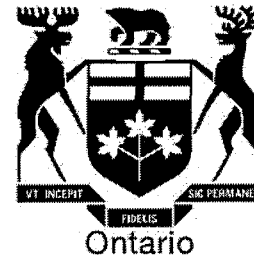


Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



16-337
Attachment 1

16-338
Attachment 2

ISSUE DATE: November 23, 2016

CASE NO(S): PL150378

PROCEEDING COMMENCED UNDER subsection 17(40) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Creek Village Inc.
Subject: Failure of the City of Hamilton to announce a decision respecting Proposed Official Plan Amendment No. OPA-13-005
Municipality: City of Hamilton
OMB Case No.: PL150378
OMB File No.: PL150378
OMB Case Name: Creek Village Inc. v. Hamilton (City)

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Creek Village Inc.
Subject: Application to amend Zoning By-law No. 6593 - Neglect of the City of Hamilton to make a decision
Existing Zoning: DE-3/S-1522
Proposed Zoning: DE-3/S-1522 to include site specific regulations
Purpose: To permit the development of a five storey residential building
Property Address/Description: 71, 75 & 77 Leland Street
Municipality: City of Hamilton
Municipality File No.: ZAC-13-027
OMB Case No.: PL150378
OMB File No.: PL150379

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Creek Village Inc.
Subject: Request to amend the Official Plan - Refusal of request by the City of Hamilton
Existing Designation: Low Density Residential 3c

Proposed Designated:	High Density Residential 1
Purpose:	To permit the development of a five storey residential building
Property Address/Description:	71, 75 & 77 Leland Street
Municipality:	City of Hamilton
Approval Authority File No.:	UHOPA-15-017
OMB Case No.:	PL160325
OMB File No.:	PL160325
OMB Case Name:	Creek Village Inc. v. Hamilton

Board Rule 107 states:

107. Effective Date of Board Decision A Board decision is effective on the date that the decision or order is issued in hard copy, unless it states otherwise.

Pursuant to Board Rule 107, this decision takes effect on the date that it is e-mailed by Board administrative staff to the clerk of the municipality where the property is located.

Heard: October 5 and 6, 2016 in Hamilton, Ontario

APPEARANCES:

Parties

Counsel

Creek Village Inc.

Kevin Thompson

City of Hamilton

Joanna Wice

DECISION DELIVERED BY RICHARD JONES AND ORDER OF THE BOARD

BACKGROUND AND CONTEXT

[1] Three applications were appealed to the Board by the Applicant/Appellant, Creek Village Inc. ("Creek"):

1. Failure of the City of Hamilton ("City") to announce a decision respecting proposed Official Plan Amendment No. 13-005;

2. Neglect of the City of Hamilton to make a decision regarding an application to amend Zoning By-law No. 6593 ("ZB").
3. The refusal of the City to adopt UHOPA-15-017, an amendment to the Urban Hamilton Official Plan ("UHOP").

[2] Creek proposes to develop 71, 75 and 77 Leland Street (subject property) in the City for a five storey residential apartment building consisting of 109 bachelor units, 10 one-bedroom units and five two-bedroom units for a total of 124 units. Fifty off-street parking spaces are proposed and one loading space. The building will be marketed as a student residence, but the accommodation will not be necessarily exclusive to same.

[3] The subject lands were used for industrial purposes and the existing two vacant, industrial buildings on site will be demolished.

[4] The subject lands have a triangular shape with 79 metres ("m") on Leland Street and 111 m on the Hamilton-Brantford Rail Trail. The topography is relatively flat. The Board heard that the subject property lies approximately 260 m southerly from McMaster University.

[5] The original application submitted in 2013 features 129 units but as a consequence of suggestions arising from community meetings with one of the two community associations, the developer converted five bachelor units to two-bedroom units and added 10 one-bedroom units.

[6] The current Official Plan and zoning designations would permit a total of 21 dwelling units with 25 parking spaces as-of-right.

[7] The Board heard in testimony that each of the permitted 21 units could accommodate five bedrooms each yielding 105 bedrooms which in Creek's view would be problematic as larger bedroom units would enhance the prospects for noisier social gatherings. Instead, the developer made applications to increase the density to allow

more units with a range of bedroom types as previously described. The as-of-right allowance would permit 105 students in comparison with the applications' proposal for 124 units or 129 bedrooms according to testimony.

[8] In the former City Official Plan, the subject property is designated Residential and additionally designated Medium Density Residential in the Ainslie Wood Westdale Secondary Plan. In the new Official Plan, UHOP approved in 2013, the subject property is designated Neighbourhoods and is additionally designated Low Density Residential C in the updated Secondary Plan which allows a maximum permitted density of 49 units per hectare ("UPH").

[9] With regard to zoning, the property is zoned DE-3/S-1522 District (Multiple Dwellings) in the ZB.

[10] The UHOP amendment proposes to establish a Special Policy Area designation in the Ainslie Wood Westdale Community Plan to increase the density from 125 UPH to 185 UPH to allow a maximum of 124 units and a maximum building height of five storeys within a High Density Residential 1 category amended from the current Low Density Residential 3C designation of the UHOP document.

[11] Creek proposes to amend the current zoning category on a site-specific basis to allow a maximum floor area ratio to 1.25 from the permitted ratio of 0.9. The amendment would also effect a reduction in the required parking provision from 1.25 spaces per unit to 0.40 spaces per unit.

[12] Two pre hearing conferences were held; the last one resulting in a Procedural Order setting out five issues.

[13] Two attachments, appended as Attachment 1 and Attachment 2, arise from Tabs 13 and 14 of Exhibit 1. These attachments describe the proposed amendments to the ZB and UHOP, which reflect the aforementioned changes to both documents. An amendment to the former Official Plan for the City was not included in Creek's

submissions to the Board because formal amendment to that document was deemed unnecessary by Creek and the City. The Board agrees and does not dispute the “non-requirement” for an amendment to a former Official Plan. The former Official Plan was the in-force document when the application was submitted in 2013.

PLANNING TESTIMONY

[14] The Board heard from Chris Pidgeon, a professional planning consultant, who testified on behalf of Creek, and Heather Travis, Senior Project Manager with the City. Ms. Travis was subpoenaed by Creek and testified favourably on the applications in accordance with her recommendation to Planning Committee in December 2015.

[15] N. Edward Davidson, a professional planning consultant provided planning evidence on behalf of the City.

[16] Mr. Pidgeon’s and Ms. Travis’ testimony agreed on many points and is summarized as follows:

- Both planners testified that the applications addressed provincial policy in positive ways. The Provincial Policy Statement 2014 and the Growth Plan for the Golden Horseshoe support the principle of efficient development involving the development of compact, vibrant and complete communities. The applications reflect that policy by promoting affordable, intensified development of a high-density type.
- The Neighbourhood designation of UHOP anticipates applications for Intensification to provide for the full expression of housing types and tenure as long as such uses are compatible with the built form and character of the surrounding neighbourhood. In this regard, the planners testified that the proposed building orientation which is towards Leland Street and the rail-trail does, not cause overlook on more sensitive, low-density residential uses. Furthermore, the existence of mature trees, 50

trees in all, which are located along the residential boundary, will be retained, and the planners opined that existing residential lots on Maple Avenue also have extensive mature trees coverage in their rear yards to provide additional buffering.

- The planners testified that the existing zoning already permits five storeys and the proposal similarly complies with the zoning setbacks permitted by the ZB.
- The proposed high density use replaces two, existing derelict industrial buildings and by doing so, reinforces the residential character of the neighbourhood. The proposed multiple dwelling will also provide an alternative housing form within a neighbourhood currently dominated by single detached dwellings.
- UHOP requires higher density uses to have access to collector roads, a particular status that Leland Avenue enjoys.
- The proposed development is located in close proximity to community services and the university, and the adjoining rail-trail.
- With regard to the urban design standards of UHOP, the planners testified that the residence contributes to a sense of identity along Leland Street, provides a high quality street edge and a good fit with the lower profile housing forms extant in the surrounding neighbourhood, and provides a building that can accommodate the future needs of residents.
- It was acknowledged in Ms. Travis' report to the Planning Committee that site plan control would initiate several changes to the proposed façade of the building to establish a better fit with the neighbourhood.

- A noise study concluded that potential noise impacts would not arise on adjoining properties and that landscaping and lighting elements will be addressed in the site plan control application to ensure that there will be no adverse impact from “spillover” lighting.
- With regard to residential intensification, UHOP states that it shall be encouraged throughout the entire built-up area of the City, an objective the applications satisfy according to their evidence

[17] There are two UHOP policies however, which the Board notes are not exemplars of policy compliance.

[18] One, Policy E.3.3.1 of UHOP recommends that higher density uses be located on the periphery of a neighbourhood, not the interior where lower density housing forms shall prevail, and two: high profile residential buildings shall not generally be located adjacent to low profile residential uses (Policy E.3.6.7b). More will be said about this later.

[19] In contrast, Mr. Davidson was of the view that the applications will not enhance, as they should the established patterns and built form of the neighbourhood, which is predominantly comprised one and two storeys. He testified that the setbacks planned to face the rail-trail will unduly crowd that public amenity corridor and should be enlarged to allow for improved transition and visual buffering.

[20] He opined that the high density character of the proposed uses warranted the re-examination of all standards and; moreover, the proposed development did not deserve the presumption of as-of-right compliance with regard to the allowance for five storeys in isolation of a broader assessment of appropriate setbacks, and performance standards regarding the provision of outdoor and indoor amenity space. He was of the view that a four-storey building represented a more compatible building option which Creek and City planning staff had not explored.

[21] He opined that the interior of this neighbourhood, being predominantly low density in character and lacking in transit services, should not be the focus of ad hoc high-density residential development.

PARKING

[22] Stewart Elkins, a professional transportation planner testified on behalf of Creek. Mr. Elkins prepared the transportation analysis that stated that 50 off street parking spaces, rather than 155 spaces required by the ZB, would be adequate for the proposed development. Mr. Elkins based his study on the presumption that the entirety of the tenants be students although he affirmed under cross examination that a building partially occupied by a non-student population could still be serviced appropriately by 50 spaces. Nevertheless, he opined that as the site is very close to the university and commercial services, other modes of mobility including transit, walking and cycling would be employed by 34% of the resident population. In his view, the site's locational advantages share characteristics of a downtown situation.

[23] Mr. Elkins testified that the development would benefit from the provision of secured bicycle parking, a program encouraging on-site car sharing and various site improvements to encourage walking.

PARTICIPANTS

[24] Douglas Anderson of 265 Emerson Street in Hamilton was in favour of the application, considering it a potential asset to the neighbourhood and the students who at the present time are limited to occupying rented space in converted single detached dwellings in the neighbourhood.

[25] Catherine Truong and Thuy Ha Truong, both of 15 Leland Avenue, were of the opinion that the five-storey structure would be disruptive and visually obtrusive in the low-density neighbourhood. Existing traffic congestion would intensify, particularly in the

morning hours, and more students in the area would ensure the prospect more debris and noise which is currently a problem in their view.

[26] Fenglai Li of 112 Ward Avenue stated that parking congestion and increased noise would arise if the applications were approved.

FINDINGS

[27] The evidence heard in connection with off street parking was uncontroverted and the Board finds agreement with the provision of 50 spaces. The recommendations specific to the encouragement of walking, cycling and car share options are intended for implementation under the site plan control process and the Board expresses every confidence in the City and Creek that there will be the appropriate follow- through pursuant to those recommendations. However, in reference to Exhibit 6, an email sent by the City's counsel, Joanna Wice to Ms. Travis, the Board is amending the proposed rezoning by-law described in Attachment 1 to signal the imposition of a Holding (H) provision to ensure that the enactment of site plan control includes that "Required Fire Flow" is addressed by Creek to the satisfaction of the Senior Director of Growth Management. In accordance with Exhibit 6, the Holding provision will ensure that the required fire flow needs are addressed including the potential requirement that Creek may have to extend the watermain from Emerson Avenue to satisfy water flow needs related to emergency servicing.

[28] The Board finds that although the density increase is numerically material, the proposed five-storey building will not cause adverse impact on neighbouring land uses. The intention to shift the building to the southwest part of the ownership largely accomplishes that objective and the Board in this regard relies on the City to effect appropriate buffering, as well as architectural refinements to the structure itself through the site plan process. At this point in time, the existence of two large, vacant industrial buildings is an anomaly in the neighbourhood, and in the Board's view, this is *profoundly more disruptive than the construction of a multi storey residential building.*

[29] This brownfield site affords an excellent opportunity to realize intensification and rather than penalizing this opportunity by reducing building height and/or unit density for the sake of a numeric reduction, the applications have demonstrated a capacity to comply with prevailing provincial and Official Plan policy and produce a residential, multi density use capable of achieving neighbourhood compatibility. As noted in paragraph 18, complete Official Plan compliance is not fully realized by the applications, but *absolute conformity with a planning document is not a presumption or a prerequisite of the Planning Act*. In this regard, the Board agrees with the testimony of the two planners who support the applications and who affirmed that the principles of sound planning practice are realized in the applications..

ORDER

[30] The Board orders that the appeals are allowed accordingly: the amendment to the City of Hamilton Zoning By-law as described in Attachment 1 shall be revised to include the provision of a Holding (H) provision, and pursuant to that revision, approved; and further, the amendment to the Urban Hamilton Official Plan shall be approved in accordance with Attachment 2.

“RICHARD JONES”

RICHARD JONES
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Ontario Municipal Board

A constituent tribunal of Environment and Land Tribunals Ontario

Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

ATTACHMENT 1

Authority:Ontario Municipal Board

Case Numbers: PL150378 & PL150379

Bill No. ____

CITY OF HAMILTON

BY-LAW NO. 16-____

To Amend Zoning By-law No. 6593 (Hamilton) Respecting Lands located at 71, 75 &77 Leland Street (Hamilton)

WHEREAS the City of Hamilton Act, 1999, Statutes of Ontario, 1999 Chap. 14, Sch. C. did incorporate, as of January 1, 2001, the municipality “City of Hamilton”;

AND WHEREAS the City of Hamilton is the successor to certain areamunicipalities, including the former municipality known as the “The Corporation ofthe City of Hamilton” and is the successor to the former regional municipality, namely, “The Regional Municipality of Hamilton-Wentworth”;

AND WHEREAS the *City of Hamilton Act, 1999* provides that the Zoning By-laws of the former area municipalities continue in force in the City of Hamilton untilsubsequently amended or repealed by the Council of the City of Hamilton;

AND WHEREAS the Council of The Corporation of the City of Hamilton passedZoning By-law No. 6593 (Hamilton) on the 25th day of July 1950, which by-lawwas approved by the Ontario Municipal Board by Order dated the 7th day ofDecember 1951, (File No. P.F.C. 3821);

AND WHEREAS the Ontario Municipal Board, in rendering a decision on these matters on the 23 day of November 2016, which recommended that Zoning By-law No. 6593 (Hamilton), be amended as hereinafter provided;

AND WHEREAS this By-law is in conformity with the Urban Hamilton Official Plan by way of a further amendment No. 71, approved by the Ontario Municipal Board on the 23rd day of November, 2016;

NOW THEREFORE the Ontario Municipal Board enacts as follows:

1. That Sheet No. W____ of the District maps, appended to and forming part of By-lawNo. 6593 (Hamilton), is amended as follows:

- (a) By changing the zoning from the “DE-3/S-1522” (Multiple Dwellings) District, Modified, to the “DE-3/S-1522a” (Multiple Dwellings) District, Modified; on the lands the extent and boundaries of which are shown on a plan hereto annexed as Schedule ‘A’.
2. That in addition to the “DE-3/S-1522 ” (Multiple Dwellings) District regulations as contained in By-Law 05-209 (modifying Zoning By-law No. 6593), the following special requirements apply:
- (a) That notwithstanding Section 10C(1) of Zoning By-Law 6593, a multiple dwelling with a maximum of 124 units, to be comprised of a mix of 109 bachelor units, 10 one-bedroom units and 5 two-bedroom units, shall be permitted;
- (b) That notwithstanding Section 10C(5) of Zoning By-law No. 6593, no building or structure shall have a gross floor area greater than the area within the district of the lot on which it is situate, multiplied by the floor area ratio factor of 1.27;
- (c) That notwithstanding Section 18A(1) of Zoning By-law No. 6593, not less than 0.4 parking spaces per unit, inclusive of visitor parking, shall be required.
3. That the amending Zoning By-law apply the Holding Provisions of Section 36(1) of the *Planning Act, R.S.O., 1990, c. P.13*, to the subject lands identified in Section 1 of this by-law by introducing the Holding symbol ‘H’ as a suffix to the proposed Site Specific “DE-3” (Multiple Dwellings) District.

The Holding Provision “DE-3/S-1522a”-‘H’ will prohibit the use of the subject lands for a multiple dwelling until such time as the following condition has been satisfied:

- (1) a report signed and sealed by a Professional Engineer is received to address the Required Fire Flow to the satisfaction of the Senior Director of Growth Management.

City Council may remove the ‘H’ symbol, and thereby give effect to the “DE-3/S-1522a” (Multiple Dwellings) District, by enactment of an amending By-law once the above conditions have been fulfilled.

4. That By-law No. 6593 (Hamilton) is amended by adding this By-law to Section 19B as Schedule S-1522a.

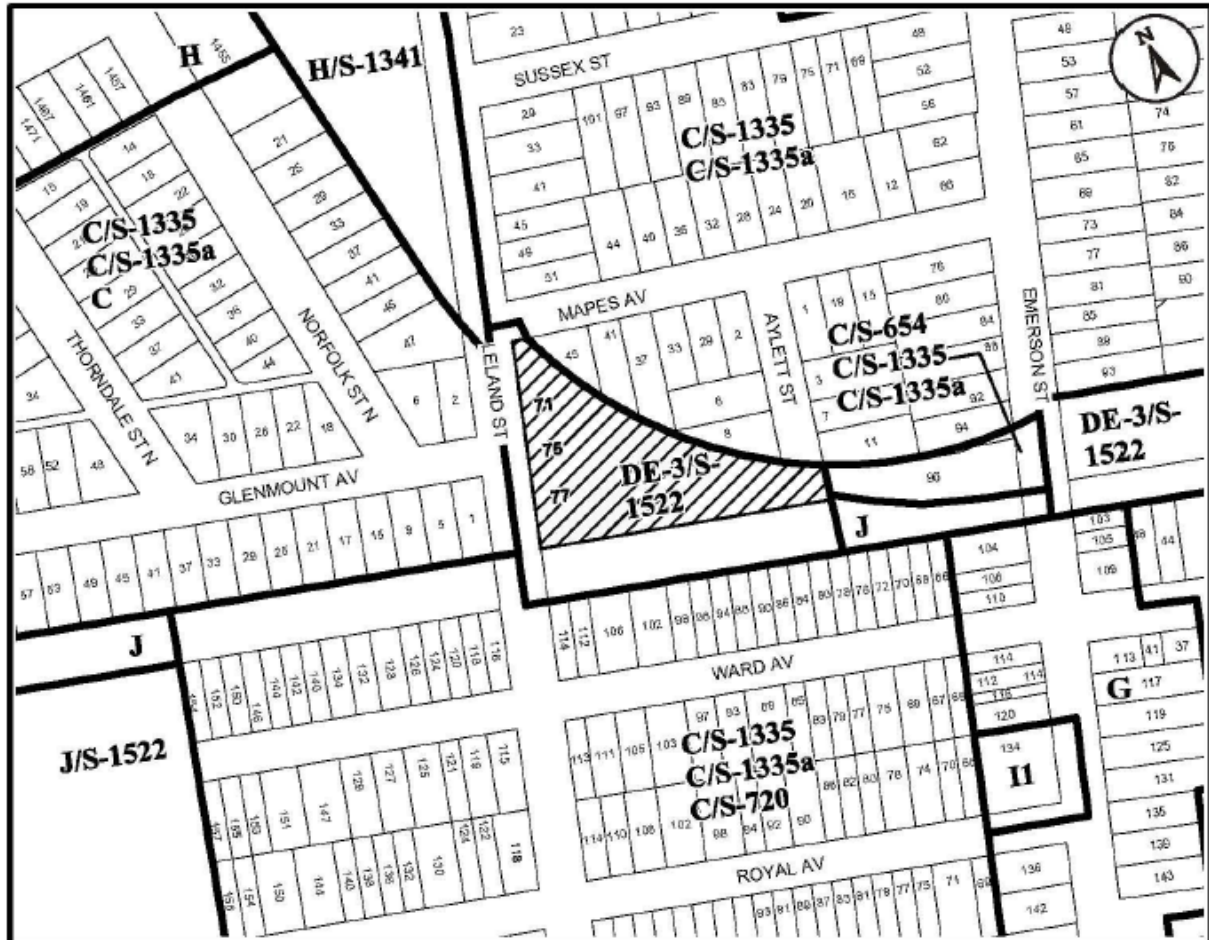
To Amend Zoning By-law No. 6593 (Hamilton)
Respecting Lands located at 71, 75 & 77 Leland Street, (Hamilton)

5. That Sheet No. W_____ of the District Maps is amended by marking the lands referred to in Section 1 of this By-law as S-1522a.
6. That no building or structure shall be erected, altered, extended, or enlarged, nor shall any building or structure or part thereof be used, nor shall any land be used, except in accordance with the "DE-3/S-1522a" (Multiple Dwellings) District, Modified, subject to the special requirements referred to in Section 2 of this By-law.
7. That the Clerk is hereby authorized and directed to proceed with the giving of notice of the passing of this By-law in accordance with the Planning Act.

PASSED this day of , 201 .

ONTARIO MUNICIPAL BOARD

Ontario Municipal Board Case Numbers: PL150378 & PL150379



Location Map

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT

File Name/Number: ZAC-13-027 / OPA-13-005	Date: October 21, 2014
Appendix "A"	Scale: N.T.S.
Planner/Technician: GM/AL	

Subject Property
 71, 75 & 77 Leland Street

Change in Zoning from the "DE-3/S-1522" (Multiple Dwellings) District to the "DE-3/S-1522a" (Multiple Dwellings) District

Urban Hamilton Official Plan Amendment No. XX

The following text constitutes Official Plan Amendment No. XX to the Urban Hamilton Official Plan.

1.0 Purpose and Effect:

The purpose and effect of this Amendment is to change the designation of the subject lands from Low Density Residential 3c to High Density Residential 1, and to establish a Site Specific Policy to permit the maximum number of units to be 124 and the maximum density to be 285 units per hectare, and to permit a maximum height of 5 storeys, on lands within the Ainslie Wood Westdale Secondary Plan, located at 71, 75 and 77 Leland Street, Hamilton.

2.0 Location:

The lands affected by this Amendment are known municipally as 71, 75, and 77 Leland Street, in the City of Hamilton.

3.0 Basis:

The basis for permitting this Amendment is as follows:

- It is consistent with the Provincial Policy Statement and conforms to the Growth Plan for the Greater Golden Horseshoe by encouraging a more diverse housing mix and providing efficient land use.
- It will permit the development of a multiple dwelling at an increased density on lands which are appropriately located in proximity to a major arterial road, with access to services and public facilities.
- It will provide for a wider range of housing options within the Ainslie Wood Westdale neighbourhood.

4.0 Actual Changes:

4.1 Text Changes:

Volume 2, Secondary Plans - Chapter B, Hamilton Secondary Plans, Ainslie Wood Westdale Secondary Plan

4.1.1 Volume 2, Chapter B – Ainslie Wood Westdale Site Specific Policies is amended by adding the new Site Specific Policy, as follows:

"Site Specific Policy – Area X

6.2.16.6 The following policies shall apply to the lands identified as Site Specific Policy – Area X on Map B.6.2-1 – Ainslie Wood Westdale Secondary Plan – Land Use Plan:

- (a) Notwithstanding Policy B.6.2.5.5 b), the maximum residential density shall be 285 units per gross hectare and the maximum number of permitted units shall be 124.
- (b) Notwithstanding Policy B.6.2.5.5 a), a maximum height of 5 storeys shall be permitted."

4.2 Mapping Changes

4.2.1 Urban Hamilton Official Plan Volume 2, Map B.6.2-1 – Ainslie Wood Westdale Secondary Plan – Land Use Plan is revised as follows:

- a) by changing the designation of subject lands from Low Density Residential 3c to High Density Residential 1 as shown on Appendix "A" attached to this amendment.
- b) by identifying the subject lands as Site Specific Policy Area X, as shown on Appendix "A" attached to this amendment;

5.0 Implementation:

An implementing Zoning By-Law Amendment will give effect to the intended uses on the subject lands.

This is Schedule "1" to By-law No. _____ passed on the day of _____, 2015.

The
City of Hamilton

Fred Eisenberger
MAYOR
Appendix "A"

Rose Caterini
CITY CLERK

DRAFT

