



Hamilton

INFORMATION REPORT

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	April 30, 2024
SUBJECT/REPORT NO:	Appeal of Urban Hamilton Official Plan Amendment Application UHOPA-23-008 and Zoning By-law Amendment Application ZAC-23-020 to the Ontario Land Tribunal for Lack of Decision for Lands Located at 17 Ewen Road, Hamilton (PED24065) (Ward 1)
WARD(S) AFFECTED:	Ward 1
PREPARED BY:	Alaina Baldassarra (905) 546-2424 Ext. 7421
SUBMITTED BY:	Anita Fabac Acting Director, Planning and Chief Planner Planning and Economic Development Department
SIGNATURE:	

COUNCIL DIRECTION

In accordance with Subsections 22(7) and 34(11) of the *Planning Act*, an Official Plan Amendment and a Zoning By-law Amendment application may be appealed to the Ontario Land Tribunal after 120 days by the applicant if Council has not made a decision on the applications.

A motion to direct staff to advise the Planning Committee on matters relating to appeals of Council's non-decision, pursuant to the *Planning Act*, was passed by City Council on May 18, 2010. This information Report has been prepared in accordance with Council's policy for staff to advise the Planning Committee and City Council of appeals for non-decision to the Ontario Land Tribunal.

The following information is provided for Planning Committee's information with regards to Urban Hamilton Official Plan Amendment application UHOPA-23-008 and Zoning By-law Amendment application ZAC-23-020, which have been appealed for non-decision.

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

INFORMATION

The subject property is municipally known as 17 Ewen Road (refer to Appendix “A” attached to Report PED24065). The property is approximately 0.42 hectares in area and is located on the west side of Rifle Range Road, on the south side of Main Street West and on the east side of Ewen Road. The subject lands have frontage on two public streets and are located adjacent to an active industrial use to the south at 45 Ewen Road. The Hamilton Rail Trail is located between the subject lands and the active industrial use. Previously, an Official Plan Amendment (OPA-07-016) and Zoning By-law Amendment (ZAC-07-062) were submitted for the subject lands. The applications were refused by Council and appealed to the Ontario Municipal Board (now the Ontario Land Tribunal). The Ontario Municipal Board approved and ordered the Official Plan Amendment to be in effect but withheld the order implementing the draft Zoning By-law Amendment. Details of the appeal are included in the Zoning By-law Amendment application section of this report.

The current Urban Hamilton Official Plan Amendment and Zoning By-law Amendment applications were submitted by GSP Group Inc. c/o Brenda Khes on behalf of 17 Ewen (Hamilton) Corporation on December 19, 2022, and deemed complete on January 18, 2023. The proposal includes a 10 storey student residence building with a total of 545 residential units (981 beds), 137 parking spaces including 28 visitor parking spaces (110 underground parking spaces and 27 surface parking spaces) and 1,934 square metres of indoor amenity space.

The appeal of the Urban Hamilton Official Plan Amendment and Zoning By-law Amendment applications, filed by Kagan Shastri, DeMelo, Winer, Park, counsel for 17 Ewen (Hamilton) Corporation, was received by the City Clerk’s Office on February 12, 2024, 420 days after the receipt of the initial applications, and is included as Appendix “C” attached to Report PED24065. After the appeal was received for the subject lands, the appellants for the applications at 17 Ewen Road, Hamilton (UHOPA-23-008 and ZAC-23-020) indicated that the appeal may be heard in conjunction with the applications at 629, 1635, 1637, and 1655 Main Street West, Hamilton (UHOPA-20-027 and ZAC-20-042), which have also been appealed for non-decision.

PROPOSED DEVELOPMENT

The applicant has proposed a 10 storey student residence with 545 residential units (981 beds), 137 parking spaces including 28 visitor parking spaces (110 underground parking spaces and 27 surface parking spaces) and 1,934 square metres of indoor amenity space. The proposed driveway entrance for the parking facilities and drop off

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areas is located on Rifle Ridge Road. There is no outdoor amenity space that is proposed or permitted on the subject lands due to compatibility concerns with the industrial use to the south of the subject lands.

Urban Hamilton Official Plan Amendment Application

The subject property is identified as “Neighbourhoods” on Schedule E – Urban Structure and is designated “Neighbourhoods” on Schedule E-1 – Urban Land Use Designations in the Urban Hamilton Official Plan. The applications were received and deemed complete prior to Ministerial approval of Official Plan Amendment No. 167, however, as per *Bill 150*, any decision must conform to the Official Plan in effect on November 4, 2022.

The subject lands are located within the Ainslie Wood Westdale Secondary Plan and are designated “Mixed Use - Medium Density” with Site Specific Policy Area D on Map B.6.2-1 Land Use Plan. The policies in the Ainslie Wood Westdale Secondary Plan as it relates to the subject lands were the result of a tri-party Settlement Agreement for a previous Official Plan Amendment (OPA-07-016) and Zoning By-law Amendment (ZAC-07-062) approved by the Ontario Municipal Board on April 9, 2015. Site Specific Policy Area D permits development to be a maximum of 10 storeys in height, permissions for a maximum residential density between 300 to 375 units per gross hectare, no outdoor amenity area and limits residential development to student accommodation as long as manufacturing, warehousing, storage and accessory uses continue to operate at 45 Ewen Road, and identifies the area as a Class 4 neighbourhood when applying the provincial guidelines regarding noise. In addition, the site specific states for any future *Planning Act* application, development on lands located within Site Specific Policy Area D, will be compatible with and will not create a negative effect on the industrial uses at 45 Ewen Road and development will have regard for Ministry of the Environment Guideline NPC 300.

The effect of the applications is to modify the site specific policy area to increase the maximum density on the subject lands, by increasing the number of one bedroom and two bedroom units whereas the original proposal included a majority of units being within the range of three, four and five bedrooms sharing a kitchen, living area and washroom. Through the previous circulation, staff noted a discrepancy between the Official Plan text changes and the mapping in the current Official Plan and the Ontario Municipal Board decision issued on April 9, 2015. The current Site Specific Policy Area D does not apply to the entirety of 17 Ewen Road but the Board decision applies Site Specific Policy Area D to the entire property. The addressing in the Secondary Plan text also applies the Site Specific Policy Area D to 17 Ewen Road. At this time, staff requires

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further clarification regarding the decision details to confirm the applicable designation for the site and the extent of Site Specific Policy Area D.

The subject property is identified as “Industrial” in the Ainslie Wood Neighbourhood Plan. Since the application has been appealed, a future housekeeping amendment will be completed to apply the appropriate identification.

Zoning By-law Amendment Application

The subject lands are currently zoned “J/S-1522” (Light and Limited Heavy Industry, Etc.) District, Modified, as shown on Appendix “A” attached to Report PED24065. The property was subject to previous Official Plan Amendment (OPA-07-016) and Zoning By-law Amendment applications (ZAC-07-062) which were denied by the City of Hamilton. The applicant appealed Council’s decision to the Ontario Municipal Board and a settlement was reached on April 9, 2015, as attached in Appendix “C” of Report PED24065. At the time of the settlement, the Ontario Municipal Board withheld the order to implement the draft Zoning By-law which was included as part of the settlement hearing. To date, staff do not have a record of discussions with the Ontario Municipal Board being initiated to request the implementation of the Draft Zoning By-law in order to formally close the current settlement decision. As a result, the student residence proposed on the subject lands is currently not permitted by the Zoning By-law.

Through the initial circulation, staff added a disclaimer to the comments stating, “City staff’s comments provided as part of this application are provided with respect to the applications themselves, and staff notes that any development of the site may remain subject to the previous multi-party settlement approved by the Ontario Land Tribunal for the subject lands”.

Modifications are required to implement the revised proposal, based on the Zoning By-law that was agreed to, but not approved, at the April 9, 2015 settlement hearing, as shown on the Concept Plan in Appendix “B” attached to Report PED24065, including:

- The definition of student residence to permit one and two bedroom units with exclusive use of a kitchen and bathroom (in addition to the three or more bedroom units already permitted);
- Increasing the maximum Gross Floor Area to include the underground parking area;
- Updating the minimum parking ratio to 0.25 parking spaces per bedroom;
- Updating the maximum density to 359 units, including a maximum of 545 bedrooms; and,

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- Removing the Holding Provision on the subject lands which requires that a Record of Site Condition be submitted to the Ministry of Environment, Conservation and Parks and that conditional site plan approval has been granted on the subject lands.

Issues identified through the circulation include:

- The proposed development does not comply with the policies of the Urban Hamilton Official Plan as follows:
 - Concern with the proposed modification to the definition of a student residence may permit a multiple dwelling use. The modification is to permit one and two bedroom units with exclusive use of a kitchen and bathroom in the unit. The addition of one and two bedroom units with the exclusive use of a kitchen, bathroom, bedroom and living area could be perceived as a multiple dwelling. If the proposed modifications change the use of the development from what is traditionally understood to be a student residence (multiple bedrooms with either a kitchen or a bathroom) to a format that offers one and two bedroom units with exclusive use of kitchen and a bathroom, there could be concerns regarding compliance with applicable Provincial Policy Statement and Urban Hamilton Official Plan policies regarding protection of employment uses;
 - Concern with the amount of indoor amenity area for the proposed use as an exterior amenity area is not permitted as a result of the active industrial use immediately to the south and the current policies within the Ainslie Wood Westdale Secondary Plan;
 - Concern with the pedestrian connectivity within the site, specifically between the parking lot and the building entrances. In addition, there is concern with the reduction in the minimum planting strip along the northern property line;
 - Concern with the location of the proposed centreline of the driveway which is to be aligned with the centreline of the driveway access on the opposite side of Rifle Ridge Road (driveway entrance into the Fortino's Plaza). Offset intersections create safety concerns and traffic difficulties including weaving traffic and overlapping left turns; and,
 - Concern with the width of the underground parking ramp design which does not appear to be wide enough to support two-way traffic flow. Additionally, the sharp turn does not appear to allow proper maneuvering. The applicant shall demonstrate that two-way traffic flow can be provided both on the ramp and within the garage.

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The applicants were advised about the concerns noted above through comments provided by City Staff.

Public Consultation

In accordance with the provisions of the *Planning Act* and the Council Approved Public Participation Policy, Notice of Complete Application and Preliminary Circulation for the applications were sent to 20 property owners within 120 metres of the subject lands on January 26, 2023. Based on the applicant's most recent documentation, no additional neighbourhood meetings occurred for the proposed development.

To date, staff have received one written submission from the public requesting to be advised of all future public meetings in order to protect their appeal rights. The comment received was from the existing industrial site, Mondelez, to the south. Mondelez was party to the previous appeal after Council's decision to refuse the initial Official Plan Amendment and Zoning By-law Amendment submitted on the subject lands.

APPENDICES AND SCHEDULES ATTACHED

- Appendix "A" to Report PED24065 – Location Map
- Appendix "B" to Report PED24065 – Concept Plans and Building Elevations
- Appendix "C" to Report PED24065 – Letter of Appeal

AB/sd