

ISSUE DATE:

**June 22, 2012**



PL100691

Ontario  
Ontario Municipal Board  
Commission des affaires municipales de l'Ontario

Deanlee Management Inc. has appealed to the Ontario Municipal Board under subsection 17(40) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from the failure of the City of Hamilton to make a decision respecting the lands composed of Part of Lot 57, Concession 2 in the City of Hamilton.

(Approval Authority File No. OPA-07-014)

OMB File No. PL100691

Deanlee Management Inc. has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law 6593 of the City of Hamilton to rezone lands respecting Part of Lot 57, Concession 2 from "AA-S1353" (Agricultural) District to a site specific "DE" (Low Density Multiple Dwellings) District, Modified and "E" (High Density Multiple Dwellings) District, Modified to implement the Official Plan Amendment

OMB File No. PL100692

Deanlee Management Inc. has appealed to the Ontario Municipal Board under subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from the failure of the City of Hamilton to make a decision respecting a proposed plan of subdivision on lands composed of Part of Lot 57, Concession 2 in the City of Hamilton

(Approval Authority File No. 25T-200712)

OMB File No. PL100706

**APPEARANCES:**

**Parties**

Deanlee Management Inc.

City of Hamilton

Niagara Escarpment Commission

Derek Schmuck

Roy Wolker

**Counsel**

P. DeMelo

N. Smith

J. Thompson

**DECISION DELIVERED BY H. JACKSON AND K. J. HUSSEY AND ORDER  
OF THE BOARD**

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**Introduction**

The matter before the Ontario Municipal Board ("Board") is an appeal by Deanlee Management Inc. ("Applicant"), from the City of Hamilton's ("City") failure to make a decision on proposed amendments to the Official Plan ("OP") and zoning by-law, with respect to 9.6 hectares of land composed of Part of Lot 57, Concession 2 in the City of Hamilton. The lands that are currently designated Major Institutional are required to be re-designated and rezoned to permit the Applicant's proposal for a development consisting of town homes and apartment-style buildings.

**Background and context**

The subject property, formerly owned by Chedoke Hospital, was declared surplus and offered for sale in 2006. It is known locally as the Chedoke Brow Lands. It is bounded by the brow of the Niagara Escarpment on the north side and Scenic Drive that encircles the land on the south side. The site is bisected by Sanatorium Road that leads south to Mohawk Drive. The eastern portion is comprised mainly of a large woodlot and on the west side, there is a smaller woodlot. A portion of Chedoke Creek flows to the north.

The Chedoke Hospital is to the south of Scenic Drive. There is a municipally owned storm water treatment pond at the southwest corner of Scenic Drive and Sanatorium Road and on the southeast corner there is a new, four-storey residence for Columbia College. There are low density residential uses to the east and west of the subject site and there is a golf course to the north at the toe of the escarpment. The Brow Trail, part of the Bruce Trail, occurs along the brow of the escarpment.

The subject property is historically and physically unique and was originally developed as a sanatorium for the treatment of tuberculosis patients. The physical setting of the buildings within the landscape was designed intentionally to provide a tranquil, natural environment to assist in the patients' recovery. The open space remains an important characteristic of the neighbourhood. The first building on the portion of the lands north

of Scenic Drive was the Brow Infirmary, built in 1916. Subsequent buildings that were added to the site were clustered, with curved roads and open spaces between the buildings. There are important cultural heritage structures remaining on the site that are designated under the *Heritage Act* and/or identified by the City in its inventory of heritage properties.

The Applicant purchased the subject property and in 2007, submitted an application for a development consisting of town homes and apartment buildings. Existing heritage buildings would be retained and used if possible.

The original application proposed buildings with up to 10 storeys. Various studies were commissioned to support the proposed development, including planning, transportation, visual impact assessments, archaeological, heritage, phase 1 environmental site assessments and soils investigations.

The proposal was modified to have apartment buildings up to six storeys, with 600 standard residential units. At this number of units, it was determined that there would be no servicing constraints and no traffic issues that would restrict development on the site. Transit is available to the site.

The Applicant undertook a series of public meetings and consultations and had many meetings with City planning staff on the proposed development. Consultation with the public indicated that the public wanted very little to no development at the site. Ultimately, on June 10, 2010, City planning staff recommended approval of the application to the Economic Development and Planning Committee (Exhibit 11).

Council neglected to make a decision regarding the applications and on June 30, 2010, the Applicant filed these appeals.

## **Issues**

### Niagara Escarpment Commission (NEC)

At the start of the hearing, the Board was advised that the Applicant and the NEC had reached a settlement. Counsel for the NEC advised the Board that the concerns of the NEC were addressed in the Minutes of Settlement of May 26, 2011 (Exhibit 1), and the

subsequent Addendum to the Minutes of Settlement, dated December 6, 2011 (Exhibit 2).

The NEC originally had the following concerns regarding the proposal:

1. Views from a distance to the brow, that is, would there be a sky-lining of buildings above the vegetation?
2. Would there be sufficient setback from the brow?
3. Would sufficient natural features on the site be preserved to retain the park-like setting of site that currently exists?
4. Would visual access from the neighbourhood into the site be preserved?

Counsel advised that the first concern is no longer an issue, as the proposed buildings will have a maximum height of six storeys, rather than eight storeys as was contemplated in an earlier proposal. With regard to the setback from the brow, there is an agreed minimum 30 m setback that is carried through to the current Minutes of Settlement and this satisfies the NEC. With respect to the third concern, the NEC is satisfied that the natural features to be retained will preserve the open character of the site.

With regard to the fourth concern, it was agreed that the lands would be subjected to a Holding provision (H symbol) under the zoning by-law. The development would require a full visual impact analysis to be done at the site planning stage for the removal of the holding zone. As described by the NEC, there is still a concern about the view, but this will be provided for by a process that requires a master site plan and precinct plan for each development phase, and includes that the required studies be conducted to the satisfaction of the Director of Planning.

The specific matters to be addressed in the visual impact assessment, as agreed between the NEC and Deanlee Management Inc., are provided in Attachment "4" to this Board Order. This document shows the specific view-sheds, and in red-line, the points at which the visual impact should be assessed. Through this mechanism, the NEC is satisfied that the visual impact will be addressed in consultation with the NEC.

The proposed development must conform with the purpose of the Niagara Escarpment Plan (NEP). Counsel for the NEC stated that she was satisfied that the documents presented address the NEC concerns in a manner that the NEC considers appropriate.

On that basis, the NEC withdrew from the hearing.

#### Derek Schmuck

Derek Schmuck, who requested and was granted party status, withdrew his appeal before the start of the hearing.

#### The City

Agreed statement of facts:

The City and the Applicant submitted an agreed statement of facts (Exhibit 6). The City and the Applicant agree on the following:

- Medium density appropriate
- 2:1 for retirement units
- Maximum unit count and Gross Floor Area (GFA) on west side of site
- Ground floor commercial uses
- No traffic constraints
- No servicing constraints
- In-force OP applicable (not the new OP subject to appeal)
- Urban in NEC plan, do not require development permit under NEC
- Should provide access to Bruce Trail
- 30 m setback from brow
- A zoned open space

- Chedoke Creek not dedicated to City
- Storm Water Management (SWM) facility to be retained in private ownership (maintenance by condominium)
- No physical parkland dedication
- Parkland credit due to brow dedication
- Listed (not designated)
- Designated are the Brow and Long and Bisby buildings
- Cultural heritage features are dealt with appropriately
- Appropriate implementation framework (in OP)
- Further visual impact assessments prior to site plan approval by NEC

The parties agreed on a series of actions ("a tool box") for the implementation of the development, including:

- Holding provisions will be in place.
- The site will not be developed all at once, but over time.
- Studies have been done for a macro level of buildings, but would need to be updated depending on the actual plan as some of the studies can only be done when the site plan is complete.

### **Remaining Issue**

#### The City, Roy Wolker and area residents

Notwithstanding the significant amount of negotiation and agreement that was reached between the parties prior to the hearing, a number of issues remain outstanding.

1. Unit Yield and Density

- a) Should the floodplain be included for purposes of calculating net residential density?
- b) What is an appropriate unit yield on these lands (450 versus 529)?
- c) Is the density proposed in the Deanlee planning documents acceptable and does it constitute medium density residential development?
- d) Should the zoning by-law exclusion from the unit yield cap for dwelling units in an existing building apply where the Brow Infirmary building is demolished and replaced (Mr. Wolker's concern)?

2. Maximum Building Height

- a) Should building heights be restricted to 4 storeys for buildings along Scenic Drive in Area B?
- b) Should building heights be restricted to 4 storeys for the entire development (Mr. Wolker's concern)?

Mr. Wolker and the area residents are also concerned about open space, cultural and natural heritage and conformity with the NEP, as specified below:

3. Landscaped Open Space Along Scenic Drive in Area A

- a) What is the appropriate percentage of landscaped open space along Scenic Drive in Area A in relation to the policy objective of clustering town homes along a limited portion of the Scenic Drive frontage in order to preserve an open space character along Scenic Drive?

4. Cultural Heritage Features

- a) Does the proposed development protect the cultural heritage landscape and identified built heritage features, in conformity with Section C.6 of the Official Plan?

## 5. Natural Heritage

- a) Does the proposed site plan and design account for the fact that the natural heritage is an integral and significant part of the cultural heritage?

### The witnesses

Wendy Nott, who was retained by the Applicant, and Jamie Bennett, who was retained by the City, provided opinion evidence on land use planning. Dr. Barry Colbert was called as a lay witness by Mr. Wolker. Dr. Colbert is a professor of policy and strategic management and Chair of the Board of "Sustainable Waterloo Region". He participated in the public meetings related to this proposed development as he and his family are long-time residents of Hamilton. Dr. Colbert has lived adjacent to the Brow Lands for nine years.

A number of local residents testified in opposition to the proposal. Among other concerns, the residents are of the view that the development is too intense and does not maintain the open, park-like setting of the area.

### **Developmental Concept**

Ms. Nott described the development concept with the assistance of Exhibit 5, a figure showing the "with prejudice" re-development plan, dated September 29, 2011. The lands are to be developed comprehensively as a condominium site. The section of Sanatorium Road within the site would be closed to through traffic and the closed portion of the road would be dedicated to the City, to be used for the Brow Trail. Sanatorium Road from Scenic Drive into the development site would be maintained as a private road. This road would also provide pedestrian access to join up with the Brow Trail.

The proposed development consists of 529 conventional townhouse and apartment units. However, the Applicant has proposed that one or more of the buildings would have retirement lifestyle units. These generally are smaller units and generate less traffic and have fewer other impacts. In light of that fact, the replacement is on a 2:1 basis, which means that if standard residential units are converted to retirement lifestyle units, they can be converted 2:1. The Applicant therefore has the option to have 429



conventional town home and apartment units and 200 active retirement lifestyle units (or some other appropriate combination).

There is GFA credit if any existing buildings are retained and used, thus providing an incentive to use the existing buildings. Live-work or home occupation and commercial uses will be permitted at some locations.

There is currently a significant amount of pedestrian activity at the site. The extension of the Brow Trail and open landscape areas would provide added benefit to the residents as well as to the public.

The Site is comprised of three main areas:

1. Area A

There is no dispute between the City and Applicant regarding this area, as shown in Schedule J-1 of Exhibit 20, the proposed modified Chedmac Planning Area Secondary Plan.

There are five town home units (Blocks A to F) proposed, consisting of four units each. These blocks front onto either Scenic Drive or the Brow. The units are designed in a manner to maintain an open landscape character. There are large Norway maples along the west side of Scenic Drive that are to be preserved as long as they are healthy. Three new, four-storey apartment buildings, Building I, J, and K, are proposed within the interior in this area. The existing Brow building is proposed to be retained and converted, if possible. If not, it will be demolished and rebuilt. If demolished, the same building footprint will be used. For the Brow Annex building, the proposal is to retain the original portion and to demolish the more recent additions. The Moreland building is to be retained wherever possible and converted.

2. Area B

Area B includes the lands that front onto Sanatorium Road and/or Scenic Drive as well as the lands surrounding Chedoke Creek. The intensity, the building height, and compatibility of the development with the surrounding area remain issues for Area B.

There are four buildings proposed. Buildings L and N are located on opposite sides of Sanatorium Road at the intersection of Scenic Drive. Both buildings are proposed to be six-storey apartment buildings, with a step-back of 3 m at the fifth floor and an additional 3 m on the sixth floor. Both these buildings are the focus of the height and density dispute. Building M, in the interior of the site, is proposed to be six storeys in height, and Building O that fronts onto Scenic Drive is proposed to be a four-storey building.

The Long and Bisby building within Area B is a designated heritage building and it will be retained.

### 3. The ESA Woodlot

The large woodlot on the east portion of the site has been identified as an ESA. This woodlot, along with a buffer, will remain as private open space.

The section of Chedoke Creek and surrounding hazard lands to the west of Sanatorium Road will also be retained in private ownership. There will be additional SWM facilities for the development, but they will be privately owned and determined at a later date.

### **Planning context**

The proposal is required to conform to the relevant provisions of the Hamilton Wentworth Regional Plan. The lands are designated Urban in this plan, which is intended to accommodate the majority of settlement with a range of land uses.

The lands are designated major institutional in the in-force City OP, related to the previous use as a hospital. An official plan amendment (OPA) is required to re-designate the lands for residential purposes. The City has determined that the entirety of these lands should be part of the Chedmac Secondary Plan area, an objective of which is to provide a range of housing types with a range of affordability that provides for low- and medium-density housing.

The City's OP contains its own policy framework to implement that portion of the escarpment occurring within the city. These lands fall within Special Policy Area 1C that has the following criteria:

1. Minimize the further encroachment on the escarpment; and

2. All development is to be compatible with the visual and natural environment of the escarpment.

The new Hamilton Urban OP, though not yet approved, represents council's intent. Consistent with the in-force OP, the new Urban OP promotes and supports intensification and a full range of dwelling types and densities. The GRIDS study was undertaken by the City as a conformity exercise with the Growth Plan and was conducted as a high-level review. The subject area was identified as a location for intensification as it is a large institutional parcel in the GRIDS study.

## **Evidence and findings**

### Unit yield, density and building height

The issue of most significance to the City, Mr. Wolker, and area residents, is the calculation of unit yield, density and building height related specifically to the two buildings at the corner of Scenic Drive and Sanatorium Road, being Buildings L and N, as shown on the site plan (Exhibit 5). These buildings are proposed to be six storeys, with step-backs on the fifth and sixth storeys that front onto Scenic Drive. The City and Mr. Wolker are opposed to the two additional storeys above four storeys and the additional 79 units, which corresponds to 529 units versus 450 units.

The site-specific OPA proposes a density that is broken down by number of units and by GFA. The mass is allocated by floor space, and is 20,000 m<sup>2</sup> on Block A with a maximum of 195 units, and 34,000 m<sup>2</sup> in Block B with a maximum of 335 units. The Applicant proposes a maximum number of 529 dwelling units.

The parties had much discussion and disagreement regarding the calculation of the number of residential dwelling units per hectare ("residential density") and whether the calculation should be "net" or "gross", with no clear definitions of either. Ms. Nott testified that it is her interpretation that net excludes the public lands and should also exclude the woodlot as it is an ESA; therefore, the portion of the road dedicated to the City and the woodlot is excluded in the calculation. The balance of the land (about 6.8 ha) is the land upon which the residential density is calculated. This includes the lands of Chedoke Creek, on the basis that these lands will be privately owned by the condominium development and will be an amenity feature enjoyed by the residents.

This approach was supported by the City planning staff during Ms. Nott's consultations with the City (Exhibit 11). The creek lands and any associated SWM facility will be protected and preserved in open space character, but will be privately owned and operated.

Under cross-examination, Ms. Nott testified that the residential density was calculated separately for Area A (195 units / 2.98 ha = 65 units per ha) and Area B (335 units / 3.87 ha = 86.5 units per ha); for Area B, the area in the calculation includes the lands around Chedoke Creek. Mr. Bennett took issue with the calculation of the residential density for Area B. Mr. Bennett regards the inclusion of the lands around Chedoke Creek as inappropriate. In his opinion, these lands are not an amenity and should not be included in the calculation. He notes that the lands cannot be developed as they are hazard lands. He supports his interpretation by noting that if the lands were publicly owned, then they would not be included in the calculation for residential density. If the lands are not included, then the calculation for the number of units per hectare is higher and falls within the high density category, which does not conform to the Secondary Plan. He recommends that the density be reduced and that all the buildings be limited to four storeys.

#### Intensity, compatibility and sensitivity

Mr. Bennett testified that along with his concern regarding the increase in density of the development in comparison to the surrounding lands, the City does not identify this as an area for intensification within the City. As such, there is no imperative to maximize density at this location. He opined that the proposed density is more intensive than the surrounding area and does not fit or achieve harmonious integration with the surrounding low density residential uses and moderate intensity institutional uses. Mr. Bennett testified that the growth strategy for the City is described in the GRIDS plan and that this plan identifies that growth should be at nodes and corridors. This site is not within such an area.

Dr. Colbert testified as a lay witness. His view, shared by many of the residents who spoke, was that the development is far too intense for the location. He felt that there should be far fewer units (only 175 units) in order to minimize the overall environmental impact on the area, both in terms of the building footprint and the number of people and cars that would be introduced to the area. He felt that the built form should conserve

the park-like character and the cultural heritage of the setting as a healing centre, preserve the maximum number of trees and green space, and adaptively re-use buildings wherever possible. He also noted that the area is not near main arterial roads, is not in an identified area for intensification, and the character of the surrounding neighbourhood is very low density and therefore, raises compatibility issues. He felt strongly that the new development should be a mix of residential and small local commercial uses to build an integrated, pedestrian friendly, sustainable community.

#### The Board's findings on height, density and intensity

The Board finds that the site is an appropriate location for the intensity proposed. The testimony of Ms. Nott has satisfied the Board that the location is appropriate for this form of development. The site is served by a defined road and the physical size is sufficiently large to allow for mitigation strategies to meet compatibility issues. The Board finds that the development is compatible with the surrounding neighbourhood, can function at the density proposed, and can exist in harmony with the surrounding low density uses. The following factors are relevant to this finding:

- The proposed planning documents are consistent with the City documents
- The development will contribute to a variety of housing types
- An obsolete site will be redeveloped
- There is a gradation of residential unit types proposed
- Apartments are concentrated across from SWM facilities and institutional uses and are buffered by the woodlot to the east
- Controls on massing will also control intensity of use
- The access through the site is consistent with existing access
- Cultural heritage is being maintained
- The intensity of the site can be met by the existing infrastructure and road capacity

- The development will contribute to city's intensification goals of 40%, therefore is consistent the with the intensification policies of the city

The Board finds that the intent of the Chedmac Secondary Plan for an appropriate gradation of density is achieved by this development. The Board is in agreement with Ms. Nott's opinion that the arrangement of the buildings on the site will ensure compatibility with the surrounding area. She testified that buffering will be achieved by building setback and landscaped open spaces and will not impact the low density residential uses. The Board agrees with Ms. Nott's opinion that the lands surrounding the creek will provide amenity space to the residents of the proposed development, and therefore, it is appropriate to include these in the calculation of units/hectare for the determination of the density of the development in Area B. As described by Ms. Nott, the lands where the creek is located are to be improved as set out in the arborist's report (Exhibit 31). These lands will be maintained by the condominium corporation and will be in private ownership. On this basis, the Board finds that the maximum number of dwelling units proposed (335 for Block B) does not exceed the maximum densities allocated for Area B. Area A is not in dispute.

The total number of units – 529 units to 6.8 ha – is equivalent to 78 units per ha and the Board finds this density is appropriate for medium density residential development. This conforms to the Chedmac Secondary Plan that indicates that the zoning for these areas is to be medium density. The potential for retirement lifestyle units on a 2:1 basis does not change the calculation of the determination of medium density.

The dispute regarding density is related to the proposed fifth and sixth floors in buildings L and N. These two buildings will have step-backs on the fifth and sixth floors at the front of the buildings that front onto Scenic Drive. The step-backs will mitigate the visual impact of the height and the mass of the buildings. The buildings are isolated from the low density, single family homes to the east and west that are more sensitive to impacts from apartment-style buildings. There are no identified adverse impacts with respect to privacy or overlook to the single family homes from the two, six-storey buildings. There is no issue with shadows, as shadows would fall on the site.

The Board finds that the impact of the fifth and sixth storeys is very limited, as these buildings are opposite a storm water pond and a four-storey building (the Columbia College residence). There will be no significant impacts to the surrounding area as a

result of these two buildings at the six-storey height. There is a six-storey building (M) that is integral to the development fronting on to Sanatorium Drive and there is no opposition to the height of this building.

For all these reasons, the Board finds that the proposal will result in an amenable mixture of densities and arrangement that will minimize conflicts between different forms of housing. There is no dispute with parking; there will be one access through Sanatorium Road, and therefore, there will be no alteration of traffic flows.

#### Conformity with NEP

Ms. Nott testified that it is her opinion that the proposal conforms to the relevant provisions of the NEP. Mr. Walker still expressed concern regarding conformity. Ms. Nott opined that the NEP is a provincial plan that is directly related to the physical landscape. The site is within a designated urban area and an objective of the plan is to minimize further urbanization, which is met by this proposal. The NEC is satisfied that the planning documents meet the Development Objectives of the NEP and that the continued consultation with the NEC, as expressed in the Minutes of Settlement, will ensure that the requirements of the NEP are met. It is Ms. Nott's opinion that the urban design can be made compatible through the implementation process and that the proposed uses would be in conformity with NEP. The Board agrees.

The Board finds that the planning documents conform to the NEP and the City policies that relate to the Niagara Escarpment. The Board accepts the opinion of Ms. Nott in this regard. The Board also accepts that with the agreement reached between the NEC and the Applicant, the objectives of the NEP are satisfied.

#### Landscaped open space

At issue for Mr. Wolker and the area residents is whether there is sufficient landscaped open space on Scenic Drive to maintain the open character. The Board finds that the plan which allows only town homes fronting onto Scenic Drive in Area A, with 50% open space to a depth of 25 m, provides sufficient open space to maintain the character of the area. The development will be on a distinct parcel, separated by Scenic Drive to the south, the brow to the north, and the woodlot to the east, with a connection to the low density area by Scenic Drive.

### Alternative development proposals

Both Dr. Colbert and Mr. Bennett presented alternative development proposals for the lands. It is evident that there are alternatives that could be contemplated for development of the lands. However, the matter before the Board is the conceptual plan as presented in Exhibit 5, which the Board finds to be appropriate and constitutes good planning. Ultimately, prior to development, a master site plan and precinct plans will be required to ensure compatibility with the OP and the surrounding neighbourhood and be to the satisfaction of the NEC.

### Natural and cultural heritage

With respect to natural and cultural heritage, Mr. Wolker expressed concern that the Norway maples along Scenic Drive be protected as they are an important part of the current visual landscape. The Board is satisfied that the requirement for a tree preservation plan to the satisfaction to the City will ensure appropriate protection of the trees. It is not likely that the trees will be impacted by the development, as there is an 8 m setback from the road right of way, and there are no driveways onto Scenic Drive from the development.

The Board is satisfied that significant natural areas have been identified and protected (such as the creek) and will continue to be protected during the ongoing development.

The proposal includes measures to re-use existing cultural heritage buildings on the site and measures to ensure that new development is compatible with the cultural heritage landscape that is comprised of curvilinear roads and open spaces.

### **Decision and order**

The Board finds that the development is consistent with the Provincial Policy Statement. The proposal is residential intensification that is appropriate and consistent with provincial policy. The Board finds that the proposal conforms to the relevant provisions of the Hamilton Wentworth Regional Plan and conforms to the in-force City of Hamilton Official Plan. As with the in-force OP, the new Urban OP, not yet in force, promotes and supports intensification and a full range of dwelling types and densities that is met by this proposal. The entirety of these lands is to be part of the Chedmac Secondary Plan



area and consistent with policies in that plan, a range of housing types with a range of affordability that provides for medium density housing is proposed.

The Board finds that the "Draft Plan of Subdivision – The Browlands", prepared by A.J. Clarke and Associates Ltd., and certified by B.J. Clarke, OLS, dated March 26, 2009, comprising Part of Lot 57, Concession 2, Sanatorium Road and Scenic Drive, Hamilton, as set out in Exhibit 7, meets the criteria of 51(24) of the *Planning Act*.

Accordingly, the appeals are allowed, and the Board Orders as follows:

1. The Official Plan for the City of Hamilton is amended as set out in Exhibit 20, as modified, now Attachment "1" to this Order.
2. Zoning By-law 6593 is amended as set out in Exhibit 21, as modified, with the Explanatory notes as set out in Exhibit 22, now part of Attachment "2" to this Order.
3. Zoning By-law 05-200 is amended as set out in Exhibit 23, as modified, with the Explanatory note as set out in Exhibit 22, now part of Attachment "2" to this Order.
4. The draft plan prepared by A.J. Clarke and Associates Ltd. and certified by B.J. Clarke, OLS, dated March 26, 2009, comprising Part of Lot 57, Concession 2, Sanatorium Road and Scenic Drive, Hamilton, is approved subject to the fulfillment of the conditions set out in Attachment "3" to this Order, and subject to the Visual Impact Assessment set out in Attachment "4" to this Order.

Pursuant to subsection 51(56.1) of the *Planning Act*, the City of Hamilton shall have the authority to clear the conditions of draft plan approval and to administer final approval of the plan of subdivision for the purposes of subsection 51(58) of the *Act*.

In the event that there are any difficulties implementing any of the conditions of draft plan approval, or if any changes are required to be made to the draft plan, the Board may be spoken to.

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So Orders the Board.

"H. Jackson"

H. JACKSON  
MEMBER

"K. H. Hussey"

K. H. HUSSEY  
VICE-CHAIR

**ATTACHMENT 1** *Exhibit 20*

**Amendment No. \_\_\_\_ to the  
Official Plan for the former City of Hamilton**

The following text, together with:

- Schedule "A" (Schedule A- Land Use Concept, former City of Hamilton Official Plan); and,
- Schedule "B" (Schedule "J-1" - Chedmac Planning Area Secondary Plan, former City of Hamilton Official Plan).

attached hereto, constitutes Official Plan Amendment No. \_\_\_\_ to the former City of Hamilton Official Plan.

**Purpose and Effect:**

The purpose of this Amendment is to redesignate the subject lands from "Major Institutional" to "Residential" and designate the lands as "Brow Lands Policy Area" in order to permit medium density residential uses and to establish a redevelopment strategy to appropriately implement a broader range of residential uses within the established neighbourhood.

The effect of the Amendment is to permit the development of a unique residential area while protecting and preserving the natural area and cultural heritage features of the site. The subject lands will be included as the 'Brow Lands Policy Area' within the Chedmac Planning Area Secondary Plan.

**Location:**

The lands affected by this Amendment are located on Part of Lot 57, Concession 2 on the north side of Scenic Drive and east and west of Sanatorium Road, between the Niagara Escarpment and Scenic Drive in the former City of Hamilton.

**Basis:**

The basis for permitting the proposal is as follows:

- The proposed amendment is consistent with the Provincial Policy Statement.
- The proposed amendment respects the Niagara Escarpment Plan's "Urban" designation policies and is compatible with the visual and natural environment of the Escarpment.
- The proposed amendment is compatible with the existing and planned development in the immediate area.

- The proposed amendment is consistent with the Places to Grow Growth Plan by providing appropriate intensification within an established area and provides alternative housing options for the immediate area.
- The proposed amendment increases linkages along the Brow Trail and provides protection for the Environmentally Significant Area.
- The proposed amendment respects the cultural heritage landscape of the site by preserving built heritage, significant heritage features and views through and to the site.

**Actual Changes:**

**Schedule Changes**

(a) Schedule "A" - Land Use Concept is revised by re-designating the subject lands from "Major Institutional" to "Residential" and "Open Space", as shown on the attached Schedule "A" of this amendment.

(b) Schedule "J-1" - Chedmac Planning Area Secondary Plan be revised by adding the subject lands as "Brow Lands Policy Area" to the Secondary Plan area and designating the subject lands, as shown on the attached Schedule "B" of this amendment.

**Text Changes**

(a) That Section A.6.1 be amended by adding the following subsections:

A.6.1.2 i) a)

*(5) Medium Density 3 development shall consist of a full range of housing forms, excluding single detached and semi-detached dwellings, at a maximum density of 75 - 80 units per net residential hectare. For the purposes of determining the permitted density, the private open space lands shown as Area D on Schedule J-1 shall be included as part of the net residential area.*

(b) That section A.6.1 be amended by adding the following subsection:

**A.6.1.3 Brow Lands Policy Area**

For lands shown as Brow Lands Policy Area on Schedule "J-1", the following policies shall apply:

A.6.1.3.1 Objectives

Notwithstanding Section A.6.1.1 Objectives, the following Objectives shall apply to the Brow Lands Policy Area:

- i) To ensure that the development of the Brow Lands Policy Area shall provide a safe, attractive and pedestrian-oriented residential environment with a high quality of design of buildings, public spaces and streets;
- ii) To encourage energy conservation through community planning, site planning and urban design;
- iii) To integrate natural and cultural heritage features into the design of the site with specific focus on the open space areas as well as providing a strong link to the Niagara Escarpment;
- iv) To integrate significant cultural heritage landscape features and characteristics such as the pavilion design, the curvilinear street pattern, as well as the sense of openness and park-like setting, into the development;
- v) To identify and protect historically or architecturally significant buildings and cultural heritage landscape features;
- vi) To ensure compatibility with the existing residential area;
- vii) To develop a land use pattern and transportation system that supports transit, cyclists and pedestrians and vehicular traffic;
- viii) To provide public linkages to and through the site; and,
- ix) To provide and/or protect significant views and encourage sensitive development adjacent to the Niagara Escarpment.

A.6.1.3.2 Residential

Notwithstanding Subsection A.6.1.2 i) *Residential*, the following policies shall apply to those lands designated Medium Density Residential 3 (Areas A and B) on Schedule "J-1":

- (a) Direct vehicular access to permitted uses shall be prohibited from Scenic Drive. The site shall be developed on the premise of a network of common private driveways together with a private condominium road or public street.

- (b) New buildings and structures will be set back a minimum of 30 metres from the staked limit of the brow of the Niagara Escarpment. Existing building BI (Brow Infirmary) as shown on Schedule J-1 may be enlarged or replaced in whole or in part, provided no part of any new construction shall be within the 30 metre setback or within the area between the façade of the existing building BI facing the escarpment and the staked brow of the escarpment
- (c) The development of live/work dwelling units is encouraged in order to provide for the opportunity of smaller scale commercial and business uses in close proximity to residential uses. Live/work units shall be permitted in block townhouses, except where such units front onto Scenic Drive, and on the ground floor of apartments where the units have direct access at-grade and shall be limited to the following: artists' or photographers' studios; personal services; craftsperson shop; and business or professional office.
- (d) Limited local commercial uses shall be permitted in accordance with the Zoning By-law. These uses shall be permitted within apartment buildings on the ground floor only and within buildings in existence at the date of the passing of this amendment.
- (e) A maximum of 529 dwelling units will be permitted within the Brow Lands Policy Area. For the purposes of overall unit count, up to 100 of the permitted dwelling units may be allocated as retirement dwelling units and two retirement dwelling units shall be equivalent to one residential dwelling unit. Should the land owner choose to implement that equivalency scenario, a maximum of 429 residential dwelling units and 200 retirement dwelling units will be permitted within the Brow Lands Policy Area. Notwithstanding this equivalency option, retirement dwelling units can also be permitted on a one-to-one basis exceeding the 200 equivalency units, provided that the total number of all units shall not exceed 629.
- (f) The following policies shall apply to Area A as shown on Schedule "J-1":
  - i) Permitted uses shall include low-rise apartments, block townhouses, accessory uses, or retirement dwelling units and amenity uses required as part of contributing to a more diverse mix of residential uses within the Chedmac Planning Area.
  - ii) To provide a transition to the existing low density residential uses on the south side of Scenic Drive, the permitted uses shall be limited to block townhouses and open space along the north side of Scenic Drive within Area A. Block townhouses along

Scenic Drive shall be clustered along a limited portion of the Scenic Drive frontage within Area A so as to preserve an open space character along Scenic Drive. The use of the land between the townhouses and the street shall be restricted to ensure that these lands are landscaped and free of structures in the manner of a front yard.

- iii) The maximum height of buildings shall not exceed 4 storeys interior to the site. Buildings along Scenic Drive shall not exceed 3 storeys.
- iv) The overall gross floor area for all residential units shall not exceed 20,000 square metres.
- v) The number of residential units will not exceed a maximum of 195 units.
- vi) Buildings existing at the date of the passing of this amendment shall be conserved and adaptively reused, where feasible.
- vii) The existing heritage building known as the "Moreland" building (shown as M on Schedule J-1) and the original portion of the "Brow Annex" building (shown as BA on Schedule J-1) shall be retained and conserved, where structurally feasible, through sympathetic adaptive re-use.
- viii) The Brow Infirmary building (shown as BI on Schedule J-1) may be preserved and expanded for residential use. If preservation of this building is not structurally feasible, a replacement residential building may be developed which maintains the existing setback from the Escarpment brow and the design of such building shall incorporate the recommendations of the Cultural Heritage Impact Assessment as required by Section A.6.1.3.6.
- ix) Uses contained within any existing building will not contribute to the overall unit count and shall not be subject to the overall gross floor area set out in iv) and v) above and in Section A.6.1.3.2.e.

**Deleted:** Where the Brow Infirmary building (shown as BI on Schedule J-1) is replaced, the amount of new gross floor area equal to the existing gross floor area of the building and equivalent number of residential units, shall be exempt from the overall gross floor area and total units set out in iv) and v) above). ¶

- (g) The following policies shall apply to Area B as shown on Schedule "J -1":
- i) Permitted uses shall include low-rise and mid-rise apartments, block townhouses, accessory uses, or retirement dwelling units and amenity uses required contributing to a more diverse mix of residential uses within the Chedmac Planning Area.
  - ii) The maximum height of block townhouse dwellings shall be 3 storeys.
  - iii) The maximum height of apartment buildings shall not exceed 6 storeys.
  - iv) The number of residential units will not exceed a maximum of 335 units.
  - v) The overall gross floor area for residential uses in Area B shall not exceed 34,000 square metres.
  - vi) The existing listed heritage building, known as the "Long and Bisby" Building (shown as LB on Schedule J-1), shall be retained and conserved through sympathetic adaptive re-use. Uses contained within any existing building will not contribute to the overall unit count and shall not be subject to the overall gross floor area set out in iv) and v) above.
  - vii) The local commercial uses permitted in the "Long and Bisby" Building are limited to: Art Gallery; Artist Studio; Craftsperson Shop; Business or Professional Office; Personal Services; Retail Store excluding a Convenience Store, not to exceed 200 square metres; Day Nursery; Library; Museum; Community Centre; Lecture Room; and Medical Office.
  - viii) The existing "Long and Bisby" building may also be converted for residential use provided the heritage character of the building is not altered significantly. A maximum of 12 residential dwelling units may be permitted within the existing building.

A.6.1.3.3 Natural Open Space

- (a) Area C and Area D as shown on Schedule "J-1" shall be preserved as natural open space and no development shall be permitted. Conservation, flood and erosion control, and passive recreation uses shall be permitted.



- (b) A vegetation protection zone (buffer) will be provided along Area C, as identified through an approved Environmental Impact Statement, and revegetated in accordance with the recommendations of this study.

#### A.6.1.3.4 Urban Design

The Brow Lands Policy Area shall be developed in accordance with the following urban design principles:

- (a) Prior to the approval of site plan and/or plan of condominium applications, the applicant is required to submit:
  - i) A Master Site Plan including, among other matters, a phasing plan, visual impact assessment and urban design guidelines, in accordance with section h) below;
  - ii) A Precinct Plan, in accordance with h) below;
  - iii) Architectural Control Guidelines, in accordance with l) below; and,
  - iv) An Urban Design Report, in accordance with Section A.6.1.3.9 iv).
- (b) Significant views to and from the Escarpment Urban Area shall be maintained and enhanced, consistent with the cultural heritage landscape.
- (c) Surface parking shall be prohibited between Scenic Drive and the main wall of any building that faces Scenic Drive.
- (d) The majority of parking shall be accommodated either through underground structures or within buildings.
- (e) A minimum of 30% of landscaped open space shall be maintained for each of Area A and Area B. In order to preserve the open, park-like setting the established groupings of trees shall be preserved, where possible.
- (f) Continuous building walls along Scenic Drive shall be prohibited. Buildings shall provide appropriate spacing based on building height to allow light, reduce shadow impacts and provide privacy between buildings. The spacing of the buildings will also promote views into and through the site.
- (g) All new development proposals within the Brow Lands Policy Area shall conform to an approved Visual Impact Assessment prepared to the satisfaction of the City of Hamilton, in consultation with the Niagara Escarpment Commission. The visual impact assessment shall determine

the potential for adverse impacts on the Niagara Escarpment. Recommendations in the visual impact assessment for mitigation measures to assist in visual integration of buildings into the landscape of the Niagara Escarpment, including but not limited to, landscaping, architectural treatment of buildings, building heights, roof details and fenestration, glazing of buildings and lighting, shall be implemented in accordance with the approved document, as appropriate. Prior to site plan approval and removal of the 'H – Holding' provisions in the implementing Zoning By-law, an addendum to the Visual Impact Assessment is required detailing how the final building locations meet the Visual Assessment Guidelines and the requirements of this amendment.

- (h) A Master Site Plan shall be prepared prior to the removal of any 'H – Holding' provisions in the implementing Zoning By-law and prior to site plan approval. Such Master Site Plan shall provide a general site plan for all of the lands within the Brow Lands Policy Area including key neighbourhood design and built form elements, such as: the internal road system; pedestrian and cycling circulation and connectivity; buildings and associated parking areas; open space and recreational areas; cultural heritage buildings, structures and features that are to be preserved; environmental protection areas; stormwater management facilities; the locations of commercial and other non-residential uses; and other neighbourhood and site design elements (such as viewsheds identified in the Visual Impact Assessment as set out in g) above). Such Master Site Plan shall also identify a phasing plan for the Brow Lands Policy Area and a further Precinct Plan shall be prepared for each phase of development. As each phase of development proceeds, a more detailed Precinct Plan shall be prepared for each phase to illustrate the intended form of development for each block including the implementation of the overall neighbourhood design and built form elements (as set out in the Master Site Plan, and include building footprints and heights; parking areas; landscaped areas; the manner in which cultural heritage buildings, structures and features are to be preserved and integrated into the project; and the locations of commercial and other non-residential uses.
- (i) The Master Site Plan and Precinct Plan(s) shall be used as a guide in the preparation and review of site plan and plan of condominium applications. Deviations from the Master Site Plan would be permitted where required to reflect detailed building or infrastructure design, provided the change is consistent with the intent of the site-specific Official Plan Amendment and the fundamental principles of the Master Site Plan are maintained, to the satisfaction of the City.
- (j) The Master Site Plan shall contain general urban design guidelines to illustrate the intended character of buildings, streets and exterior spaces, and building relationships to streets and public spaces, to natural

Deleted: i) below)

environment areas, to heritage buildings and structures to be preserved and to the surrounding neighbourhood. The guidelines shall address how the proposed development features such as new buildings, entry features, streetscape and landscape design are to be sympathetic in nature to the historical significance of the Brow Lands, retained natural heritage features (including the Niagara Escarpment) and, to the heritage architectural and cultural landscape features that will be conserved.

- (k) Development of the Brow Lands shall incorporate sustainable site and building features and technologies to minimize energy consumption, conserve water, reduce waste, improve air quality and promote human health and wellbeing. All new development shall incorporate Leadership in Energy and Environmental Design (LEED) certification for new construction and neighbourhood development and Low Impact Development (LID) approaches, where possible.
- (l) Architectural control guidelines shall be prepared prior to site plan approval to provide design guidance necessary to achieve a high quality of architectural design and to ensure that new buildings are sympathetic to both the historical significance of the Brow Lands Policy Area and to the heritage architecture and cultural landscape features that will be preserved. Architectural control is to be implemented through a third-party registered architect retained by the City.
- (m) All block townhouse units shall have the principal front door orientated towards Scenic Drive or an internal private condominium road or driveway. For townhouse units fronting both Scenic Drive and an internal public street, private condominium road or driveway, the principal entrance shall be orientated towards the public street.
- (n) Green roofs shall be incorporated, where feasible, for all buildings that exceed 4 storeys in height.
- (o) All apartment buildings shall have a minimum podium height of 2 storeys and a maximum podium height of 4 storeys. Those portions of apartment buildings that abut Scenic Drive shall be setback above 4 storeys.

#### A.6.1.3.5 Transportation

In addition to section 6.1.2 iv) *Transportation*, the following policies shall apply to Brow Lands Policy Area:

- (a) The Brow Lands Policy Area will be developed on the premise of a network of private driveways together with a private condominium road or public street, with a minimum of two driveway accesses to Scenic Drive.

- (b) New development shall support the use of public transit by creating a comfortable pedestrian environment with links to the public arterial road system where transit will be provided.
- (c) A pedestrian pathway network shall be established throughout the Brow Lands Policy Area to connect to the Brow Trail. A public access easement shall be granted for pedestrian linkages within the north-south portion of the private road (as shown as a dashed line on Schedule "J-1") between the Bruce Trail and the surrounding neighbourhood.
- (d) A roundabout may be required at the southerly intersection of Scenic Drive and the private road (as shown as a dashed line on Schedule "J-1") and any land required to accommodate the roundabout shall be dedicated to the City.
- (e) The Owner shall submit a streetscape plan for existing Sanatorium Road either as a private condominium road or as a public street.
- (f) A bicycle pathway, as identified in the City's Trails Master Plan, shall be provided and maintained through an easement along the north-south alignment of the Sanatorium Road either as a private condominium road or public street (as shown as a dashed line on Schedule "J-1").
- (g) Any private condominium road shall be engineered and built to carry the load of fire apparatus to the satisfaction of the Fire Chief.

#### A.6.1.3.6 Heritage

- (a) The cultural heritage landscape consists of the curvilinear street pattern, open-park like setting, the undulating topography, the natural areas, the views through the site and the spatial organization of the buildings. In addition, the buildings themselves, the pedestrian bridge, the Cross of Lorraine, the stone pillars and stone wall, the stormwater management facility and Escarpment stairs are elements of the cultural heritage landscape.
- (b) The lands contained within the Brow Lands Policy Area have been included in the City of Hamilton's Inventory of Buildings of Architectural and/or Historical Interest, Appendix A: Inventory of Cultural Heritage Landscapes, as such, development and redevelopment within the Brow Lands Policy Area shall be sympathetic to the cultural heritage landscape and shall ensure the conservation of significant built heritage and cultural heritage resources.

- (c) The Brow Lands Policy Area shall be developed in accordance with the following built heritage conservation and planning principles and objectives:
- i) The continuation of a pedestrian corridor along the brow of the Escarpment;
  - ii) The protection and retention of the "Long and Bisby" Building (shown as LB on Schedule J-1), the "Moreland" Building (shown as M on Schedule J-1) and the original part of the "Brow Annex" Building (shown as BA on Schedule J-1), in situ through sympathetic adaptive re-use;
  - iii) The presumption in favour in any redevelopment of the retention, renovation and expansion to 4 storeys of the "Brow Infirmary" building (shown as BI on Schedule J-1). Where the "Brow Infirmary" building is determined to be unsuitable for adaptive re-use and expansion, as determined through a Cultural Heritage Impact Assessment prepared to the satisfaction and approval of the City, a new building that is designed to respect the heritage architecture of the original building may be constructed in the same approximate building footprint to a maximum height of 4 storeys and shall be set back from the staked limit of the brow of the Niagara Escarpment, no closer than the existing "Brow Infirmary" building;
  - iv) The protection and retention of the Moreland, Brow Annex and Brow Infirmary buildings may not be required where it is demonstrated that it is not structurally feasible to re-use and adapt such buildings.
  - v) The preservation and conservation of the pedestrian bridge over the Chedoke Creek and the stone vehicular bridge and associated stone wall/pillars.
  - vi) The preservation and conservation of other heritage resources shall be encouraged. Where these resources cannot be retained, then the City will require the appropriate documentation of all buildings to be demolished be provided prior to removal.
- (d) Development within the Brow Lands Policy Area shall have regard to the following cultural heritage landscape requirements:
- i) Development shall be compatible with the existing cultural; heritage landscape, such that open spaces, plantings and the curvilinear street pattern are maintained and/or referenced in

- the new development and that the layout and scale of buildings reflect the existing site, where possible;
- ii) The existing topography of the perimeter roads, woodlots and Chedoke Creek and stormwater management facility shall be maintained, where feasible;
  - iii) The existing trees and vegetation within the Chedoke Creek/stormwater management facility shall be maintained and enhanced;
  - iv) A tree preservation plan shall be submitted to determine the opportunities for the protection and preservation of individual trees and the recommendations shall be implemented, to the satisfaction of the City. The plan shall be prepared in association with the Heritage Impact Assessment so that trees that contribute to the cultural heritage landscape can be identified and considered for preservation;
  - v) Significant views and view corridors to, through, and from Brow Lands Policy Area shall be protected, as identified in the Master Site Plan;
  - vi) An open, park-like landscape setting shall be provided in front the "Long and Bisby" building. Limited parking may be permitted provided there are no other feasible alternative locations; and,
  - vii) The existing curvilinear road alignment of old Sanatorium Road shall be respected, where technically feasible.
- (e) A Cultural Heritage Impact Assessment or Assessments shall be undertaken prior to site plan approval for any development within Brow Lands Policy Area by a qualified professional with demonstrated expertise in cultural heritage assessment, mitigation and management, according to the requirements of the City's Cultural Heritage Impact Assessment Guidelines; prepared to the satisfaction and approval of the City and shall contain the following:
- i) Identification and evaluation of the following potentially affected cultural heritage resource(s): the Long and Bisby building; the Moreland building; the Brown Infirmary; and, the Brow Annex; including detailed site(s) history and *cultural heritage resource* inventory containing textual and graphic documentation;
  - ii) A description of the proposed *development or site alteration* and alternative forms of the *development or site alteration*;

- iii) A description of all *cultural heritage resource(s)* to be affected by the *development* and its alternative forms;
  - iv) A description of the effects on the *cultural heritage resource(s)* by the proposed *development* or *site alteration* and its alternative forms; and,
  - v) A description of the measures necessary to mitigate the adverse effects of the *development* or *site alteration* and its alternatives upon the *cultural heritage resource(s)*.
- (f) The City may require that, as part of the development or redevelopment of the lands, heritage features be retained on site and incorporated, used or adaptively re-used as appropriate.
- (g) Where appropriate, the City may impose a condition on any development approval for the retention and conservation of the affected heritage features or the implementation of recommended mitigation measures through heritage easements pursuant to the Ontario Heritage Act and/or Development Agreements.

#### A.6.1.3.7 Archaeology

- (a) An archaeological assessment shall be undertaken by an Ontario licensed archaeologist for the entire site to the satisfaction of the Ministry of Culture and the City of Hamilton prior to any development or site alteration (including site grading, tree planting/removal and topsoil disturbance);
- (b) Where archaeological features are identified, the development proponent shall develop a plan, to protect, salvage or otherwise conserve the features within the context of the proposed development as recommended by a licensed archaeologist and approved by the Province and the City of Hamilton.

#### A.6.1.3.8 Stormwater Management and Engineering

- (a) Stormwater management facilities shall follow an integrated design process. The design of the facilities shall respect the recommendations of the Tree Preservation Plan and Heritage Impact Assessment.
- (b) Submission of engineering and grading plans for stormwater management facilities shall demonstrate a low impact design and how impact to the important heritage features identified will be minimized.

- (c) Due to the sensitive nature of the site a detailed engineering submission outlining how excavation for footings or underground parking on the subject lands can be achieved without adversely affecting the stability of the Niagara Escarpment. The report shall consider utilizing methods other than blasting, where possible.

A.6.1.3.9 Implementation

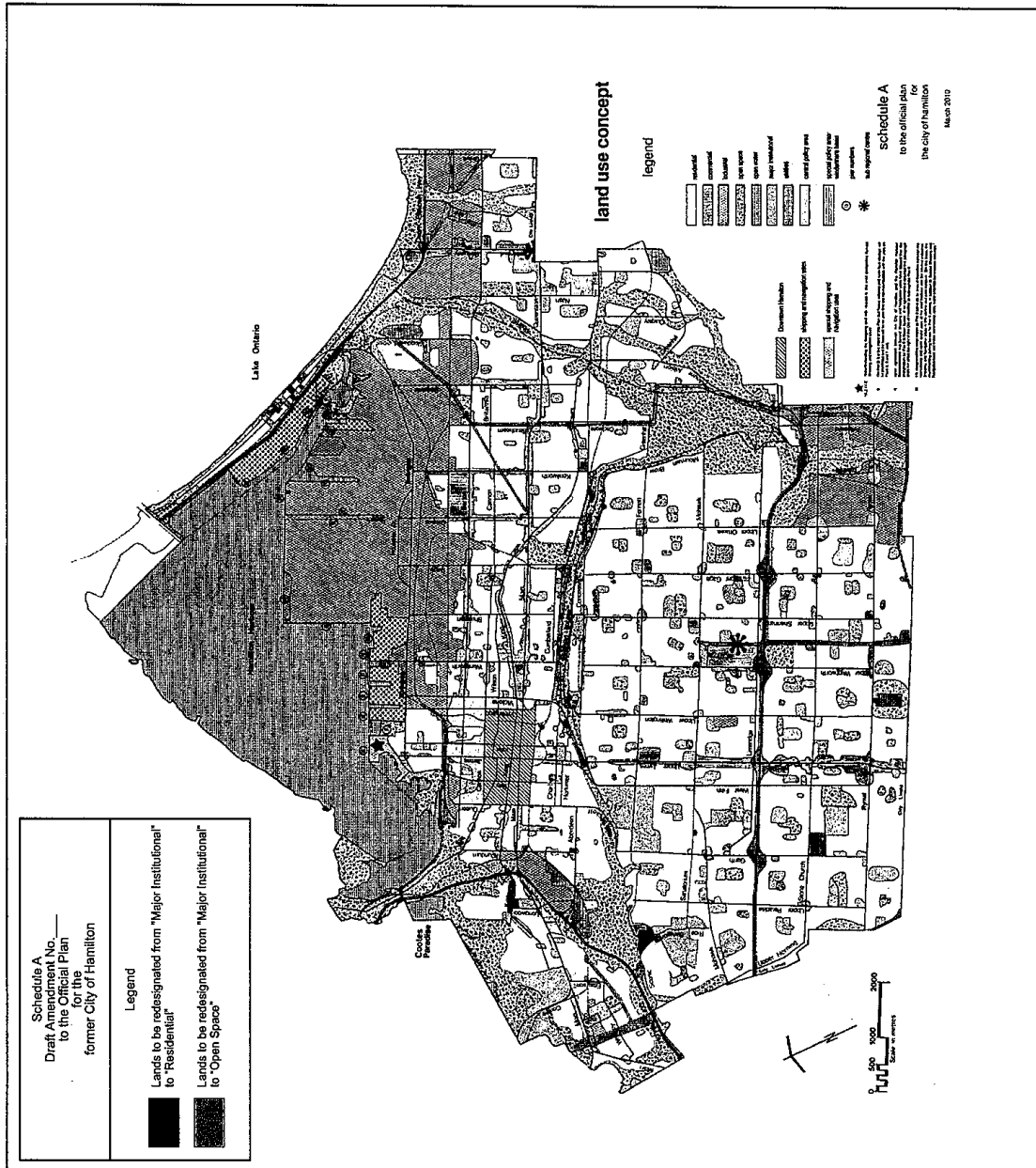
- (a) An implementing Zoning By-law, Site Plan Agreement, and Plan(s) of Subdivision will give effect to this Amendment.
- (b) The implementing Zoning By-law shall contain 'H – Holding' provisions addressing the matters set out in sub-section d) following).
- (c) The 'H – Holding' provisions may be lifted for a portion of the site to allow development to proceed in phases.
- (d) The 'H – Holding' provisions in the implementing Zoning By-law shall include the following requirements:
  - i) The master site plan and/or master plan for the relevant development phase (as required in Section A. 6.1.3.4) has been prepared to the satisfaction of the Director of Planning.
  - ii) Studies, or updates/addenda to existing studies, as determined by the Director of Planning, have been prepared which inform and support the master plan(s), and which may include:
    - o Sustainability Strategy;
    - o Detailed Heritage Impact Assessment;
    - o Stormwater Management Report that considers Low Impact Development opportunities;
    - o Tree Preservation/Protection Plan;
    - o Environmental Impact Study;
    - o Traffic Impact Study;
    - o Visual Impact Assessment or Update ;
    - o Geotechnical/Engineering Study; and/or,
    - o Detailed Servicing Strategy.
  - iii) The urban design guidelines (as required in Section A. 6.1.3.4) have been prepared to the satisfaction of the Director of Planning.
  - iv) An Urban Design Report has been submitted to demonstrate, to the satisfaction of the Director of Planning, compliance with the urban design policies of this Plan and the area-specific Brow

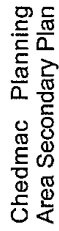


Lands Policy Area urban design guidelines. The Urban Design Report shall include text, plans, details and/or elevations, as necessary, to demonstrate how the intent of the Secondary Plan policies and the area-specific urban design guidelines has been met.

- (e) Where there is conflict between this amendment and the parent Official Plan, the policies of this amendment shall prevail.

Draft





**ATTACHMENT 2** *Exhibit 22*

**ZONING BYLAW EXPLANATORY NOTE**

**Amendment to Zoning By-law No. 6593 (Hamilton):**

The purpose of the Zoning Bylaw Amendment is to rezone the subject lands so as to permit the development of the Subject Lands in accordance with the provisions of the proposed Official Plan Amendment, specifically to allow for the development of up to 529 residential units on the Subject Lands. The zoning by-law would allow for the development of townhouse dwellings, multiple dwellings and retirement dwellings and amenity uses accessory thereto. The zoning would also provide for mix of accessory and limited commercial uses, as well as live/work units.

The lands identified as Block 1 on the Bylaw Schedule shall contain restrictions which will limit the height of any proposed building to no more than 9.0m adjacent to Scenic Drive, while all other buildings shall have a height not to exceed 12.0m as defined in the Bylaw. The zoning bylaw permits the development of up to ~~195~~ residential dwelling units on Block 1 while establishing further requirements with respect to building massing, setbacks and landscape requirements.

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The lands identified as Block 2 on the Bylaw Schedule shall contain restrictions which will limit the height of any townhouse dwelling unit to no more than 3 storeys or 9.0m, while all other buildings shall have a height not to exceed 6 storeys or 18.0m as defined in the Bylaw. The zoning permits the development of up to ~~335~~ residential dwelling units on Block 2 while establishing further requirements with respect to building massing, setbacks and landscape requirements.

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The lands identified on Block 1 and Block 2 are subject to a Holding Provision, the removal of which requires the submission of a visual impact assessment as part of a Master Site Plan and Precinct Plan process, to the satisfaction of the Director of Planning, in consultation with the Niagara Escarpment Commission.

**Amendment to Zoning By-law No. 05-200**

The proposed zoning by-law amendment would zone the lands identified in the Schedule attached thereto as Conservation/Hazard Lands (P5) Zone. No residential units are proposed to be developed on these lands.

*Exhibit 21*

**CITY OF HAMILTON  
BY-LAW NO. \_\_\_\_**

**To Amend Zoning By-law No. 6593 (Hamilton),  
Respecting Lands Located on the north side of Scenic Drive  
and east and west of Sanatorium Road**

**WHEREAS** the Ontario Municipal Board by Order dated \_\_\_\_\_, 2011 approved an Amendment to the Official Plan of the former City of Hamilton;

**AND WHEREAS** this by-law will be in conformity with said Amendment to the Official Plan of the former City of Hamilton

**NOW THEREFORE** the Ontario Municipal Board directs that Zoning By-law No. 6593 (Hamilton) be amended as follows:

1. That Sheet No. W-36 of the District Maps appended to and forming part of Zoning By-law No. 6593 (Hamilton), as amended, is hereby further amended by changing the zoning from the "AA/S-1353" (Agricultural) District, Modified to the following districts:
  - (a) "DE-/S-1600" (Low Density Multiple Dwellings - Holding) District, Modified, on the lands shown as Block 1; and,
  - (b) "E-H/S-1600" (Multiple Dwellings, Lodges, Club, etc. - Holding) District, Modified, on the lands shown as Block 2; the extent and boundaries of which are shown on a plan hereto annexed as Schedule "A".
2. For the purposes of this By-law the following definitions shall apply:

**Building Height:**

Shall mean the vertical distance from grade to the uppermost point of the building but not including any mechanical penthouse or any portion of a building designed, adapted or used for such features as a chimney, smokestack, fire wall, stair tower, fire tower, water tower, tank, elevator bulkhead, ventilator, skylight, cooling tower, derrick, conveyor, antenna, or any such requisite appurtenance, or a flagpole, display sign, ornamental figure, bell tower or other similar structure, except for townhouse dwellings, where building height shall mean the vertical distance from grade to the eaves. Provided, however, where this By-law requires building height to be calculated to determine a minimum rear yard or a minimum side yard requirement, building height shall mean the vertical distance between the lowest finished grade elevation along the lot line

related to such required yard at that point closest to the building and the horizontal extension of the uppermost point of the building.

**Retirement Dwelling Unit:**

Shall mean a dwelling unit in a multiple dwelling which does not contain a full kitchen but where the building provides communal facilities such as kitchen/dining facilities, laundry facilities, lounges and where the residents may be supervised in their daily living activities. A retirement dwelling unit may be licensed by the municipality and shall not be considered a long term care facility, emergency shelter, lodging house, residential care facility or any other facility which is licensed, approved or regulated under any general of special Act.

**Craftsperson Shop:**

Shall mean an establishment used for the creation, finishing, refinishing or similar production of custom or hand-made commodities, together with the retailing of such commodities.

**Personal Services:**

Shall mean the provision of services involving the health, beauty or grooming of a person or the maintenance or cleaning of apparel, but shall not include a Dry Cleaning Plant or a Body Rub Parlour.

**Studio:**

Shall mean an establishment used for the study or instruction of a performing or visual art, such as but not limited to, dancing, singing, acting or modelling, or the workplace with accessory retail, of a painter, sculptor or photographer, or an establishment used for the making or transmission of motion pictures, radio or television programs.

3. That the "DE" (Low Density Multiple Dwellings) District regulations, as contained in Section 10A of Zoning By-law No. 6593, applicable to Block "1" are modified to include the following special requirements:

- (a) Notwithstanding Subsection 10A (1) of Zoning By-law No. 6593, only the following uses shall be permitted:
  - i. Townhouse dwellings;
  - ii. Multiple dwellings;
  - iii. Retirement dwelling units and amenity uses accessory thereto;
  - iv. Accessory uses only on the ground floor of a multiple dwelling and within any building existing on the date of the

Ontario Municipal Board approval of this by-law being the \_\_\_\_\_ day of \_\_\_\_\_, 2011, limited to the following: Office; Craftsperson Shop; Personal Services; Medical Office; Home Occupation; Day Nursery; Studio; and, a Retail Store provided that the total floor area does not exceed 200 square metres; and,

- v. Commercial uses only within the buildings existing on the date of the Ontario Municipal Board approval of this by-law being the \_\_\_\_\_ day of \_\_\_\_\_, 2011, known as the "Moreland" and "Brow Annex" buildings limited to: Art Gallery; Artist Studio; Craftsperson Shop; Business or Professional Office; Personal Services; Retail Store, excluding a Convenience Store, not to exceed 200 square metres; Day Nursery; Library; Museum; Community Centre; Lecture Room; Restaurant, not to exceed 200 square metres; and Medical Office.

Alternatively, dwelling units shall be permitted within the existing buildings and such dwelling units shall not be considered as part of the maximum number of dwelling units set out in Section 3(b)xiii herein.

- vi. Live/work units including a dwelling unit only within a townhouse unit a minimum distance of 25 metres from Scenic Drive or building containing multiple dwellings, with one of the following uses, provided the non-residential use does not exceed 50% of the floor area: Personal Services; Craftsperson Shop; Artists' or Photographers' Studio; or Business or Professional Office.

- (b) Notwithstanding Subsections 10A (2), (3), (4) and (5) of Zoning By-law No. 6593, the following provisions shall apply:

- i. No building or structure adjacent to Scenic Drive shall exceed 9 metres in height from the grade existing at the date of the Ontario Municipal Board approval of this By-law being the \_\_\_\_\_ day of \_\_\_\_\_, 2011. All other buildings and structures shall not exceed a height of 12 metres from the grade existing at the date of the Ontario Municipal Board approval of this by-law, being the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

- ii. Townhouse dwellings shall be the only permitted residential uses within 30 metres of Scenic Drive. A minimum of 50 percent of the frontage along Scenic Drive shall be

along  
Scenic  
Drive

~~maintained as landscaped open space to a minimum depth of 25 metres (except where buildings and structures are permitted). For purposes of this requirement, the frontage will be as measured along the limits of the zone boundary for Block 1 and the determination of the 50 percent of the frontage along Scenic Drive shall include the width of the lands associated with the required setback between each continuous row of townhouse dwellings, provided such area is maintained as landscaped open space.~~

- iii. That no new buildings or structures shall be permitted within a minimum setback of 30 metres to the staked limit of the brow of the Niagara Escarpment;
- iv. That existing building B-I (Brow Infirmary) as shown on Schedule A may be enlarged or replaced in whole or in part, provided no part of any new construction shall be within the 30 metre setback provided for under paragraph b) ii) or within the area between the façade of the existing building B-I facing the escarpment and the staked brow of the escarpment;
- v. That no buildings or structures (excluding fences, gates and similar landscape features) shall be permitted within 8 metres of the lot line along Scenic Drive;
- vi. That a minimum setback of 50 metres shall be provided and maintained from the intersection of the westerly property limit along Scenic Drive and the staked limit of the brow;
- vii. That a minimum setback of 12 metres shall be provided between multiple dwellings;
- viii. That a minimum setback of 5 metres shall be provided between each continuous row of townhouse dwellings;
- ix. That not more than 4 townhouse dwelling units shall be attached in a continuous row;
- x. That a minimum setback of 5 metres shall be provided and maintained to any private driveway, laneway or private road;
- xi. That a minimum of 30% of the lot area shall be provided and maintained as landscaped area;



- xii. That a maximum of 10% of the required parking may be surface parking;
  - xiii. That a maximum of 195 residential dwelling units shall be permitted, not including dwelling units provided within any building existing on the date of the Ontario Municipal Board approval of this by-law being the \_\_\_\_ day of \_\_\_\_, 2011; Deleted: 180
  - xiv. That the maximum gross floor area shall not exceed 20,000 square metres for all residential units; Deleted: 19
  - xv. That direct vehicular access to townhouse dwellings shall be prohibited from Scenic Drive.
4. That the "E" (Multiple Dwellings, Lodges, Club, etc.) District regulations, as contained in Section 11 of Zoning By-law No. 6593, applicable to Block "2" are modified to include the following special requirements:
- (a) Notwithstanding Subsection 11 (1) of Zoning By-law No. 6593, only the following uses shall be permitted and only in conjunction with the building existing on the date of the Ontario Municipal Board approval of this by-law, being the \_\_\_\_ day of \_\_\_\_, 2011, known as the "Long and Bisby" Building:
    - i. Townhouse dwellings;
    - ii. Multiple dwellings;
    - iii. Retirement dwelling units and amenity uses accessory thereto;
    - iv. Accessory uses only on the ground floor of a multiple dwelling and within any building existing on the date of the Ontario Municipal Board approval of this by-law being the \_\_\_\_ day of \_\_\_\_, 2011, limited to the following: Office; Craftsperson Shop; Personal Services; Medical Office; Home Occupation; Day Nursery; Studio; and, a Retail Store provided that the total floor area does not exceed 200 square metres;
    - v. Commercial uses only within the building existing on the date of the Ontario Municipal Board approval of this by-law being the \_\_\_\_ day of \_\_\_\_, 2011, known as the "Long and Bisby" Building limited to: Art Gallery; Artist Studio; Craftsperson Shop; Business or Professional Office; Personal Services; Retail Store, excluding a Convenience

Store, not to exceed 200 square metres; Day Nursery; Library; Museum; Community Centre; Lecture Room; Restaurant, not to exceed 200 square metres; and Medical Office.

Alternatively, a maximum of 12 dwelling units shall be permitted within the existing building and such dwelling units shall not be considered as part of the maximum number of dwelling units set out in Section 4b)xii herein.

- vi. Live/work units including a dwelling unit only within a townhouse unit with one of the following uses provided the non-residential use does not exceed 50% of the floor area: Personal Services; Craftsperson Shop; Artists' or Photographers' Studio; Business or Professional Office or Medical Office.
- (b) Notwithstanding Subsections 11 (2), (3), (4), (5) and (6) of Zoning By-law No. 6593, the following provisions shall apply:
- i. That no building for a townhouse dwelling shall exceed 3 storeys or 9 metres in height from the grade existing at the date of the Ontario Municipal Board approval of this by-law, being the \_\_\_\_\_ day of \_\_\_\_\_, 2011;
  - ii. That no building containing multiple dwellings or retirement dwellings units shall exceed 6 storeys or 18 metres in height from the grade existing at the date of the Ontario Municipal Board approval of this by-law, being the \_\_\_\_\_ day of \_\_\_\_\_, 2011;
  - iii. That no building containing multiple dwellings or retirement dwellings units shall exceed 4 storeys or 12 metres in height from the grade existing at the date of the Ontario Municipal Board approval of this by-law, being the \_\_\_\_\_ day of \_\_\_\_\_, 2011 where any portion of such building is located within 50 metres of a single-family lot;
  - iv. That a minimum setback of 8 metres shall be provided and maintained from the lot line abutting Scenic Drive;
  - v. That a minimum setback of 12 metres shall be provided and maintained between multiple dwellings up to 4 storeys in height;

- vi. That a minimum setback of 20 metres shall be provided and maintained between multiple dwellings 5 storeys or more in height;
  - vii. That a minimum setback of 5 metres shall be provided and maintained to all other Zone district boundaries
  - viii. That not more than 4 townhouse dwelling units shall be attached in a continuous row;
  - ix. That a minimum setback of 5 metres shall be provided and maintained between townhouse dwellings;
  - x. That a minimum of 30% of the lot area shall be provided and maintained as landscaped area;
  - xi. That a maximum of 10% of the required parking may be surface parking;
  - xii. That a maximum of 335 residential dwelling units are permitted; Deleted: 50
  - xiii. That a maximum of 34,000 square metres of gross floor area shall be permitted for all residential units; Deleted: 5
  - xiv. For buildings other than townhouses abutting on Scenic Drive, the maximum building façade width, measured at the most easterly to the most westerly point of the building, shall not exceed 53 metres;
  - xv. For buildings greater than 4 storeys and 12 metres in height, those portions of the building at the 5<sup>th</sup> and 6<sup>th</sup> storey which abut Scenic Drive shall be setback a minimum of 3 metres from the storey below at each of the 5<sup>th</sup> and 6<sup>th</sup> storey;
  - xvi. That direct vehicular access to townhouse dwellings shall be prohibited from Scenic Drive.
5. That in addition to the requirements of Sections 3 and 4 above, the following provisions shall also apply:
- (a) That notwithstanding the provisions of Sections 3. (b) xiv and 4. (b) xiii above, the total gross floor area for residential uses shall not exceed 54,000 square metres, excluding any residential use of the existing buildings that are retained or reconstructed. Deleted: 1,900

- (b) That notwithstanding the provisions of Section 3. (b) xiii and 4.(b) xii above, a maximum of 100 dwelling units may be allocated for up to 200 retirement dwelling units at a ratio of 1:2 for a total of 629 units. Additional dwelling units may also be allocated to retirement dwelling units at a ratio of 1:1 providing the total number does not exceed 629.
- (c) That the provisions of Sections 3. (b) xiii and 4 (b) xii, above, shall exclude any dwelling units that may be contained in the buildings existing on the date of the Ontario Municipal Board approval of this by-law, being the \_\_\_\_\_ day of \_\_\_\_\_, 2011, known as the "Long and Bisby" Building, the "Moreland" Building, the "Brow Annex" and the "Brow Infirmary" Building.
6. That the 'H' symbol shall be removed for all, or a portion of the lands affected by this By-law, by a further amendment to this By-law, at such time:
- (a) The applicant submits a Master Site Plan and Precinct Plan for each development phase, as set out in Official Plan Amendment No. xx, which includes the required studies, to the satisfaction of the Director of Planning.
- (b) The applicant submits urban design guidelines, as set out in Official Plan Amendment No. xx, to the satisfaction of the Director of Planning.
- (c) The applicant submits architectural control guidelines, as set out in Official Plan Amendment No. xx, to the satisfaction of the Director of Planning.
- (d) The applicant submits an Urban Design Report, as set out in Official Plan Amendment No. xx, to the satisfaction of the Director of Planning.
- (e) Where the Moreland and Brow Annex buildings are not to be retained, the applicant submits a report which demonstrates that retention and re-use of such buildings is not structurally feasible, to the satisfaction of the Director of Planning.



This is Schedule "A" to By-Law No.11-

Passed the ..... day of ....., 2011

## Schedule "A"

Map Forming Part of  
By-Law No. 11- \_\_\_\_\_  
to Amend By-law No.6593

### Subject Property

North side of Scenic Drive, east and west of Sanatorium Road.

Change in Zoning from the "AA/S-1353" (Agricultural)  
District, Modified to:



Block 1: "DE/S-1600" (Low Density Multiple  
Dwellings - Holding)



Block 2: "E-H/S-1600"  
Multiple Dwellings, Lodge, Clubs, etc. - Holding)  
District, Modified.



Refer to By-law 05-200.



Old Sanatorium Road

*Exhibit 23*

**CITY OF HAMILTON**

**BY-LAW No. \_\_\_\_\_**

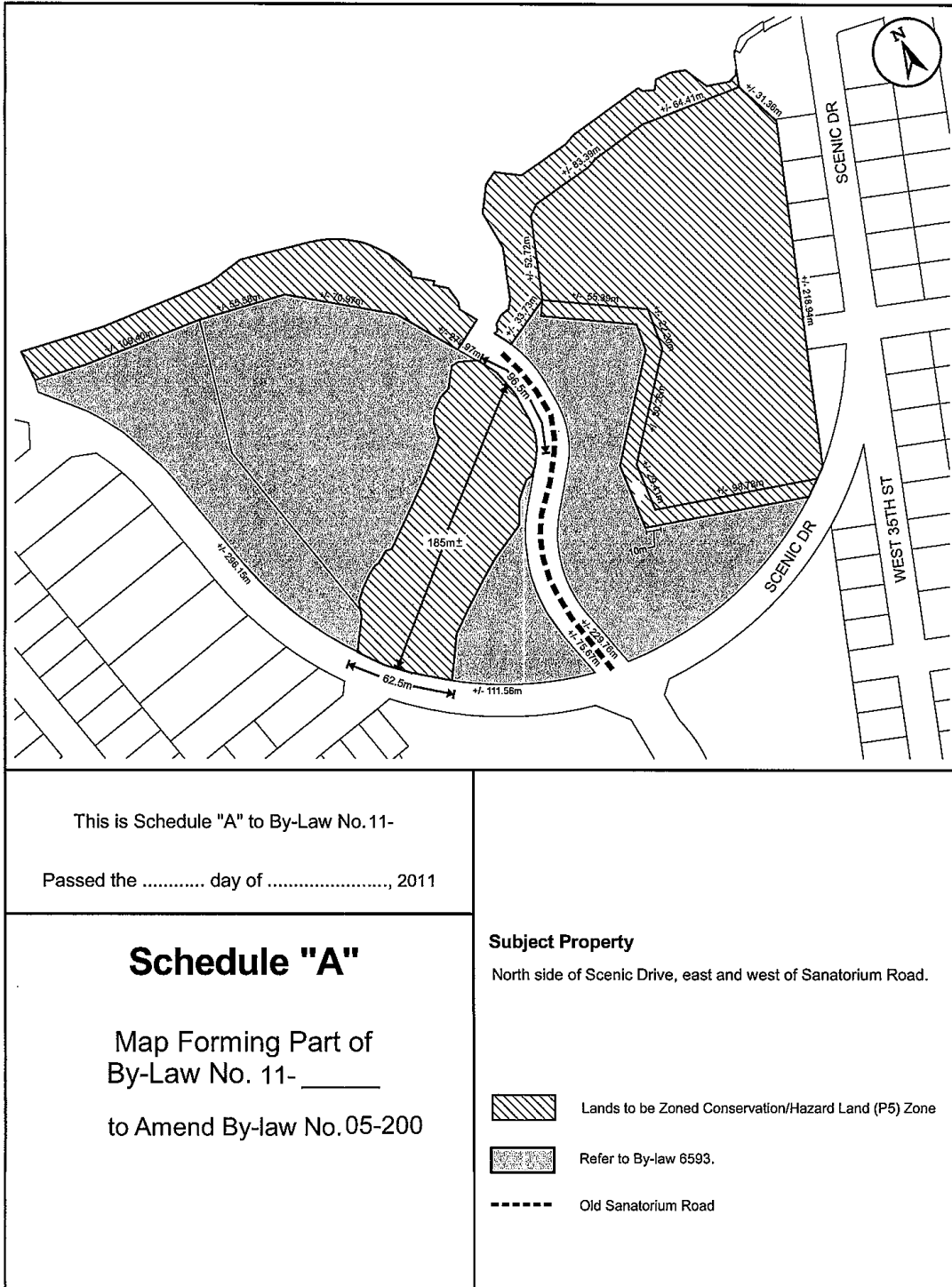
**To Amend Zoning By-law 05-200,  
Respecting Lands Located at Sanatorium Road (Hamilton)**

**WHEREAS** the Ontario Municipal Board by Order dated \_\_\_\_\_, 2011 approved an Amendment to the Official Plan of the former City of Hamilton;

**AND WHEREAS** this by-law will be in conformity with said Amendment to the Official Plan of the former City of Hamilton

**NOW THEREFORE** the Ontario Municipal Board directs that Zoning By-law No. 05-200 amended as follows:

1. That Schedule "A" to Zoning By-law 05-200, is hereby amended by including the Conservation/Hazard Land (P5) Zone boundaries and Neighbourhood Parks (P1) Zone boundaries on Map 1034, both as shown on the attached Schedule "A".



**ATTACHMENT 3**

*Exhibit 24*

Page 1 of 7

**Brow Lands**

Further to the City of Hamilton's Standard Form Subdivision Agreement, the following Special Conditions of Draft Plan Approval for 25T-200712, Part of Lot 57, Concession 2, Sanatorium Road and Scenic Drive, Hamilton, shall apply:

1. That this approval apply to the "Draft Plan of Subdivision – The Browlands" (file 25T-200712) prepared by A.J. Clarke and Associates Ltd. and certified by B.J. Clarke, OLS, dated March 26, 2009.
2. That prior to servicing, the Owner agrees to retain an expert roundabout engineering consultant at the Owner's expense to design, engineer and analyze and provide cost estimates for the future roundabout at the intersection of Sanatorium Road and Scenic Drive to the satisfaction of Manager of Traffic Engineering and Operations and the Director of Development Engineering.
3. That prior to servicing, the Owner agrees to make a one time cash payment to the City of Hamilton to cover 20% of the estimated cost for construction of a modern roundabout at the intersection of Scenic Drive and Sanatorium Road as determined through Condition 2 to the satisfaction of the Director of Development Engineering.
4. That prior to registration of the draft plan, the Owner shall dedicate daylight visibility triangles, and any other land required for the roundabout, on the north side of the intersection of Scenic Drive and Sanatorium Road to accommodate the final design of the intersection to the satisfaction of Manager of Traffic Engineering and Operations and the Director of Development Engineering.
5. That prior to registration of the draft plan, the Owner shall receive final approval of a Traffic Impact Study to the satisfaction of the Manager of Traffic Engineering and Operations.
6. That prior to the registration of any phase of the draft plan, the applicant shall submit a study to confirm that suitable sightlines are available for at least one additional access onto Scenic Drive east of the Scenic/Sanatorium intersection to the satisfaction of the Manager of Traffic Engineering and Operations.
7. That prior to registration of any phase of the draft plan, the Road Closure application for Sanatorium Road, filed with the City of Hamilton Public Works Department, shall be finalized and the road stopped up and closed to the satisfaction of the Manager of Development Engineering and the Manager of Traffic Engineering and Operations.



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8. That prior to registration of the draft plan, the Owner enters into an agreement of Purchase and Sale to acquire the lands shown as Block 4 from the City of Hamilton to the satisfaction of the Director of Planning.
9. That prior to registration of any phase of the draft plan, the Owner shall provide a landscape plan prepared by a landscape architect or engineer, or related professional which details the alignment, design and construction of the extension of the Brow Trail, including safety barriers and fences, and considering the stability of the escarpment edge, to the satisfaction of the Manager of Landscape Architectural Services.
10. That prior to registration of any phase of the draft plan, the Owner agrees to construct the Brow Trail within Block 5 at the Owner's sole expense (the east-west portion of Sanatorium Road located along the brow of the Niagara Escarpment) including the connection to Scenic Drive and with the continuous connection to the existing Brow Trail north of Block 7, in accordance with the City of Hamilton's Recreational Trails Master Plan (December 2007) and the approved landscape plan, to the satisfaction of the Manager of Open Space Development, the Director of Planning and the Director of Development Engineering.
11. That prior to registration of the draft plan, the Owner shall stake the brow of the Niagara Escarpment and shall prepare a plan showing the Escarpment Brow to the satisfaction of the Niagara Escarpment Commission.
12. That prior to registration of the final plan, the Owner shall enter into an agreement to implement all recommendations of the Environmentally Significant Areas Impact Evaluation Group (ESAIEG) to the satisfaction of the Director of Planning in consultation with the Hamilton Conservation Authority.
13. That prior to removal of any trees or vegetation, the Owner shall prepare and implement a tree preservation/protection plan to the satisfaction of the Director of Planning and the Hamilton Conservation Authority.
14. That prior to preliminary grading, the Owner shall submit a final Environmental Impact Statement (EIS) to be reviewed by the Environmental Significant Areas Impact Evaluation Group (ESAIEG) and the Hamilton Conservation Authority. Any recommendations of the revised Environmental Impact Statement should be implemented to the satisfaction of the Director of Planning and the Hamilton Conservation Authority.
15. That prior to demolition of any buildings or structures on the site, the Owner shall prepare and implement the recommendations of a Cultural Heritage Impact Assessment to the satisfaction of the Director of Planning.

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16. That prior to preliminary grading, the Owner shall receive any necessary demolition permits for the removal of any existing buildings (subject to the completion of the Cultural Heritage Impact Assessment) on the property which are not required to be conserved and submit proof that the buildings have been demolished or otherwise removed to the satisfaction of the Director of Planning.
17. That prior to registration of the draft plan, Block 6 be dedicated as open space to the City of Hamilton, by the Owner's certificate on the final plan of subdivision to the satisfaction of the Director of Planning.
18. That prior to registration of the draft plan, the Owner agrees to construct 1.5m wide concrete sidewalks along the north side of Scenic Drive adjacent to the subject lands to the satisfaction of the Director of Development Engineering.
19. That prior to registration of any phase of the draft plan, the Owner agrees to provide an easement over Block 4 for non-motorized vehicular public access (pedestrian, cyclists etc.) and City emergency and maintenance vehicles to the satisfaction of the Director of Development Engineering.
20. The Owner agrees to provide a detailed servicing strategy for the entire site, with the submission of the first phase of development of the draft plan lands to the satisfaction of the Director of Development Engineering.
21. That prior to servicing and subject to the detailed servicing strategy noted in Condition 20, the Owner agrees to reconstruct the existing sanitary sewer on Scenic Drive to provide for a gravity outlet for sanitary flows from the site at the Owner's sole expense and to the satisfaction of the Director of Development Engineering.
22. That prior to servicing, the Owner agrees that the abandonment of all existing private or municipal services including the existing sanitary outlet to the north of the subject lands be done in accordance with City standards at the Owner's sole expense and to the satisfaction of the Director of Engineering Development.
23. That prior to servicing, the Owner agrees to implement, at the Owner's sole expense, all recommendations of the Sanatorium Road Realignment Flood and Erosion Control Impact Assessment as related to the site, to the satisfaction of the Director of Development Engineering in consultation with the Hamilton Conservation Authority.

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24. That prior to registration of the first phase of the draft plan, the Owner agrees that flood and erosion hazard limits on the draft plan lands will be identified and a block for storm water management and conveyance facilities will be identified beyond the hazard limits on the final plan of subdivision and to grant a maintenance easement over the said block to the City of Hamilton for the purpose of assuring adequate conveyance and storage of storm runoff to the satisfaction of the Director of Development Engineering and the Hamilton Conservation Authority.
25. That prior to servicing of the first stage of development, the Owner agrees to submit a detailed Stormwater Management Report to demonstrate that there is no increase in the peak flows, for the 2 to 100 year storm event, on a subwatershed scale as result of the increased imperviousness of the site and that Level 1 quality control of surface runoff is provided on the site to the satisfaction of the Director of Development Engineering and the Hamilton Conservation Authority.
26. That prior to servicing of the first stage of development, the Owner agrees to submit an Erosion Assessment, prepared by a qualified professional engineer, to demonstrate that there is no increase in the erosion potential of the existing watercourse due to the increased imperviousness of the site to the satisfaction of the Director of Development Engineering and the Hamilton Conservation Authority.
27. That prior to servicing, subject to the findings and recommendations of the approved Stormwater Management Plan and the Erosion Assessment, the Owner agrees to:
- i) Operate, maintain, and monitor in an acceptable manner, the storm water management facility(s) throughout the construction of all stages of draft plan registration, or until a time as established by the Director of Development Engineering;
  - ii) Construct, operate and maintain the facility including any changes to conditions as result of the Ministry of the Environment's approval at the Owner's sole expense;
  - ii) Provide an operating and maintenance manual to the satisfaction of the Director of Development Engineering for the pond(s) and agrees to inspect/monitor and maintain the storm pond(s) in accordance with said manual throughout construction including the monitoring period and during the life of the constructed facility; and

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- iii) Keep detailed logs concerning performance and required maintenance activities for the pond until such time that the Storm Water Management Facility is proven to perform as designed, to the satisfaction of the Director of Development Engineering.
- 28. That, prior to servicing, the Owner agrees to follow an integrated design process for stormwater management whereby the design of the facility shall ensure the protection of significant trees and heritage resources in accordance with the Tree Preservation Plan and the Heritage Impact Assessment, to the satisfaction of the Director of Development Engineering in consultation with the Manager of Community Planning and Design.
- 29. That prior to servicing, the Owner shall submit a detailed engineering submission outlining how excavation for footings, servicing or underground parking on the subject lands can be achieved utilizing methods other than blasting to the satisfaction of the Director of Development Engineering in consultation with the Niagara Escarpment Commission. Any peer review required for this study will be at the sole cost of the developer.
- 30. The Owner agrees to that prior to any future site plan approvals, the applicant shall be required to submit an Urban Design Report brief indicating how the proposed development meets the urban design policies contained in Official Plan Amendment [REDACTED]
- 31. The Owner agrees that prior to any future site plan approvals, the Owner will provide information demonstrating construction details for development of the private road system and Brow Trail to determine that the network is engineered and built to carry the load of fire apparatus. It will be imperative that access for fire apparatus is maintained. This will mean that the private road and trail will need to be engineered to support the width and weight of fire apparatus to the satisfaction of the Fire Chief. It is requested that the path / trail be maintained year-round as a means of access.
- 32. The Owner agrees that prior to any future site plan approvals, the Owner shall provide a streetscaping plan indicating how the road will be closed, assumed and constructed as a private road to the satisfaction of the Director of Planning.
- 33. The Owner agrees that should the existing street trees be confirmed as an invasive species and require removal, the developer will be required to submit a tree planting plan for the north side of Scenic Drive which details the location of new landscaping and street trees. New street trees shall be placed no fewer than 6 to 10 metres apart along the length of the north side of Scenic Drive.
- 34. The Owner agrees that prior to site plan approval, an addendum to the engineering submission outlining excavation may be required.

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35. The Owner agrees that the detailed engineering drawings shall demonstrate that the proposed roundabout design, and any additional traffic calming features, will function as intended, accommodate all road users and provide necessary road allowance areas for utilities and any streetscape treatment.
36. The Owner agrees that The Owner may be required to provide an updated Traffic Impact Study as each phase of development occurs to account for variations in the assumptions used initially (density, access locations, etc.).
37. The Owner agrees that the subdivision agreement will require that prior to any future site plan approvals, the Owner shall complete a visual impact assessment for all development proposals to the satisfaction of the Director of Planning in consultation with the Niagara Escarpment Commission. The visual impact assessment shall determine the potential for adverse impacts on the Niagara Escarpment as well as views to and through the site.

*Notes to Draft Plan Approval:*

1. That prior to any future site plan approvals, the following information must be considered. When responding to a fire emergency with a minimum of six (6) large fire apparatus, there is a requirement for the Fire Department to be able to get its vehicles as close to the scene as possible so as not to reduce the functional ability of the fire apparatus. The indication is that there will be vehicle parking designated in front of the proposed buildings. It is imperative that this parking area be designed so that a minimum travel route of 2.9 metres can be maintained year round.
2. That prior to any future site plan approvals, the following information must be considered. Given the proposed density and multi-storey design, multiple access points are requested by Emergency Services (Fire). With multi-storey buildings, it is essential that access is available to deploy ground ladders and aerial devices for rescue and firefighting operations.
3. That prior to any future site plan approvals, the following must be considered. The indication is that the site would be protected with a private hydrant system that would be utilized by firefighter crews. Given the proposed layout, it would be important that a sufficient number of hydrants are provided in accessible locations and that the system is not looped. In the case of a significant fire incident, access to multiple independent feeder lines is required to supply the necessary volume of water.
4. That prior to any future site plan approvals, the following must be considered. The Fire Department would strongly be recommending the installation of residential sprinklers in these high density multi-storey buildings

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5. That prior to any future site plan approvals, the Fire Department strongly requests that if the design for underground parking is of a common one-way in and out, that additional access / egress locations be provided for firefighting and rescue operations.

**Deleted:** 6. That prior to any future site plan approvals for buildings higher than 6 storeys (18 metres), the Owner shall complete a visual impact assessment for all development proposals to the satisfaction of the Director of Planning in consultation with the Niagara Escarpment Commission. The visual impact assessment shall determine the potential for adverse impacts on the Niagara Escarpment as well as views to and through the site.

Draft

## ATTACHMENT 4

Date: May 20, 2011

### MEMORANDUM OF AGREEMENT

BETWEEN: DEANLEE MANAGEMENT INC.  
AND: NIAGARA ESCARPMENT COMMISSION  
Re: DEANLEE MANAGEMENT - CHEDOKE BROWLANDS  
Minutes of Settlement  
Visual Impact Assessment

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As part of the review of the proposed development for the Chedoke Browlands the proponent's consultant Siteline Research submitted a Visual Impact Assessment ("VIA") dated September 2008 with addendum and updated with a further version dated October 2009. This document was not approved, by the NEC, as there remained outstanding matters to be addressed. Comments on the October 2009 report (herein the "Siteline Report") were provided by the NEC by letter dated December 3, 2009.

The draft OPA and Zoning Bylaw both speak to the provision of a Visual Impact Assessment that would be required to consider an increase in building storeys over 6 storeys to a maximum of 8 storeys. This memorandum is to provide direction on the outstanding matters that the proponent has agreed to address to the satisfaction of the City of Hamilton in consultation with the NEC for the visual assessment of the site in order to achieve removal of the H provision in the zoning by-law and proceed with site plan approval and development of any part of the site.

The substance of the following outstanding matters has been excerpted from two existing pieces of correspondence:

- A. December 3, 2009 Letter to the City of Hamilton from the NEC;
- B. Chedoke Browlands Visual Impact Assessment, Addendum October 20, 2008. Copies of the Siteline Report and Letters A and B are to be filed with the OMB as exhibits as part of the implementation of this settlement.

**Visual Impact Assessment - Comments from December 3, 2009 Letter A** (The references at the end of each item indicates the letter and item number from which the excerpts are taken).

The study provided October 26, 2009 by Siteline Research (the Siteline Report) represents a comprehensive version of the Visual Impact Assessment (VIA) study and addenda as requested by the NEC. The document includes updated information based on:

- The initial study
- The addenda provided in concert with different development plan scenarios; and
- The April 16, 2009 Demonstration Plan (DP) we understand is the final plan.

There are inconsistencies between the DP and the VIA for four (4) of the proposed building heights /storeys. They are as follows:

<u>Building #</u>	<u>VIA Storeys</u>	<u>Demonstration Plan Storeys</u>
#4	6	4
#5	6	4
#6	5	3
#7	5	3

The VIA will therefore need to be revised to reflect the storeys shown on the Demonstration Plan; or the latest proposal (applicant email December 3, 2009). See also other matters herein.

The methodology, investigative methods and documentation (including simulations) of the physical changes to the Escarpment landscape for viewshed/views from the north and north-west largely meets the requirements of the NEC. The visual analysis of views and changes to the landscape from Scenic Drive however does not fulfill visual assessment requirements and will require further investigation. Also missing from the report is a section regarding Guidelines for the design of the buildings.

While the methodology followed to demonstrate change for views from the north and northwest, Figures 1 through 17, is largely acceptable NEC staff, the consultants do differ in the evaluation of the visual impact to the Escarpment landscape for some, not all, of the proposed built form.

1. The VIA will study, in accordance with the NEC Visual Assessment guidelines, the degree and nature of visual change to views from the Sanatorium Promenade/Escarpment park area resulting from the proposed development. The VIA will review and assess the impact of new buildings on the horizon line from locations from the north-west (King road) and the views from the Promenade.  
[Letter A Item 1. second paragraph]



2. In October 2008 Siteline provided draft Guidelines, under separate cover, for the design of the buildings. NEC staff found these and other comments made by Siteline to be valuable in setting out parameters to mitigate visibility of the built form. A section addressing these matters has not been included in the October 2009 version of the VIA (the Siteline Report). Based on the last discussion the draft Guidelines were to be expanded upon (from the October 2008 submission) and included in the final report. As such this section is required for the VIA to be considered complete.  
[Letter A Item 3]

**The following are the guidelines from Letter B that were provided by Siteline and that should be incorporated into and expanded on in the final VIA:**

Guidelines for the design of buildings proposed for the subject lands are intended to assist in the visual integration of the new buildings into the landscape of the Niagara Escapement and are a result of the Visual Impact Assessment. Based on the Visual Impact Assessment the following guidelines are recommended to be adopted:

- a) All proposed buildings shall be clad in building materials that are of an earth tone. The use of mid tone colours is encouraged. Light coloured cladding materials shall not be used on elevations that may be visible from the viewpoints used in the Visual Impact Assessment.
  - b) The use of reflective cladding materials shall be kept to a minimum on all building elevations that are visible from the viewpoints; and
  - c) The proposed buildings should provide a variety of roof profiles to reduce their visual presence.  
[Letter B, Item 13]
3. The proponent submitted a new section in the October 2009 Siteline Report called Analysis of Potential View Corridors from Scenic Drive. This section of the report does not provide the information sought by the NEC to satisfy this component of the study. As has been discussed with the applicant and the City, the viewsheds into the subject lands, all within the Niagara Escarpment Plan, are to be identified. Subsequently, simulations demonstrating the change to the landscape with the introduction of built form, from view points selected in concert with NEC staff were to be provided. This work is expected to be consistent with the methodology, investigative methods and documentation undertaken for the views from the north north-west.  
[Letter A Item 4]
  4. The section of the Siteline Report addressing Scenic Drive includes a series of 8 photographs of existing conditions with a key plan. This photo series does not

however include the whole of the frontage along Scenic Drive. Viewsheds are not defined on the plan and no simulations of the built form are provided.

- a) Siteline Comment: "As requested by NEC staff, an on site review was undertake [sic] to assess the nature and extent of any existing view corridors that might currently exist visually linking Scenic Drive with the brow of the escarpment."

NEC response: Views and viewsheds are not limited to those that extend to the brow. The Escarpment landscape is the whole of the site not just the brow. This matter has been discussed and clarified in writing and at each meeting with the applicant and their various consultants. However we would note views to the brow looking east from Scenic Drive & Sanatorium Road (west intersection) were not documented.

- b) Siteline Comment: "From our review of the existing vegetation, existing buildings to be retained as well as the new buildings and vegetation proposed as part of the development concept it is in our opinion unlikely that the current lack of view corridors will be significantly altered."

NEC response: Beyond the issues regarding the identification of viewshed there is the matter of vegetation removal and introduction of the built form. The Demonstration Plan cross referenced to the Aboud Plan indicates much of the vegetation within the interior of the Sanatorium grounds will be removed. At this time vegetation retention in the creek area is unknown and subject to the approval of the October 26th A. J. Clarke submission. In particular the visual conditions from View Point 4 will alter considerably both with vegetation removal and the introduction of 8 storey buildings. As examples see Photos 5, 6 and 7; background vegetation would be obscured by Buildings 8 and 9. This same built form impact would result from buildings 1, 6 and 7 looking west from viewpoints 1 and 2.

- c) It should be noted that the NEC Visual Assessment Guidelines identify that photographs are to be taken during non leaf conditions where possible.
- d) We would recommend that the proponent and their consultant review the NEC Visual Assessment Guidelines, past reports & correspondence (some attached) and contact NEC staff to review the scope of work to ensure this component of the study is addressed to the satisfaction of the NEC.  
[Letter A Item 5]

5. There are specific viewsheds of concern where existing photographs and simulations demonstrating the changes to the landscape along Scenic Drive would be pertinent. We also recommend an existing photograph and simulation be provided for the view looking east from the Promenade/Escarpment Park. These viewpoints, with approximate viewsheds, are set out on the attached red lined plan. These locations should not be considered comprehensive and we trust that the consultants will provide simulations of any other viewsheds they consider relevant to demonstrating the change to the Escarpment landscape and the visual impact assessment.  
[Letter A Item 6]
6. The proposed layout of the built form on these lands has taken different forms through out the review process. For the most part NEC staff are satisfied with the built form volumes set out, west of the Chedoke Creek, on the April 2009 Demonstration Plan. However; the layout east of the creek is very similar to that proposed in 2007. At that time NEC staff expressed concern for the amount of built form within the Escarpment lands. We note this as a matter of continuing concern, but will await final comments on the built form pending the resubmission of the visual analysis of views from Scenic Drive into the Escarpment lands and other outstanding matters as identified herein (2007 Site Plan attached for reference).  
[Letter A Item 10]

**SCHEDULE:**

Deanlee Demonstration Master Plan red lined December 2, 2009 LL

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PL100691

