Delivered by Courier and Facsimile

Office of the City Clerk
City of Hamilton
71 Main Street West, 1st Floor
Hamilton, ON L8P 4Y5

Attention: Rose Caterini,
City Clerk

Planning and Economic Development Dept.
City of Hamilton
71 Main Street West, 1st Floor
Hamilton, ON L8P 4Y5

Attention: Guy Paparella,
Director Growth Planning

Dear Ms. Caterini and Mr. Paparella:

Re: Notice of Appeal re: City of Hamilton 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), in the City of Hamilton

We act on behalf of Parrish & Heimbecker, Limited (“P&H”), owners and operators of a grain handling terminal and state of the art flour mill on Pier 10 in the Port of Hamilton, located approximately 270m from the east side of Pier 8. P&H leases premises on Pier 10 from the Hamilton Port Authority.

We hereby file, on behalf of P&H, this notice of appeal of all of the following:

(i) (a) Council’s decision to give 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 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.
Background

The Zoning By-law and the Draft Plan and conditions would permit development of a mixed-use area consisting of commercial, residential, institutional and parkland uses on Pier 8. The Zoning By-law has requirements that place residential units facing Pier 10, including minimum building lot frontages, minimum setbacks, minimum number of residential units in each of the blocks facing Pier 10, and commercial uses restricted to ground floor. The Draft Plan arranges the blocks and the multi-residential buildings thereon in a grid formation, with corridors between blocks open to the industrial uses to the east. As further described below, the effect of the Zoning By-law requirements and the Draft Plan design is to leave sensitive receptors vulnerable to noise and air quality impacts without appropriate mitigation, and the draft plan conditions are inadequate to ensure protection of receptors and sources.

As P&H’s Class III industrial operations are located within 300 m to the east of the proposed development, our client is directly impacted by the Zoning By-law and Draft Plan, and our client has previously expressed its concerns on the fundamental issue of land use compatibility. P&H is concerned that the impact of noise and dust from P&H’s operations on the new, sensitive residential uses proposed on Pier 8 has not been adequately addressed in the planning for Pier 8. These concerns are more fully set out in our correspondence to the City dated May 23, 2017 and January 12, 2017, attached hereto.

Our client is concerned about maintaining compliance with existing environmental compliance approvals and the prospect of complaints and responding action by regulators, driven by noise and air quality impacts from P&H operations on sensitive receptors on Pier 8 as now planned. Further, P&H has another approximately 4 acres of space on the west side of Pier 10 (closest to Pier 8) that is in the planning stages for a significant expansion of P&H operations. The introduction of new sensitive uses as planned in the Draft Plan and Zoning By-law raise similar concerns about the ability to secure and maintain environmental compliance approvals. As set out in our correspondence attached, it is clear that the City’s own consultant, Pinchin Ltd., shares these concerns.

BLG made a deputation to the Hamilton Planning Committee on behalf of P&H at the public meeting on May 16, 2017, and requested that consideration of the Zoning By-law and Draft Plan be deferred until (i) complete study of noise and dust impacts has been completed (as recommended by Pinchin), and (ii) meetings have been held between the City and P&H and their respective noise and air quality experts to determine appropriate mitigation measures. The Committee did not defer the applications.

Grounds for Appeal

Our clients grounds for appealing the Zoning By-law and the Draft Plan and draft plan conditions include:

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

P&H has set out in correspondence to the City dated May 23, 2017 and January 12, 2017, attached hereto, detailed grounds for opposing the Zoning By-law and Draft Plan (and conditions)
on the basis of prematurity and failure to resolve compatibility issues, and associated failure to comply with Provincial guidelines pertaining to land use compatibility. The grounds set out in the two letters attached are hereby incorporated by reference as grounds for these appeals.

The planning instruments were brought to Hamilton Planning Committee and Council for adoption prematurely. 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 a noise and air quality perspective, the reports identified that the proposed development, being a sensitive receptor, will increase the likelihood of complaints and therefore may jeopardize P&H’s ability to operate and also expand its 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:

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

Even if the site is designated Class 4, extensive mitigation is required, to the point of re-orienting buildings in a way not now accommodated or permitted by the Draft Plan, the draft plan conditions, and the Zoning By-law. This is further elucidated in the May 23, 2017 letter attached. Further, the “H” holding symbol (section 6 of the Zoning By-law) and the draft plan 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 P&H (and other industries) with respect to ensuring compatibility, nor do they provide procedural and participatory protections to P&H if there is disagreement regarding lifting the “H” or implementation of the draft plan 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 simply need to be amended in order to meet the most fundamental of requirements: land use compatibility. The approval of the Zoning By-law and the Draft Plan is premature until impact mitigation has been properly addressed and industry on Pier 10, including P&H, has been engaged in that work.

As noted by the City’s own experts in the Dust Assessment and Noise Study, P&H’s current operations and proposed expansion may be jeopardized by the proposed development as articulated in the Zoning By-law and Draft Plan. This is simply 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.

**Growth Plan**

The Growth Plan 2006 explicitly requires municipalities to plan for, protect and preserve employment areas for current and future uses in policy 2.2.6.2(c). 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 inadequate conditions) threatens P&H’s current and future use of employment lands, as well as the other industrial uses on Pier 10 and vicinity, and therefore do 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 sufficiency of employment land in a highly appropriate location, the Port of Hamilton, and the ability of P&H to expand into underutilized lands thereby making more efficient use of such well-located employment lands. The result of the Zoning By-law and Draft Plan is to undermine the policy directions in the Employment policies of the Growth Plan 2017 such as 2.2.5.7(a) and 2.2.5.8.

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 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. The P&H operations are necessarily 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, 3.2.4.1, and the Zoning By-law and Draft Plan fail to conform through 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.
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, such as P&H, to prevent or mitigate adverse effects from odour, noise and other contaminants. The policy is also intended to protect the long term viability of major facilities including marine facilities such as Pier 10 for their intended function.

Policy 1.1.1 (b) 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 direct municipalities to protect employment areas for current and future uses, particularly those in proximity to major goods movement facilities and corridors, such as Pier 10, for employment uses, such as the P&H operations, that require those facilities. Such protection supports the goal of policies 1.3.1(a) and (b). The P&H 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 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 the P&H site and Pier 10 generally, all as described above and in the correspondence attached.
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 UHOP

Similarly, on the basis of the failure to ensure compatibility and protect employment land and employment infrastructure as set out above, P&H’s operations will be threatened as a result of the proposed development permitted by the Zoning By-law and Draft Plan and conditions, and thus the instruments do not conform with the Secondary Plan. As such, policy A.6.3.5.1.26 “Pier 10”, which seeks to preserve Pier 10 for existing uses and uses permitted by the Shipping and Navigation land use designation, cannot be met.

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 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. Even if residential uses are anticipated by the Secondary Plan on Pier 8, such policies and designations do not, and are not stated to, override the protection of Pier 10 and the necessity to ensure compatibility and mitigation in the future planning of Pier 8.

The City’s Urban Hamilton Official Plan (“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)

In addition, the permitted uses on Pier 10 are set out in policy E.5.6.1 of UHOP:
The following uses shall be permitted on lands owned by the Hamilton Port Authority, so long as they are owned by the Hamilton Port Authority, on Pier 10:

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

Since the Zoning By-law and the Draft Plan (with inadequate conditions) threaten the industrial uses on Pier 10, and will establish clear land use incompatibility as set out herein, they do not conform with the policies of the Secondary Plan and are contrary to Council's policy directions in the UHOP.

Conclusion

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, P&H 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.

As part of these appeals, please find enclosed:

- Two Ontario Municipal Board Appeal/Objection Forms (A1); and
- Two cheques payable to the Minister of Finance in the amount of $300.00 each, being the prescribed filing fees.

Please advise us in due course of the date of an Ontario Municipal Board pre-hearing conference in respect of these appeals.

Yours very truly,

Borden Ladner Gervais LLP

Pitman Patterson
PM/jem
Enclosures

cc: Client
TOR01: 6870596: v2
File No. 292943/000055

May 23, 2017

Delivered by Email

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

Attention: City Clerk

Dear Mayor Eisenberger and Members of Council:

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

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

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

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

In their current form, the applications indicate sensitive multi-unit residential mid to high-rise buildings along the eastern border of the site, facing the P&H site. This is against the recommendation of the City’s own expert, Pinchin Ltd, which recommends placing sensitive uses further west while developing the east border of the site with non-sensitive commercial uses.
With respect, these applications are premature until mitigation strategies have been thoroughly canvassed with the City’s experts and industry on Pier 10, including the possibility of siting non-sensitive commercial uses along the eastern boundary of the site and/or re-orienting the buildings as proposed by Pinchin in its 2017 report.

**P&H**

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

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

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

**The Protection of Industry and Employment**

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

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

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

In addition, policy 1.6.9 of the PPS 2014 specifically requires planning in the vicinity of ports to be undertaken to preserve the longer term operation and economic role of the marine facility.
Planning for land uses in the vicinity of airports, rail facilities and marine facilities shall be undertaken so that:

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

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

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

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

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

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

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

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

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

The City’s Noise Study specifically considers the P&H site and states “[i]ntroduction of new sensitive receptors within proximity to Parrish & Heimbecker may result in noise complaint potential and thus impact P&H’s ability to operate and expand operations from a provincial air/noise permitting perspective.”

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

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

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

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

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

Even if the site is designated Class 4, extensive mitigation is required, to the point of re-orienting buildings in a way not now accommodated by the plan of subdivision or the zoning by-law. The Pinchin report considers alternative building orientation as follows:
Given the stage of the project and the many different possibilities for building design and potential sensitive receptor locations, it is recommended that any proposed building layout concepts and designs be reviewed by a qualified Acoustical Engineering professional prior to any approval in order to ensure compliance with the MOECC guidelines.” [emphasis added]

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

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

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

Yours truly,
Borden Ladner Gervais LLP

Pitman Patterson
JPP/jcm

Cc: Jason Thorne, General Manager,
Planning & Economic Development Department

Parrish & Heimbecker
File No. 292943/000008

January 12, 2017

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

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

Dear Mr. Thorne,

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

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

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

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

NPC-300 states:

"Where a site in proximity to a stationary source is in the process of being developed or re-developed for noise sensitive uses (such as residential), it is considered the
responsibility of the proponent/developer of the noise sensitive land use to ensure compliance with the applicable sound level limits and for this responsibility to be reflected in the land use planning decisions."

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

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

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

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

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

Our client also requests that a meaningful dialogue be established between the City, as proponent and approval authority, and the affected industries in respect of these land use compatibility issues. We request that a meeting (and if warranted, subsequent meetings) be held between the City and stationary source owners who wish to participate, including the involvement of our respective noise and other experts. At the very least, there should be a direct sharing of information and expert advice at such meetings so that no party is acting in the absence of relevant and complete information, and issues and possible solutions can be identified.
We urge that this dialogue be commenced before the statutory public meetings are held for the zoning by-law amendment and draft plan subdivision applications, and before those instruments are put before City Council for a decision. Our client seeks an outcome which protects industry in conformity with the Official Plan documents.

We look forward to hearing from you.

Yours very truly,
Borden Ladner Gervais, LLP

Pitman Patterson
JPP:sa

c.c. Edward John, Senior Project Manager, Planning & Economic Development, City of Hamilton (edward.john@hamilton.ca)

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

c.c Client

TOR01: 6633454: v2
## Part 1: Appeal Type (Please check only one box)

<table>
<thead>
<tr>
<th>SUBJECT OF APPEAL</th>
<th>TYPE OF APPEAL</th>
<th>PLANNING ACT REFERENCE (SECTION)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minor Variance</td>
<td>✗ Appeal a decision</td>
<td>45(12)</td>
</tr>
<tr>
<td>Consent/Severance</td>
<td>✗ Appeal a decision</td>
<td>53(19)</td>
</tr>
<tr>
<td></td>
<td>✗ Appeal conditions imposed</td>
<td></td>
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<tr>
<td></td>
<td>✗ Appeal changed conditions</td>
<td>53(27)</td>
</tr>
<tr>
<td></td>
<td>✗ Failed to make a decision on the application within 90 days</td>
<td>53(14)</td>
</tr>
<tr>
<td>Zoning By-law or Zoning By-law Amendment</td>
<td>✗ Appeal the passing of a Zoning By-law</td>
<td>34(19)</td>
</tr>
<tr>
<td></td>
<td>✗ Application for an amendment to the Zoning By-law – failed to make a decision on the application within 120 days</td>
<td>34(11)</td>
</tr>
<tr>
<td></td>
<td>✗ Application for an amendment to the Zoning By-law – refused by the municipality</td>
<td></td>
</tr>
<tr>
<td>Interim Control By-law</td>
<td>✗ Appeal the passing of an Interim Control By-law</td>
<td>38(4)</td>
</tr>
<tr>
<td>Official Plan or Official Plan Amendment</td>
<td>✗ Appeal a decision</td>
<td>17(24) or 17(36)</td>
</tr>
<tr>
<td></td>
<td>✗ Failed to make a decision on the plan within 180 days</td>
<td>17(40)</td>
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<tr>
<td></td>
<td>✗ Application for an amendment to the Official Plan – failed to make a decision on the application within 180 days</td>
<td>22(7)</td>
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<tr>
<td></td>
<td>✗ Application for an amendment to the Official Plan – refused by the municipality</td>
<td></td>
</tr>
<tr>
<td>Plan of Subdivision</td>
<td>✗ Appeal a decision</td>
<td>51(39)</td>
</tr>
<tr>
<td></td>
<td>✗ Appeal conditions imposed</td>
<td>51(43) or 51(48)</td>
</tr>
<tr>
<td></td>
<td>✗ Failed to make a decision on the application within 180 days</td>
<td>51(34)</td>
</tr>
</tbody>
</table>

## 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: ___________________________

Parrish & Heimbecker Limited

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: 1060 Fountain Street North Cambridge

Street Address ___________________________ Apt/Suite/Unit# ___________________________

Ontario ___________________________ City/Town ___________________________

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.

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: Pitman Last Name: Patterson

Company Name: Borden, Ladner, Gervais LLP

Professional Title: Lawyer

E-mail Address: PPatterson@blg.com

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

Daytime Telephone #: 416-367-6109 Alternate Telephone #: ___________________________

Fax #: 416-367-6749

Mailing Address: 22 Adelaide Street West, Suite 3400 Toronto

Street Address ___________________________ Apt/Suite/Unit# ___________________________

Ontario ___________________________ City/Town ___________________________

Province ___________________________ Country (if not Canada) ___________________________

Postal Code ___________________________

Signature of Appellant: ___________________________ Date: Jan 6/17

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 cover letter attached.

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 cover letter attached.

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? [ ] YES [ ] NO

(For example: A consent application connected to a variance application)

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

Do you believe this matter would benefit from a prehearing conference?  
YES ☑ NO

If yes, why?

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

Please see cover letter attached.
Part 10: Required Fee

Total Fee Submitted: $300.00

Payment Method: [X] 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.