Dear Ms. Caterini and Mr. Paparella:

Re: Notice of Appeals filed pursuant to subsections 51(3) and 34(19) of the Planning Act, R.S.O, 1990, c. P. 13, as amended, on behalf of Bunge Canada Against the City of Hamilton’s adoption of Zoning By-law No. 17-095 and approval of a Draft Plan of Subdivision “Waterfront Pier 8” and draft plan conditions (File 25T201605)

We are the solicitors retained to act on behalf of Bunge Canada (“Bunge”), the owners and operators of a state-of-the-art grain and oilseed processing plant located at 515 Victoria Avenue North, in the City of Hamilton (the “Bunge Lands”).

The Bunge Lands are located in close proximity to the Pier 8 Lands.

On behalf of Bunge we hereby file this Notice of Appeal of all of the following:

(i) (a) Council’s decision to grant approval to the draft plan of subdivision “Waterfront Pier 8” (File No. 25T201605) (the “Draft Plan”), which appeal is made pursuant to subsection 51(39) of the
Planning Act, R.S.O. 1990, c. P13, as amended (the “Act”), together with,

(b) Council’s decision to approve 53 conditions of draft plan approval (the “Conditions”) in respect of the Draft Plan, all of which are hereby appealed pursuant to subsection 51(39) of the Act; and

(ii) Council’s decision to approve Zoning By-law No. 17-095 (the “Zoning By-law”), which appeal is made pursuant to subsection 34(19) of the Act.

The Zoning By-law and the Draft Plan and Conditions, as presently worded, would permit development of a mixed-use area consisting of commercial, residential, institutional and parkland uses on Pier 8, in close proximity to existing industrial uses that will result in incompatible land uses. The mixed use developments that would be permitted under the approved Zoning By-law will have a significant impact on the existing operations of industrial uses such as Bunge’s and will prevent the expansion of existing industrial uses. This undermines the significant resources expended by the existing industries in this area and undermines the policy objectives of the provincial policies as well as the policies of the Regional and City of Hamilton Official Plan.

The following are Bunge’s more specific grounds for appeal:


   In reviewing the materials provided to Council at the time of its decision, the City’s own experts in the Dust Assessment and Noise Study articulated that existing industries in close proximity to Pier 8 may be jeopardized in terms of existing operations and any potential expansion, as a result of an approval of the proposed development as set out in the Zoning By-law and Draft Plan. This is not consistent with the PPS 2014 and does not conform to the Growth Plan, which both seek to minimize land use conflicts and protect industry and marine facilities.

   (a) **Growth Plan**

   The Growth Plan 2006 explicitly requires municipalities to plan for, protect and preserve employment areas for current and future uses. Policy 2.2.6.2(b) of the Growth Plan 2006 mandates that municipalities will provide opportunities for a diversified economic base including maintaining a range of suitable sites for employment uses. Policy 2.2.6.2 (a) mandates that municipalities provide for an appropriate mix of employment uses, including industrial uses. Equivalent policies are found in the Growth Plan 2017 in policies 2.2.5.1(a), (b) and (d).

   The Zoning By-law and Draft Plan (with the inadequate Conditions) threatens existing industrial uses such as Bunge’s current and future use of employment lands and therefore does not conform to the employment lands policies of the Growth Plan 2006 and the Growth Plan 2017. Further, by introducing sensitive receptors on Pier 8, the City undermines the
supply of employment lands in a highly appropriate location, the Port of Hamilton, and the
ability of existing industries to expand into underutilized lands thereby making more efficient
use of such well located employment lands.

In addition, the Zoning By-law and Draft Plan (and Conditions) do not conform to
the Moving Goods policies under policy 3.2.4 of the Growth Plan 2006, particularly policy
3.2.4.5, which requires municipalities to plan for land uses adjacent to inter-modal facilities, rail
yards and dockyards that are compatible with and supportive of the goods movement functions
of these facilities. Bunge’s operations are located to rely on the dock facilities, and feature inter-
modal transfer of raw and finished products among ship, rail and truck modes. Similar policy
directions are now found in the Growth Plan 2017, including policies 3.2.1.2, 3.2.2.1, 3.2.2.2 and
3.2.4.1. The Zoning By-law and Draft Plan fail to conform to these policies because they do not
ensure properly integrated planning, ensuring compatibility, maximizing use of inter-modal
infrastructure transfer opportunities, and ensuring the long-term viability of major goods
movement facilities and corridors.

(b) Provincial Policy Statement 2014

Policy 1.2.6 of the PPS 2014 requires sensitive land uses to be planned to ensure
that they are appropriately designed, buffered and/or separated from major facilities to prevent or
mitigate adverse effects from odour, noise and other contaminants.

Policy 1.1.1 (b) of the PPS 2014 provides that healthy, livable and safe
communities are sustained by “accommodating an appropriate range and mix of residential
(including second units, affordable housing and housing for older persons), employment
(including industrial and commercial), institutional (including places of worship, cemeteries and
long-term care homes), recreation, park and open space, and other uses to meet long-term
needs”. Policy 1.1.1(c) directs planning authorities to avoid development that may cause
environmental and public health and safety concerns.

The proposed development of Pier 8 as set out in the Zoning By-law and Draft
Plan has not been demonstrated to sufficiently protect against industrial source impact on the
living environment of Pier 8, or to promote a healthy living space for future residents.

Policies 1.3.2.1 and 1.3.2.3 of the PPS 2014 direct municipalities to protect
employment areas for current and future uses, particularly those in proximity to major goods
movement facilities and corridors, such as the Bunge Lands, for employment uses, that require
those facilities.

Such protection supports the goal of policies 1.3.1(a) and (b) of the PPS 2014.
The Bunge operations are an important part of a vital agri-food economic hub in the Port of
Hamilton, which relies on the inter-modal facilities uniquely available in such a large port area.

Policy 1.6.8.2 of the PPS 2014 states that major goods movement facilities (which
includes ports) shall be protected for the long term. Policy 1.6.8.3 requires new development
proposed on lands adjacent to existing transportation facilities to be compatible with, and
supportive of, the long-term purposes of those facilities, and to be designed to avoid, mitigate or minimize negative impacts on and from transportation facilities.

In addition, policy 1.6.9.1 of the PPS 2014 specifically requires planning in the vicinity of ports to be undertaken to preserve the longer term operation and economic role of the marine facility:

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

a) their long-term operation and economic role is protected; and

b) airports, rail facilities and marine facilities and sensitive land uses are appropriately designed, buffered and/or separated from each other, in accordance with policy 1.2.6. (emphasis added)

The Zoning By-law and the Draft Plan are not consistent with the PPS 2014 since they will increase land use conflict, do not ensure compatibility, and threaten the current and future uses of industrial lands such as the current Bunge Lands.

2. The Zoning By-law and Draft Plan (and Conditions) are premature and do not constitute good land use planning due to unresolved incompatibility issues:

We respectfully submit that the City commissioned Pinchin to provide two reports that consider the feasibility of the redevelopment of Pier 8: a Preliminary Dust and Odour Impact Assessment (the “Dust Assessment”) and an Environmental Noise and Vibration Impact Feasibility Study (the “Noise Study”). The reports were finalized in January of 2017. From both an air quality and noise perspective, the reports identified that the proposed development, being a sensitive receptor, will increase the likelihood of complaints and therefore may jeopardize existing industries, such as Bunge that operate within Ministry of the Environment standards, to continue operations and also expand their operations.

The reports also recommend that commercial uses should be developed along the eastern edge of the property, and if not, extensive implementation of at receptor noise control will be needed.

Further, the “H” holding symbol (section 6 of the Zoning By-law) and the Conditions (including #36, 47, 48 and 48) are insufficient to address compatibility issues and to cure the structural and fundamental problems (block/building orientation, placement of sensitive uses) inherent in and prescribed by the Draft Plan and the Zoning By-law. The “H” and draft plan conditions do not provide sufficient mechanisms and assurances to Bunge and other industries with respect to ensuring compatibility, nor do they provide procedural and participatory protections to nearby industries if there is disagreement regarding lifting the “H” or implementation of the Conditions.
It is our client’s position that it is not good planning to approve a zoning by-law and plan of subdivision with conditions that will require amendment in order to meet the most fundamental of requirements: land use compatibility. The approval of the Zoning By-law and the Draft Plan are premature until impact mitigation has been properly addressed and industry in the area have been properly engaged in that work.

3. The Zoning By-law and the Draft Plan do not conform with the West Harbour (Setting Sail) Secondary Plan Area (the “Secondary Plan”) and the City of Hamilton’s Urban Hamilton Official Plan (“UHOP”)

We respectfully submit that Zoning by-law 17-095 and the Draft Plan conditions do not conform with the policies of the West Harbour (Setting Sail) Secondary Plan.

The Secondary Plan directs that, where feasible, the City must ensure that land use arrangements that minimize the impact of noise and vibration will be considered in any review of a development proposal (Policy A.6.3.4.5.6). The City’s noise and vibration experts specifically recommended an alternative land use configuration on Pier 8 and recommended further measurements and analyses prior to approval of the Draft Plan and Zoning By-law so that adjustments could be made. There is no evidence that the City made any attempt to follow or test such recommendations so as to ensure conformity with this policy directive in the Secondary Plan.

Policy A.6.3.4.5.8 of the Secondary Plan states that where a noise study, completed to the satisfaction of the City, identifies and recommends appropriate mitigation measures, the recommendations shall be implemented as a condition of approval. The Pinchin reports provide clear recommendations (including that non-sensitive uses such as commercial spaces be developed along the east face of the site; that buildings be oriented in an overlapping fashion), which were simply not included as conditions of draft plan approval, nor could they be since the structure of the Draft Plan and the Zoning By-law contradict the recommended mitigation measures.

The UHOP also provides guidance on the policy direction of the Council of the City of Hamilton. Protection of industry and employment uses, and particularly the use of marine facilities, is required by the UHOP.

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

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

Zoning By-law No. 17-095 and the Draft Plan (with the inadequate Conditions) threaten existing industrial uses and will establish clear land use incompatibility, they do not conform with the policies of the Secondary Plan and are contrary to Council’s policy directions in the UHOP.

For the foregoing reasons, as well as others that may become evident prior to the hearing of this appeal and that the Board may permit, Bunge appeals the decisions of Council to approve Zoning By-law 17-095 and the Draft Plan of Subdivision and all conditions of approval applicable thereto to the Ontario Municipal Board. We enclose, as required, the following additional documentation:

(i) Two Ontario Municipal Board Appeal/Objection Forms (A1); and

(ii) Two cheques payable to the Minister of Finance in the amount of $300.00 each, being the prescribed filing fees.

Should you have any questions or require additional materials, do not hesitate to call me.

Yours truly,

Mary Flynn-Gagliardi

Encl.

Cc: Kathleen S. Molamphy – Senior Counsel, Bunge Canada
    Robert Farr, Bunge Canada
    Rene Lemay, Bunge Canada
    Stephen Rigby, McMillan LLP
**Subject of Appeal**

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**Part 2: Location Information**

Pier 8, 65 Guise Street East

Address and/or Legal Description of property subject to the appeal:

Municipality/Upper tier: City of Hamilton
Part 3: Appellant Information

First Name: ___________________________ Last Name: ___________________________

Bunge Canada

Company Name or Association Name (Association must be incorporated – include copy of letter of incorporation)

Professional Title (if applicable): ____________________________________________

E-mail Address: ____________________________________________

Daytime Telephone #: ___________________________ Alternate Telephone #: ___________________________

Fax #: ___________________________________________

Mailing Address: 515 Victoria Avenue North, Hamilton

Ontario, Canada  L8L 8G7

Signature of Appellant: ___________________________ Date: ___________________________

Please note: You must notify the Ontario Municipal Board of any change of address or telephone number in writing. Please quote your OMB Reference Number(s) after they have been assigned.

Personal information requested on this form is collected under the provisions of the Planning Act, R.S.O. 1990, c. P. 13, as amended, and the Ontario Municipal Board Act, R.S.O. 1990, c. O. 28 as amended. After an appeal is filed, all information relating to this appeal may become available to the public.

Part 4: Representative Information (If applicable)

I hereby authorize the named company and/or individual(s) to represent me:

First Name: Mary Last Name: Flynn-Guglietti

Company Name: McMillan LLP

Professional Title: Partner/Lawyer

E-mail Address: mary.flynn@mcmillan.ca

Daytime Telephone #: 416-865-7256 Alternate Telephone #: ___________________________

Fax #: 416-865-7048

Mailing Address: Brookfield Place - 181 Bay Street, Suite 4400, Toronto

Ontario, Canada  M5J 2T3

Signature of Appellant: ___________________________ Date: June 20, 2017

Please note: If you are representing the appellant and are NOT a solicitor, please confirm that you have written authorization, as required by the Board’s Rules of Practice and Procedure, to act on behalf of the appellant. Please confirm this by checking the box below.

☑ I certify that I have written authorization from the appellant to act as a representative with respect to this appeal on his or her behalf and I understand that I may be asked to produce this authorization at any time.
Part 5: Language and Accessibility

Please choose preferred language: ☑ English ☐ French

We are committed to providing services as set out in the Accessibility for Ontarians with Disabilities Act, 2005. If you have any accessibility needs, please contact our Accessibility Coordinator as soon as possible.

Part 6: Appeal Specific Information

1. Provide specific information about what you are appealing. For example: Municipal File Number(s), By-law Number(s), Official Plan Number(s) or Subdivision Number(s):

(Please print)

Please see attached cover letter.

2. Outline the nature of your appeal and the reasons for your appeal. Be specific and provide land-use planning reasons (for example: the specific provisions, sections and/or policies of the Official Plan or By-law which are the subject of your appeal - if applicable). **If more space is required, please continue in Part 9 or attach a separate page.

(Please print)

Please see attached cover letter.

THE FOLLOWING SECTIONS (a&b) APPLY ONLY TO APPEALS OF ZONING BY-LAW AMENDMENTS UNDER SECTION 34(11) OF THE PLANNING ACT.

a) DATE APPLICATION SUBMITTED TO MUNICIPALITY:
   (If application submitted before January 1, 2007 please use the O1 'pre-Bill 51' form.)

b) Provide a brief explanatory note regarding the proposal, which includes the existing zoning category, desired zoning category, the purpose of the desired zoning by-law change, and a description of the lands under appeal:
   **If more space is required, please continue in Part 9 or attach a separate page.

Bill 73 - This question applies only to official plans/amendments, zoning by-laws/amendments and minor variances that came into effect/were passed on or after July 1, 2016.

1. Is the 2-year no application restriction under section 22(2.2) or 34(10.0.0.2) or 45(1.4) applicable?
   a. No
   b. Yes

Part 7: Related Matters (if known)

Are there other appeals not yet filed with the Municipality? YES ☐ NO ☑

Are there other planning matters related to this appeal? (For example: A consent application connected to a variance application)

YES ☑ NO ☐

If yes, please provide OMB Reference Number(s) and/or Municipal File Number(s) in the box below:

A1 Revised August 2016

Page 4 of 6
Part 8: Scheduling Information

How many days do you estimate are needed for hearing this appeal? □ half day □ 1 day □ 2 days □ 3 days □ 4 days □ 1 week □ More than 1 week – please specify number of days: 3 weeks or more

How many expert witnesses and other witnesses do you expect to have at the hearing providing evidence/testimony?
At least 4

Describe expert witness(es)' area of expertise (For example: land use planner, architect, engineer, etc.):
Planner, acoustics engineer, air quality expert

Do you believe this matter would benefit from mediation? YES □ NO □
(Mediation is generally scheduled only when all parties agree to participate)

Do you believe this matter would benefit from a prehearing conference? YES □ NO □
(Prehearing conferences are generally not scheduled for variances or consents)

If yes, why?

Part 9: Other Applicable Information **Attach a separate page if more space is required.

Please see attached cover letter.
Part 10: Required Fee

Total Fee Submitted: $ 300.00

Payment Method:
- [ ] Certified cheque
- [ ] Money Order
- [✓] Solicitor's general or trust account cheque

• The payment must be in Canadian funds, payable to the Minister of Finance.
• Do not send cash.
• PLEASE ATTACH THE CERTIFIED CHEQUE/MONEY ORDER TO THE FRONT OF THIS FORM.
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Payee: Minister of Finance

Royal Bank of Canada
200 Bay Street
Toronto, ON M5J 2J5
Canada

PAY EXACTLY *** Three Hundred and 00/100 CAD

TO THE ORDER OF
Minister of Finance

McMillan LLP

NO. 1101202

DATE 06 19 2017
mm dd yyyy

$ 300.00

AUTHORIZED SIGNATURES
**APPELLANT FORM (A1)**

**PLANNING ACT**

**SUBMIT COMPLETED FORM TO MUNICIPALITY/APPROVAL AUTHORITY**

**Part 1: Appeal Type (Please check only one box)**

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A1 Revised August 2016
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Bunge Canada

Company Name or Association Name (Association must be incorporated — include copy of letter of incorporation)

Professional Title (if applicable): ________________________

E-mail Address: ________________________ By providing an e-mail address you agree to receive communications from the OMB by e-mail.

Daytime Telephone #: ________________________ Alternate Telephone #: ________________________

Fax #: ________________________

Mailing Address: 515 Victoria Avenue North, Hamilton

Street Address: ________________________ Apt/Suite/Unit#: ________________________ City/Town: ________________________

Ontario, Canada L8L 8G7

Province: ________________________ Country (if not Canada): ________________________ Postal Code: ________________________

Signature of Appellant: ________________________ Date: ________________________

(Signature not required if the appeal is submitted by a law office.)

Please note: You must notify the Ontario Municipal Board of any change of address or telephone number in writing. Please quote your OMB Reference Number(s) after they have been assigned.

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I hereby authorize the named company and/or individual(s) to represent me:

First Name: Mary ________________________ Last Name: Flynn-Guglietti

Company Name: McMillan LLP

Professional Title: Lawyer/Partner

E-mail Address: mary.flynn@mcmillan.ca By providing an e-mail address you agree to receive communications from the OMB by e-mail.

Daytime Telephone #: 416-865-7256 Alternate Telephone #: ________________________

Fax #: 416-865-7048

Mailing Address: Brookfield Place - 181 Bay Street, Suite 4400, Toronto

Street Address: ________________________ Apt/Suite/Unit#: ________________________ City/Town: ________________________

Ontario, Canada M5J 2T3

Province: ________________________ Country (if not Canada): ________________________ Postal Code: ________________________

Signature of Appellant: ________________________ Date: June 20, 2017

Please note: If you are representing the appellant and are NOT a solicitor, please confirm that you have written authorization, as required by the Board’s Rules of Practice and Procedure, to act on behalf of the appellant. Please confirm this by checking the box below.

☑ I certify that I have written authorization from the appellant to act as a representative with respect to this appeal on his or her behalf and I understand that I may be asked to produce this authorization at any time.

A1 Revised August 2016
Part 5: Language and Accessibility

Please choose preferred language: ☑ English  ☐ French

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Do you believe this matter would benefit from mediation? YES ☑ NO □
(Mediation is generally scheduled only when all parties agree to participate)

Do you believe this matter would benefit from a prehearing conference? YES ☑ NO □
(Prehearing conferences are generally not scheduled for variances or consents)

If yes, why?

Part 9: Other Applicable Information **Attach a separate page if more space is required.

Please see attached cover letter.
Total Fee Submitted: $300.00

Payment Method: [ ] Certified cheque  [ ] Money Order  [✓] Solicitor's general or trust account cheque

- The payment must be in Canadian funds, payable to the Minister of Finance.
- Do not send cash.
- PLEASE ATTACH THE CERTIFIED CHEQUE/MONEY ORDER TO THE FRONT OF THIS FORM.
<table>
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<th>Invoice Date</th>
<th>Invoice Number</th>
<th>Comments</th>
<th>Amount</th>
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Payee: Minister of Finance

Royal Bank of Canada
200 Bay Street
Toronto, ON M5J 2J5
Canada

PAY EXACTLY *** Three Hundred and 00/100 CAD

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McMillan LLP

NO. 1101203

DATE 06-19-2017

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AUTHORIZED SIGNATURES