Housing Policy & Strategy, is clearly implemented.

CONTACT

Kelly Jones, Senior Planner, Community Planning, Scarborough District, Tel. No. (416) 392-4293, E-mail: Kelly.Jones@toronto.ca

SIGNATURE

Paul Zuliani, Director
Community Planning, Scarborough District