

411 Victoria Park - Authorizing an Option to Purchase Agreement with Habitat for Humanity

Date: March 22, 2023

To: City Council

From: Executive Director, Housing Secretariat

Wards: Ward 20 - Scarborough South West

SUMMARY

City Council approval is required to authorize an Option to Purchase Agreement (the "Option Agreement") with Habitat for Humanity related to the affordable home ownership housing development at 411 Victoria Park Avenue in Scarborough Southwest.

Diamond Kilmer is the owner and developer of the 411 Victoria Park Avenue site and plans to transfer a parcel of land currently identified as "Block 4" on its draft plan of subdivision (the "Affordable Ownership Parcel") to Habitat for Humanity ("Habitat") to build 58 affordable homeownership townhomes. The Option Agreement between the City and Habitat is urgently required as it is a prerequisite for Diamond Kilmer to transfer the lands to Habitat and the registration of Diamond Kilmer's Plan of Subdivision and issuance of their first above-grade building permit.

Diamond Kilmer purchased 411 Victoria Park Avenue from CreateTO with the obligation to develop a parcel for affordable ownership housing purposes. A Section 37 Agreement with the City was executed in November 2021 that requires Diamond Kilmer to transfer the Affordable Ownership Parcel to a non-profit housing provider. The Section 37 Agreement requires the provider to enter into an Option Agreement with the City so that, in the unlikely event that the provider is unable to develop the property within a reasonable timeframe, the lands will return to the City. The City would then seek another non-profit group to build the affordable housing.

RECOMMENDATIONS

The Executive Director, Housing Secretariat recommends that:

1. City Council authorize the City, to enter into the Option Agreement substantially on the same terms and conditions set out Appendix A attached hereto, and on such

other or amended terms and conditions acceptable to the Executive Director, Housing Secretariat, and in a form satisfactory to the City Solicitor.

2. City Council authorize the Executive Director, Housing Secretariat to execute the Option Agreement on behalf of the City, in addition to corporate signing authorities.

FINANCIAL IMPACT

There will be no financial implications resulting from the adoption of the report.

DECISION HISTORY

On December 20, 2019, Diamond Kilmer (DK Victoria Park Inc.) filed applications for Official Plan amendment and rezoning, as well as draft plan of subdivision approval for the lands at 411 Victoria Park Avenue, 2510 and 2530 Gerrard Street East (applications 19 263629 ESC 20 OZ and 19 263636 ESC 20 SB respectively).

On July 14, 2021, City Council adopted item SC25.1 Final Report - 411 Victoria Park Avenue, 2510 and 2530 Gerrard Street East - Official Plan Amendment, Zoning Amendment, and Subdivision Applications, and approved the applications.

The City Council decision record and Final Report of the Director, Community Planning, Scarborough District dated June 4, 2021 can be viewed at the following link:
[Agenda Item History - 2021.SC25.1 \(toronto.ca\)](#)

On November 12, 2021, City Council enacted By-law No. 958-2021 to adopt Official Plan Amendment No. 551 which, in part, redesignated the subject Block 4 to *Apartment Neighbourhoods*. The amendment can be viewed at:
[By-law 958-2021 \(toronto.ca\)](#)

On the same date, City Council also enacted By-law Nos. 959-2021 and 960-2021 to amend Toronto Zoning By-law No. 569-2013 and former City of Scarborough Birchcliff Community Zoning By-law No. 8786 respectively, which can also be viewed at the following links:
[By-law 959-2021 \(toronto.ca\)](#)
[By-law 960-2021 \(toronto.ca\)](#)

With respect to the subject Block 4 in particular, the above zoning by-law amendments permit two, maximum 3-storey stacked townhouse blocks comprising a maximum gross floor area of 6,250 square metres. Associated Section 37 provisions also applied through these by-laws require the owner to convey Block 4, in fee simple to a non-profit housing provider, for the purpose of constructing at least 58 affordable housing units comprising 19 two-bedroom and 39 three-bedroom units.

For additional context, refer to Appendix B which illustrates the location of Block 4 outlined in relation to the larger subdivision.

COMMENTS

Housing Secretariat staff, in consultation with Legal Services, and Habitat have negotiated terms for the Option Agreement. The purpose of the agreement is to provide the City the option to acquire or assign the affordable ownership lands to a third party affordable housing provider in the event that Habitat is unable to develop the lands. This will ensure that the lands are developed for affordable housing purposes as expeditiously as possible.

City Council authority is required to authorize the Executive Director, Housing Secretariat, to execute the Option Agreement on such terms as set out in Appendix A, and as summarized below.

In the event that Habitat does not obtain a building permit, enter into an agreement setting out the terms for delivery of the affordable housing units or register a mortgage in favour of the City within four years of acquiring the property, the City may exercise its option to purchase the lands for nominal consideration. The option period is 21 years.

Habitat may also exercise an option to engage an alternative non-profit housing provider to purchase the lands with the consent of the City at any point following its acquisition of the property up until the expiry of the City's option period, provided Habitat has not commenced construction. Transfer to an alternative provider would be for nominal consideration, and only permitted with the consent of the City. The alternative provider would similarly be required to develop the property with affordable ownership units.

Habitat would only be able to sell the land on the open market should Habitat exercise its option and the parties be unable to identify an acceptable alternative provider, and the City refuse to acquire the property, within a five year period. In such a circumstance, the City would realize on the profits from the sale, less any carrying costs incurred arising from the delay of the City.

CONTACT

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SIGNATURE



Abigail Bond
Executive Director, Housing Secretariat

ATTACHMENTS

Appendix A

Option Agreement – Major Terms and Conditions

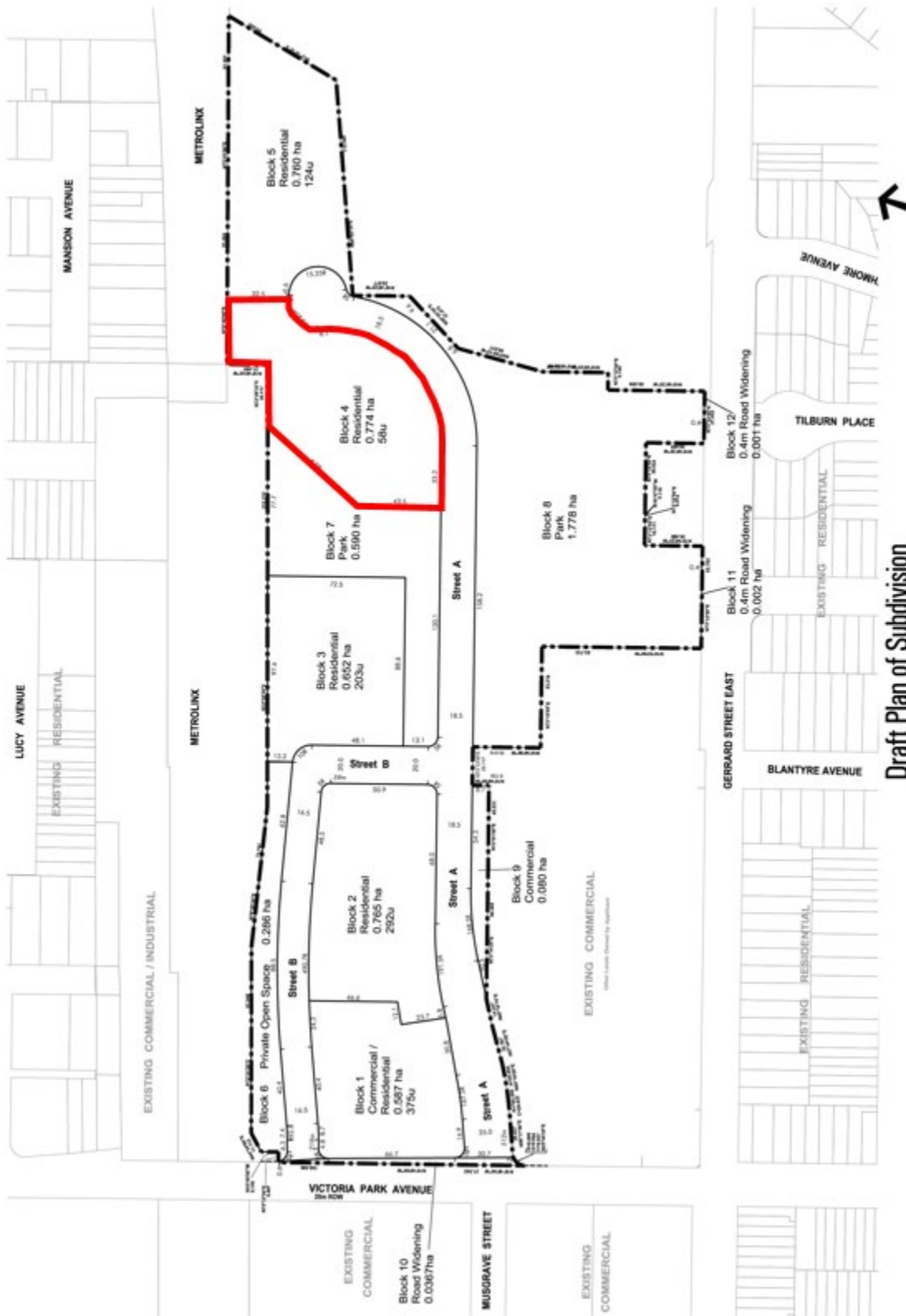
Parties	<ul style="list-style-type: none">• City of Toronto (the "City")• Habitat for Humanity Greater Toronto Area, or such other party as approved by the Executive Director, Affordable Housing (the "Provider")
Property	Block 4 Draft Plan of Subdivision Application No. 19 263636 ECS 20 SB and shown on Appendix C to this Staff Report (the "AO Lands")
AO Lands Closing Date	The date on which the AO Lands are transferred in fee simple to the Provider.
Provider Deliverables	The Provider shall: <ul style="list-style-type: none">(i) obtain building permit for the units on the AO lands(ii) enter into delivery agreement as required by Section 37 Agreement(iii) register a mortgage in favour of the City to secure certain obligations under the Section 37 Agreement (the "City Charge")
Provider Deliverables Period	Within 4 years of the AO Lands Closing Date.
City Option	City shall have the option to purchase the AO Lands where the Provider Deliverables have not been undertaken within the Provider Deliverables Period.

City Option Period	The period beginning 4 years after the AO Lands Closing Date and ending 21 years after the date the Option Agreement is executed, exercisable on notice from the City to the Provider.
City Charge	Shall be in a form satisfactory to the City Solicitor and shall be discharged upon occupancy of the first affordable ownership unit on the AO Lands without payment by the Provider of any kind.
City's Undertaking	Provider may request the City's Undertaking not to exercise the City Option for 1 year during the City Option Period, which may be provided at the City's sole and unfettered discretion and which may be unreasonably withheld.
Alternative Provider	An alternative affordable housing provider.
Provider Option	The Provider shall have the option to engage an Alternative Provider to purchase the AO Lands, notice of which to be delivered in writing (the "Alternative Provider Notice").
Provider Option Period	The period of time beginning on the AO Lands Closing Date and ending on the earlier of (i) expiration of the City Option Period, (ii) issuance of a below grade building permit for the units on the AO Lands, and (iii) termination of the Option Agreement.
Selection of Alternative Provider	Where the Provider intends to exercise the Provider Option, it shall find an Alternative Provider to purchase the AO Lands, and shall provide notice of same to the City (the "Alternative Provider Notice").
Confirmation of Alternative Provider	City shall have 6 months (the "City Notice Period") to confirm satisfaction with the Alternative Provider and the City may stipulate terms and conditions of transfer of the AO Lands to the Alternative Provider (the "Alternative Provider Deliverables").
Costs of Provider	The Provider shall be responsible for its own costs associated with the sourcing of the Alternative Provider, and may contract with the Alternative Provider for the reimbursement of costs.

<p>No Alternative Provider</p>	<p>Where</p> <p>(i) no Alternative Provider can be sourced by the Provider, or</p> <p>(ii) the City has not provided its consent to the proposed Alternative Provider during the City Notice Period, or</p> <p>(iii) the City is not able to approve the transfer of the AO Lands to the Alternative Provider within 120 days after the Alternative Provider Notice,</p> <p>then the City shall have 5 years after receipt of the Alternative Provider Notice to provide notice to the Provider that the City shall purchase the AO Lands.</p>
<p>Sale on Open Market</p>	<p>Where there has been no Alternative Provider selected and the City has declined to acquire the AO Lands, then the Provider shall be entitled to sell the AO Lands to a third party purchaser for fair market value. The City shall be entitled to the gross profits of sale less the Provider's carrying costs.</p>
<p>Termination of Option</p>	<p>Where (i) the City does not elect to exercise the City Option within the City Option Period, (ii) the City does not approve of the Alternative Provider and declines to purchase the AO Lands or (iii) where the Alternative Provider has fulfilled the Alternative Provider Deliverables, the Option Agreement shall terminate.</p>
<p>Option Agreement as Agreement of Purchase and Sale</p>	<p>Where the City has exercised its option to purchase, a binding agreement of purchase and sale shall come into effect on terms of Option Agreement.</p>
<p>Purchase Price</p>	<p>\$10.00 subject to adjustments for all items normally adjusted between a vendor and purchaser. No chattels are included in the Purchase Price.</p>
<p>Access to AO Lands</p>	<p>City shall have access to the AO Lands during the City Option Period for inspections and due diligence.</p>
<p>As-Is, Where-Is</p>	<p>AO Lands to be acquired as is, where is save and except representations from the Provider and the property shall be in equal or better condition compared to the AO Lands Closing Date.</p>
<p>Provider Representations</p>	<p>The Provider shall provide certain representations and warranties regarding the building, work orders and environmental matters from the time of the AO Lands Closing Date.</p>

Encumbrances	AO Lands shall be subject only to certain permitted encumbrances as acceptable to the City Solicitor.
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Appendix B: Location Map



Draft Plan of Subdivision

Appendix C: AO Lands

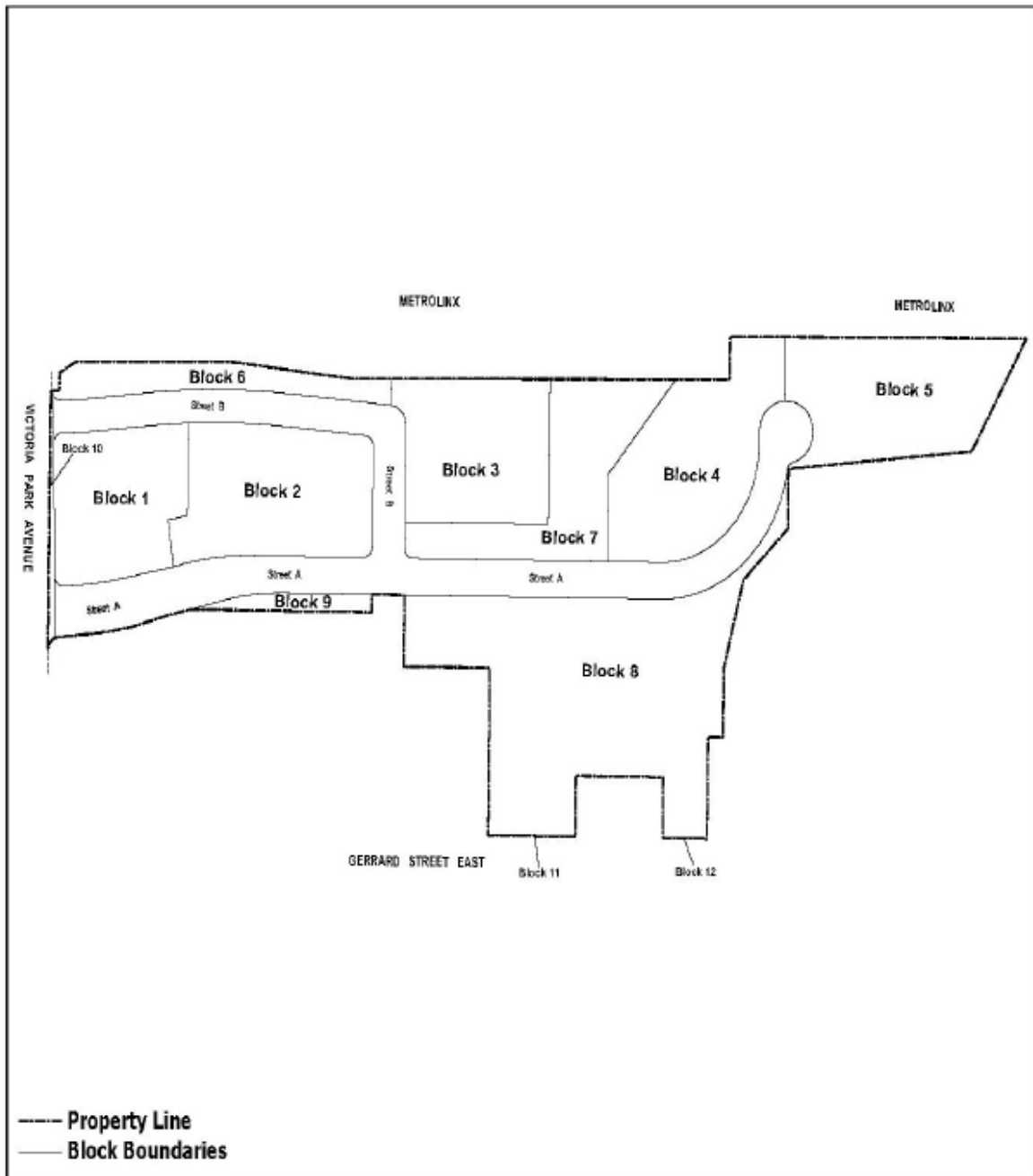


Diagram 3

**411 Victoria Park Avenue &
2510 and 2530 Gerrard Street East, Toronto**

File #19 263636 ECS 20 SB



Not to Scale

City of Toronto By-law 569-2013