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File No. 292943/000055

May 23, 2017

Delivered by Email

Mayor and Council of the City of Hamilton
 City of Hamilton
 71 Main Street West, 1st Floor
 Hamilton, ON L8P 4Y5

Attention: City Clerk

Dear Mayor Eisenberger and Members of Council:

Re: Zoning By law Amendment and Draft Plan of Subdivision, Piers 6, 7 & 8
City File Nos: ZAC 16 034/25T 201605 (the “applications”)
Parrish & Heimbecker, Pier 10

BLG has been retained as legal counsel by Parrish & Heimbecker Limited (P&H). We previously wrote to the City with respect to the proposed Zoning By-law Amendment and Draft Plan of Subdivision for Piers 6, 7 & 8 and expressed our client’s concerns regarding the introduction of new sensitive land uses on Piers 7 and 8. We enclose for your reference a copy of our letter dated January 12, 2017.

We made a deputation to the Hamilton Planning Committee at the public meeting on May 16, 2017, and requested that consideration of the applications be deferred until (i) complete study of noise and dust impacts has been completed, and (ii) meetings have been held between the City and P&H and their respective noise and air quality experts to determine appropriate mitigation measures.

We reiterate our client’s concerns with the land use compatibility of the applications and ask that City Council defer consideration of the applications until after the City has adequately considered the matters noted above. In particular, we ask that Council direct staff to undertake the necessary additional study of the noise and dust/odour impacts and engage the industrial businesses on Pier 10 in meaningful discussion on mitigation strategies. As noted below, the City’s own consultant recognizes that necessary mitigation may include measures such as building orientation adjustments that would require changes to the plan of subdivision and by-law as currently drafted.

In their current form, the applications indicate sensitive multi-unit residential mid to high-rise buildings along the eastern border of the site, facing the P&H site. This is against the recommendation of the City’s own expert, Pinchin Ltd, which recommends placing sensitive uses further west while developing the east border of the site with non-sensitive commercial uses.

With respect, these applications are premature until mitigation strategies have been thoroughly canvassed with the City's experts and industry on Pier 10, including the possibility of siting non-sensitive commercial uses along the eastern boundary of the site and/or re-orienting the buildings as proposed by Pinchin in its 2017 report.

P&H

P&H is the owner and operator of a large grain handling terminal and flour mill on Pier 10, which is approximately 270m from the east side of Pier 8. P&H has recently completed a \$45 million investment in the new mill on Pier 10 which was supported by the City of Hamilton and all other levels of government. The P&H mill is the first greenfield site flour mill built in Ontario in 75 years. The P&H Mill has created 16 sustainable full-time jobs while also retaining 200 jobs in Ontario.

In December of 2015, Mayor Eisenberg commented on the P&H development, saying "We also need to have that commercial industrial capacity grow to help ensure that our tax base is more healthy and more balanced going into the future, so not so reliant on the residential tax base". P&H is concerned for the long term viability of its operations given the confirmed incompatibility of the sensitive land uses introduced by the applications.

The May 16, 2017 Staff Report discusses the adjacent industrial uses and suggests that there are opportunities to work collaboratively with adjacent industries to develop mitigation strategies. The Staff Report states that "currently discussions between industrial operators are ongoing (Parrish and Heimbecker) in order to address this approach". However, there has been no consultation about possible mitigation strategies with P&H to date, as no meetings have been held involving the relevant experts. P&H remains eager to meet with City Staff and Pinchin to discuss mitigation strategies. Those meetings need to happen now, before approvals, just as Pinchin recommends in their 2017 reports.

The Protection of Industry and Employment

Protection of industry and employment uses, and particularly the use of marine facilities, is prescribed by the Province of Ontario and required by the City of Hamilton in the Urban Official Plan ("UHOP").

The *Provincial Policy Statement, 2014* (the "PPS 2014"), policy 1.2.6, requires sensitive land uses to be planned to ensure that they are appropriately designed, buffered and/or separated from major facilities, such as P&H, to prevent or mitigate adverse effects from odour, noise and other contaminants.

Policy 1.6.8.2 states that major goods movement facilities (which includes ports) shall be protected for the long term. Policy 1.6.8.3 requires new development proposed on lands adjacent to existing transportation facilities to be compatible with, and supportive of, the long-term purposes of those facilities, and to be designed to avoid, mitigate or minimize negative impacts on and from transportation facilities.

In addition, policy 1.6.9 of the PPS 2014 specifically requires planning in the vicinity of ports to be undertaken to preserve the longer term operation and economic role of the marine facility:

Planning for land uses in the vicinity of *airports, rail facilities and marine facilities* shall be undertaken so that:

- a) their long-term operation and economic role is protected; and
- b) *airports, rail facilities and marine facilities and sensitive land uses* are appropriately designed, buffered and/or separated from each other, in accordance with policy 1.2.6. (emphasis added)

The following policy goals of the City of Hamilton are stated in the UHOP:

- “Recognize and support the contribution of older industrial areas...” (Policy 5.1.1)
- “Protect lands designated Employment Area from non-employment uses and to support the employment functions...” (Policy 5.1.4)
- “Minimize land use conflicts between heavy industrial uses and sensitive land uses.” (Policy 5.1.5)
- “Recognize the major role that the Port of Hamilton plays in the City’s economy, being one of the largest in the country and one of the finest inland ports on the continent...” (Policy 5.1.8)

The permitted uses on Pier 10 are unequivocally set out in policy E.5.6.1 of UHOP:

The following uses shall be permitted on lands owned by the Hamilton Port Authority, so long as they are owned by the Hamilton Port Authority, on Piers 10...

- a) uses such as the movement, management, safety and convenience of ships; uses involved in the carriage of goods or passengers to other modes of transportation;
- b) related storage and processing;
- c) vessel and barge docks;
- d) industry and commerce ancillary or necessary to the port;
- e) recreational boat facilities;
- f) ancillary uses including retail and restaurant; and
- g) the provision of services such as security, employment, immigration, labour, administration, technical, food, fuel and maintenance.

The policies in the PPS 2014 and the UHOP seek to protect industrial and employment uses while recognizing their economic importance. The applications must be consistent with the PPS 2014 and conform with the policies of the Urban Hamilton Official Plan and it is incumbent upon City Council, as decision maker, to thoroughly consider whether it has assurance that the applications in their current state conform.

It is not sufficient to approve the applications while deferring the completion of studies and determination of required mitigation to a later date. Compliance with the PPS 2014 and UHOP must be demonstrated now.

The Pinchin Reports

In January of 2017, Pinchin finalized two reports that consider the feasibility of the redevelopment of Pier 8; a Preliminary Dust and Odour Impact Assessment (the “Dust Assessment”) and an Environmental Noise and Vibration Impact Feasibility Study (the “Noise Study”).

The City’s Noise Study specifically considers the P&H site and states “[t]he proposed development and the introduction of new sensitive receptors within proximity to Parrish & Heimbecker may result in noise complaint potential and thus impact P&H’s ability to operate and expand operations from a provincial air/noise permitting perspective.”

In addition, the City’s Dust Assessment concludes with respect to P&H, “[i]ntroduction of new sensitive receptors within proximity to Parrish & Heimbecker will increase the risk of complaints and could adversely impact their ability to secure or maintain their Environmental Compliance Approval and expand operations”.

If P&H chose to expand its operations as of right, which is contemplated to occur on the western vacant portion of the P&H site, its ability to do so could be impacted by the proposed development.

The City’s experts have indicated that the introduction of sensitive uses to Pier 8 may jeopardize the operation and growth of the Pier 10 industrial area. This conclusion is at odds with the requirements of the PPS 2014 and the Urban Hamilton Official Plan which seek to protect employment uses and preserve the operation of the marine facility.

Most importantly, the Pinchin Report recommends that commercial uses should be developed along the eastern edge of the property, and if not, extensive implementation of at receptor noise control will be needed:

Based on the results from the assessment, where some industry is located within 300 m from proposed development and the current Class 1 or 2 receptor designation benchmark, it would normally be recommended that non noise sensitive uses such as commercial spaces be developed along the east areas of the site. This recommendation has been made in order to place sensitive spaces further to the west such that they are not within the 300 metre minimum setback limit from neighbouring industry, and to provide some shielding from the industry. It should be noted that the current plan proposes noise sensitive multi-tenant high rise buildings along the east border of the site. In the event that this is not changed to non-sensitive commercial spaces, it can be expected that extensive implementation of at receptor noise control will be needed. This includes the designation of the entire project property as Class 4 lands, points of reception, as defined by MOECC in publication NPC-300. (emphasis added)

Even if the site is designated Class 4, extensive mitigation is required, to the point of re-orienting buildings in a way not now accommodated by the plan of subdivision or the zoning by-law. The Pinchin report considers alternative building orientation as follows:

Given the stage of the project and the many different possibilities for building design and potential sensitive receptor locations, it is recommended that any proposed building layout concepts and designs be reviewed by a qualified Acoustical Engineering professional prior to any approval in order to ensure compliance with the MOECC guidelines.” [emphasis added]

Against this recommendation, the proposed Zoning By-law Amendment has requirements that site residential units facing Pier 10, including minimum building lot frontages, minimum setbacks, minimum number of residential units in each of the blocks facing Pier 10, and commercial uses restricted to ground floor. Further, the plan of subdivision in its current form would not accommodate the type of building orientation proposed by Pinchin: an overlapping of buildings end to end so as to close off the east-west corridors now open to the east that will permit noise and dust to penetrate deep into Pier 8 (as shown in the Pinchin report).

The Staff Report acknowledges that appropriate mitigation could involve re-orienting buildings, and that “more significant changes could be made in relation to the siting of the buildings that would require changes to the draft plan of subdivision and / or the zoning by-law”. The Zoning By-law Amendment and Draft Plan of Subdivision do not build in mitigation measures. In addition, the proposed conditions of approval do not provide sufficient legal right and opportunity for industry on Pier 10 to provide necessary input to protect both industry and the proposed development.

It is our respectful submission that, on the basis of the City’s own Noise Study and Dust Assessment, the applications as articulated do not satisfy Provincial or City policy requirements. It is simply not good planning to approve a by-law and plan of subdivision that will require further changes to meet the most fundamental of requirements, land use compatibility. The approval of the applications is premature until impact mitigation has been properly addressed and industry on Pier 10, including P&H, has been engaged in that work.

Yours truly,
Borden Ladner Gervais LLP



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Cc: Jason Thorne, General Manager,
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Parrish & Heimbecker

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File No. 292943/000008

January 12, 2017

Delivered via Email (jason.thorne@hamilton.ca)

Mr. Jason Thorne
General Manager
Planning & Economic Development Department
City of Hamilton
71 Main Street West
Hamilton, ON L8P 4Y5

Dear Mr. Thorne,

**Re: Zoning By-law Amendment and Draft Plan of Subdivision, Piers 6, 7 & 8
City File Nos: ZAC-16-034/25T-201605
Parrish & Heimbecker, Pier 10**

We have been retained as land use planning counsel for Parrish & Heimbecker, Limited (“P&H”) the operator of a grain handling terminal and flour mill on Pier 10. We write to supplement the letter of October 25, 2016 submitted by our client’s land use planner, Samuel Head, regarding our client’s concerns in respect of the introduction of new sensitive land uses on Piers 7 and 8, and to express our client’s expectation that the proponent will comply with applicable provincial guidelines including MOECC Guidelines D-6 and NPC-300.

We will not repeat the detailed information regarding our client’s facility on Pier 10 as set out in Mr. Head’s letter. It is clear that our client has made a substantial economic investment on Pier 10, and a significant contribution to the establishment of an agri-food hub in the port. These efforts have been supported by all levels of government and the Hamilton Port Authority. The Port of Hamilton and the industries it hosts play a major role in the City’s economy. Given this role, the City has recognized the need to work in consultation with the HPA to harmonize City and HPA planning. The City’s official plan instruments recognize the need to protect existing industrial areas in the Port and to establish appropriate separation and mitigation measures.

Our client is deeply concerned that the viability of these industries will be threatened by the introduction of sensitive land uses on Piers 7 and 8 and that there has been inadequate consultation with existing industries, contrary to the approach directed by MOECC in NPC-300.

NPC-300 states:

“Where a site in proximity to a stationary source is in the process of being developed or re-developed for noise sensitive uses (such as residential), it is considered the

responsibility of the proponent/developer of the noise sensitive land use to ensure compliance with the applicable sound level limits and for this responsibility to be reflected in the land use planning decisions.”

NPC-300 goes on to state that the involvement of owners of stationary sources in the land use planning process “is highly recommended” when an adjacent new noise sensitive land use is proposed. The Guideline also states that a “cooperative effort” on the part of the proponent and the stationary source owners is desirable.

The Guideline provides that it is considered the responsibility of the proponent of the new noise sensitive land use to ensure compliance with applicable sound level limits. This includes mitigation. NPC-300 lists a number of general design principles to facilitate the juxtaposition of sensitive land uses and stationary sources. These principles include (but are not limited to) site layout considerations, such as using the closest buildings to provide shielding for the remainder of the development, ensuring the closest buildings face away from the stationary sources, and ensuring that the exposed side of the new buildings do not contain sensitive indoor spaces. An example of the application of such principles is found in the development of Pier 27 in Toronto adjacent to the Redpath Sugar plant.

Our review of the materials available, including the draft plan of subdivision and concept plans, suggests that these design principles have not yet been incorporated into the planning of the fabric of Piers 7 and 8. It is our client’s view that, in the context of a comprehensive redevelopment of Piers 7 and 8 in close proximity to stationary and other noise sources on Piers 9, 10 and higher, ensuring compatibility and compliance with provincial guidelines should be a fundamental driver of planning aspects such as site layout and the distribution of new uses on Piers 7 and 8.

It is also our client’s expectation that the City will formally confirm a Class 4 area in this instance. This classification must be reflected in the proposed zoning by-law amendment, and the considerations applicable to a Class 4 area as set out in section B9.2 of NPC-300 must be applied. Our client also requests that the City provide to it all noise impact studies prepared and formal confirmation of the area classification, as contemplated by NPC-300.

In respect of noise studies, our client has reviewed the Noise and Vibration Impact Feasibility Study prepared by Pinchin Ltd. In our client’s view (as informed by its consultant team), this study is preliminary at best and it expressly contemplates that further investigation is required, including verification of the predictable worse case noise impact and appropriate mitigation strategies. On the understanding that Pinchin is undertaking further work, we request to receive such further studies in a timely manner.

Our client also requests that a meaningful dialogue be established between the City, as proponent and approval authority, and the affected industries in respect of these land use compatibility issues. We request that a meeting (and if warranted, subsequent meetings) be held between the City and stationary source owners who wish to participate, including the involvement of our respective noise and other experts. At the very least, there should be a direct sharing of information and expert advice at such meetings so that no party is acting in the absence of relevant and complete information, and issues and possible solutions can be identified.

We urge that this dialogue be commenced before the statutory public meetings are held for the zoning by-law amendment and draft plan subdivision applications, and before those instruments are put before City Council for a decision. Our client seeks an outcome which protects industry in conformity with the Official Plan documents.

We look forward to hearing from you.

Yours very truly,
Borden Ladner Gervais, LLP



Pitman Patterson
JPP:sa

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- c.c. Chris Phillips, Senior Advisor, Planning & Economic Development Department, City of Hamilton (chris.phillips@hamilton.ca)
- c.c. Client

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