



Board of Directors To Sit As Hearing Board

**Thursday, January 9, 2025 at 6:00 p.m.
Section 28 Hearing Re: 55 Cootes Drive
Permit Application No. D/F,C,A/23/97**

Hamilton Conservation Authority is now conducting meetings in a hybrid format via an in-person and WebEx platform.

All hybrid meetings can be viewed live on HCA's You Tube Channel:
<https://www.youtube.com/user/HamiltonConservation>

1. Call to Order

– Brad Clark

2. Declarations of Conflict of Interest

3. Notice of Hearing

3.1 Notice of Hearing – 55 Cootes Drive, Dundas

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3.2 Section 28 Hearing Guidelines, Hearing Procedures (Appendix B)

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4. Motion to sit as a Section 28 Hearing

5. Chair's Opening Remarks

6. Presentation by Hamilton Conservation Authority Staff and Applicant

6.1. Introduction of applicant/agent by HCA Staff

6.2. HCA Staff Report re: 55 Cootes Drive, Dundas Creek, Permit No. D/F,C,A/23/97

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6.3. Presentation by Applicant

6.3.1. Applicant's Presentation

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6.4. Questions from applicant and/or applicant's counsel to HCA staff

6.5. Questions from HCA staff and/or staff counsel to applicant

6.6. Questions from Hearing Board to HCA staff and/or applicant

7. Hearing Board to move In Camera

8. Hearing Board to reconvene in public forum

9. Chair to advise of Hearing Board's decision

10. Adjournment



December 2, 2024

File: D/F,C,A/23/97

BY EMAIL

7612737 Canada Corp.
c/o Dr. Allen Greenspoon
M1 – 414 Victoria Ave. N.
Hamilton, ON
L8L 5G8

Dear Dr. Greenspoon:

RE: NOTICE OF HEARING
Hearing under Section 28.1(5) of the *Conservation Authorities Act* for an
Application by 7612737 Canada Corp. for Development Activity in a
Regulated Area of Spencer Creek at 55 Cootes Drive, City of Hamilton
(Dundas)

This letter serves to inform you that the application by 7612737 Canada Corp., received December 4, 2023, for development activity in a regulated area of Spencer Creek will be considered by the Board of Directors at the meeting scheduled for:

6:00 p.m. on January 9, 2025
At the offices of the Hamilton Conservation Authority at:
838 Mineral Springs Road, Ancaster, ON

This is a Hearing under Section 28.1(5) of the *Conservation Authorities Act*. Please note that Authority staff is recommending **refusal** of the application on the basis that the development activity does not meet the requirements of the *Conservation Authorities Act* to allow development activity in a regulated area. A copy of the staff report outlining staff's reasons for recommending refusal is included with this notice. Also attached is a copy of the HCA's Hearing Guidelines.

You are invited to speak in support of your application and submit supporting written material for the Hearing. You will be allotted approximately 20 minutes to speak at the Hearing. You may be represented by legal Counsel or have advisors present information to the Board of Directors. If you intend to appear please contact Mike Stone, Manager, Watershed Planning Services, to confirm attendees. Any written material you intend to present or rely on will be required to be submitted by December 16, 2024, to enable the Board members time to review the material along with the staff report.

This Hearing is governed by the provisions of the *Statutory Powers Procedure Act*. Under the Act, a witness is automatically afforded a protection that is similar to the protection of the *Ontario Evidence Act*. This means that the evidence that a witness gives may not be used in subsequent civil proceedings or in the prosecutions against the witness under a Provincial Statute. It does not relieve the witness of the obligation of this oath since matters of perjury are not affected by the automatic affording of the protection. The significance is that the legislation is Provincial and cannot affect Federal matters. If a witness requires protection of the *Canada Evidence Act*, that protection must be obtained in the usual manner.

The Ontario Statute requires the tribunal to draw this matter to the attention of the witness as this tribunal has no knowledge of the effect of any evidence that a witness may give.

If you do not attend at this Hearing, the Board of Directors of the Hamilton Conservation Authority may proceed in your absence, and you will not be entitled to any further notice of proceedings.

Please contact the undersigned at ext. 133 at this office if you have any questions regarding this matter.

Yours truly,



Mike Stone MCIP, RPP
Manager, Watershed Planning Services

Enclosures: Hamilton Conservation Authority Hearing Guidelines
Hamilton Conservation Authority Hearing Report

APPENDIX B

Hearing Procedures

1. Motion to sit as Hearing Board.
2. Roll Call followed by the Chairperson's opening remarks. For electronic hearings, the Chairperson shall ensure that all parties and the Hearing Board are able to clearly hear one another and any witnesses throughout the hearing.
3. Staff will introduce to the Hearing Board the applicant/owner, his/her agent and others wishing to speak.
4. Staff will indicate the nature and location of the subject application and the conclusions.
5. Staff will present the staff report included in the Authority/Executive Committee agenda.
6. The applicant and/or their agent will present their material
7. Staff and/or the conservation authority's agent may question the applicant and/or their agent if reasonably required for a full and fair disclosure of matters presented¹ at the Hearing.
8. The applicant and/or their agent may question the conservation authority staff and/or their agent if reasonably required for full and fair disclosure of matters presented at the Hearing.²
9. The Hearing Board will question, if necessary, both the staff and the applicant/agent.
10. The Hearing Board will move into closed session for deliberation. For electronic meetings, the Hearing Board will separate from other participants for deliberation.
11. Members of the Hearing Board will move and second a motion.
12. A motion will be carried which will culminate in the decision.
13. The Hearing Board will move out of closed session. For electronic meetings, the Hearing Board will reconvene with other hearing participants.
14. The Chairperson or Acting Chairperson will advise the owner/applicant of the Hearing Board decision, including providing the Board's reasons for the decision for approval or refusal.
15. The Chairperson or Acting Chairperson shall notify the Party of their right to appeal the decision to the Ontario Land Tribunal, Minister, or other prescribed body (as applicable) upon receipt of the reasons for decision, in accordance with the provisions and timelines outlined in the Conservation Authorities Act and Ontario Regulation 41/24 (Details will be included in the Notice of Decision).
16. Motion to move out of Hearing Board and sit as the Board of Directors.

^{1, 2} As per the *Statutory Powers Procedure Act* a tribunal may reasonably limit further examination or cross-examination of a witness where it is satisfied that the examination or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the proceeding.

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Hearing Report

TO: Board of Directors

FROM: Lisa Burnside, Chief Administrative Officer (CAO)

RECOMMENDED BY: T. Scott Peck, MCIP, RPP, Deputy Chief Administrative Officer/Director, Watershed Management Services

PREPARED BY: Mike Stone, MCIP, RPP, Manager, Watershed Planning, Stewardship & Ecological Services

DATE: January 9, 2025

RE: Hearing under Section 28.1(5) of the *Conservation Authorities Act* for an Application by 7612737 Canada Corp. for Development Activity in a Regulated Area of Spencer Creek at 55 Cootes Drive, City of Hamilton (Dundas) – Permit Application No. D/F,C,A/23/97.

STAFF RECOMMENDATION

THAT HCA staff recommends to the Board of Directors:

THAT the Board of Directors refuse the application made by 7612737 Canada Corp. for the construction of a six-storey residential building with 129 dwelling units, 81 parking spaces and associated grading and landscaping in a regulated area of Spencer Creek at 55 Cootes Drive, City of Hamilton (Dundas) as the proposal does not meet the requirements of the *Conservation Authorities Act, R.S.O. 1990* to allow development activity in a regulated area.

BACKGROUND

Site Description

The subject property at 55 Cootes Drive is 0.49 ha (1.2 ac) in size, and currently supports two existing one-storey commercial buildings and an associated parking lot.

The site is bound by Cootes Drive to the south, King Street East to the north, and East Street North to the east (Attachment A).

The property is located in the Lower Spencer Creek subwatershed, and the site drains to the storm sewer which outlets to a tributary of Lower Spencer Creek, and then to the Desjardins Canal, and ultimately to Cootes Paradise Marsh and Hamilton Harbour. The property is within the regulatory floodplain of Spencer Creek.

Under the City's Urban Hamilton Official Plan (UHOP) the property is designated Mixed Use – Medium Density, and is zoned Mixed Use – Medium Density, Special Exception 581 (C5 – 581), in the City's Zoning By-law 05-200. The site is also located in a Special Policy Area (SPA 3) for floodplain management in the Town of Dundas. The applicable policies for SPA 3 are outlined in Volume 3, Chapter B, Dundas Two Zone Floodplain Area (UD-3) in the UHOP.

The entire property is regulated pursuant to the *Conservation Authorities Act* and *Ontario Regulation 41/24* due to the presence of Spencer Creek and its associated flooding hazard.

The Proposal

The proposal is for the construction of a six-storey residential building with 129 dwelling units, 81 parking spaces (79 below grade and 2 at grade), and associated grading and landscaping. The site plan provided in support of the proposal and permit application are attached to this report (Attachment B).

Application Review to Date

HCA's involvement with the subject property began in 2012, when HCA provided input to Formal Consultation applications circulated by the City of Hamilton regarding development proposals for the site. Between 2018 and 2024 HCA has provided input to a Site Plan application for the proposed development of the site. The City granted conditional approval of the Site Plan application on January 15, 2020, with a subsequent addendum to the approval issued on May 1, 2023. HCA received a permit application for site development on December 4, 2023. HCA understands the property has been under the same ownership between 2012 and the present time. The following provides a more detailed summary of key dates and correspondence related to HCA's review of the proposed development of the site.

April 17, 2012 – HCA provided comments on Formal Consultation application FC-12-030, for a proposed 4-storey motel building and a 1-storey commercial building with associated parking. HCA comments noted the property was within the Regulatory Floodplain of Lower Spencer Creek and within Special Policy Area 3 (SPA 3) of the former Town of Dundas Official Plan, and that any development on the property would have to comply with all policies of Special Policy Area 3 and would require a permit from the HCA.

July 20, 2012 – HCA provided email comments to the applicant's architect (KNY Architects Inc.) as a follow-up to a meeting held on July 18th to review requirements for development of the site based on a proposed one-storey commercial and three-storey apartment building. HCA's email confirmed that subject to detailed engineering to address the various water forces against the structure, that the proposal complies with the requirements of the SPA to allow an increase in building size within the regulatory floodplain area, but that it had not been demonstrated how the proposal would meet the requirements of the SPA related to safe access and egress and providing adequate parking for the residents of the building above the regulatory floodplain elevation.

August 22, 2012 – Meeting held between HCA, City of Hamilton and applicant's agent (Andrew Thistlethwaite) and architect (KNY Architects Inc.) to review floodproofing requirements for the proposed building.

October 22, 2012 – HCA provided comments on Formal Consultation application FC-12-123, for a revised proposal for a four-storey, 86-unit residential apartment building, together with surface and underground parking. HCA comments noted the property was within the Regulatory Floodplain of Lower Spencer Creek and within SPA 3, and that development on the property would have to comply with all policies of SPA 3 and would require a permit from the HCA. The Regional floodplain elevation for the site was provided (82.14 m) and floodproofing requirements were noted in HCA's comments, as well as the requirement to address the safe access/egress policies of SPA 3.

February 2, 2018 – HCA provided comments on Site Plan Control application DA-18-018, for a proposed six-storey mixed use building containing 1,115 m² of commercial space on the ground floor, 55 residential dwelling units, and 105 parking spaces within a ground floor parking garage and above ground parking deck. HCA's comments noted the property was within the regulatory floodplain of Lower Spencer Creek and within SPA 3, and that development on the property would have to comply with all policies of SPA 3 and would require a permit from the HCA. It was further noted that the submitted plans included with the circulation demonstrated the proposed development was adequately flood-proofed based on geodetic elevations, but that a structural engineering assessment of the development remained outstanding and would be required as part of the future regulation application. HCA's comments also noted that standard site plan conditions requiring a stormwater management plan, grading and erosions and sediment control plans and an HCA permit would be required for approval of the application.

April 15, 2019 – HCA responded to an email enquiry from April 10, 2019 from the applicant's planning consultant (GSP Group) seeking clarification regarding floodproofing requirements for a new building design.

September 13, 2019 – HCA provided comments on a revised proposal under Site Plan Control application DA-18-018 for a six-storey multiple dwelling building with 121 dwelling units. HCA's comments noted that in order to comply with SPA 3 floodplain development policies, the proposed development must be dry flood-proofed to at least

1.1 metres below the regulatory flood elevation for the property (82.14 m), that electrical and heating systems would have to be located above the regulatory floodplain elevation, and that it be demonstrated the development can safely withstand the hydrostatic and hydrodynamic forces that can result from inundation under Regional Storm conditions.

It was further noted that while it appeared the proposed building was adequately dry flood-proofed based on geodetic elevations, that elevations for all building openings should be labelled on the submitted plans to confirm they are at or above the Regional Flood elevation. HCA also noted the issue of the structural engineering assessment for the revised proposal still remains outstanding and will be required as part of the future regulation application to our office.

January 15, 2020 – The City of Hamilton granted conditional approval of Site Plan Control application DA-18-018.

December 22, 2022 – HCA provided email comments regarding a revised Site Plan application submission which provided for a slight increase in the number of dwelling units and number of parking spaces. HCA's comments noted staff had not received any further response to HCA's earlier comments, which remain applicable, but that these comments could be addressed through standard site plan conditions, as previously recommended by HCA.

May 1, 2023 – Amended conditional site plan approval granted by the City.

July 7, 2023 – HCA provided a response to an email from July 4th from the applicant's planning consultant (GSP Group) noting recent conditional approval of the site plan application and enquiring about HCA permit requirements. HCA's response noted the last site plan submission HCA reviewed was from December 2022, at which time it was noted to the City that HCA's earlier comments from 2019 and 2018 remained outstanding and would need to be addressed prior to issuance of a permit, including the demonstration of adequate floodproofing.

October 12, 2023 – HCA provided a response to an email from July 4th from the applicant's planning consultant (GSP Group) noting permit application submission is pending and enquiring about requirements for the structural engineering assessment that is to be completed for the proposed building. HCA's comments noted the structural engineering assessment relates to floodproofing requirements and demonstrating the building is designed to withstand any flood forces that would be exerted on the structure during a Regional storm event.

October 18, 2023 – HCA staff met with applicant's planner (GSP Group), architect (McCallum Sather) and engineer (WSP) to discuss floodproofing requirements.

December 4, 2023 – HCA permit application and supporting materials submitted by applicant's planning consultant (GSP group) electronically via email to HCA. The permit

fee was paid by the applicant's planning consultant (GSP Group) on December 5. HCA sent email confirmation to the applicant's planning Consultant (GSP group) and agent (Andrew Thistlethwaite) that the application had been received and staff would review.

March 26, 2024 – HCA provided comments on a site plan application submission received from the City on January 2024 to support clearance of site plan conditions. HCA's comments noted a permit application had been received, and that in reviewing the submitted plans and elevations of building openings, that the development concept is generally acceptable in terms of dry floodproofing, but that the structural engineering assessment to demonstrate the building is designed to withstand flood forces remained outstanding. It was further noted that Dundas SPA 3 requirements regarding safe access for residential development were not addressed, and given that safe access is not available due to depths of flooding at King Street, that HCA could not support residential development on the site.

June 25, 2024 – HCA staff met with the applicant's agent (Andrew Thistlethwaite) and consulting team (Nancy Friday with GSP Group and Steven Frankovich with S. Llewellyn & Associates) to review the file history, safe access considerations and options for resolution, including possible dates for a hearing in front of the HCA Board of Directors.

August 15, 2024 – HCA staff met with the applicant and their consulting team to further discuss the matter, and at which time it was indicated you would confirm your interest and preferred timing for a hearing.

September 6, 2025 – The applicant's agent (Andrew Thistlethwaite) confirmed the applicant's interest in a hearing in front of the HCA Board of Directors in January 2025.

September 18, 2024 – HCA confirmed with applicant's agent via email that a hearing in front of the HCA Board of Directors had been scheduled for January 9, 2025, and outlining the timing/date requirements for the submission and exchange of materials prior to the hearing.

October 31, 2024 – HCA sent a letter confirming the January 9, 2025 hearing date and dates for submission of materials prior to the hearing.

November 15, 2024 – The applicant's planning consultant (GSP Group) provided HCA with a letter from a qualified structural engineer which summarized the proposed approach for structural design of the building in order to demonstrate the foundation walls and footings will be able to withstand the hydrostatic forces that would be associated with a Regional storm floodplain.

November 18, 2024 – The applicant's planning consultant emailed HCA to confirm that no further information would be submitted in support of the permit application.

In accordance with *Conservation Authority Act Hearing Guidelines* (MNRF October 2005, amended 2018, 2020 and 2021) and the *Hamilton Region Conservation Authority Administrative By-law* (HCA, October 5, 2023), HCA provided the Notice of Hearing to the applicant, as well as a copy of this Hearing Report, which outlines HCA staff's analysis of the application and reasons for recommending refusal, on December 2, 2024.

STAFF COMMENT

HCA has a mandate to ensure that people and property are protected from impacts associated with natural hazards. The Province has delegated the authority for implementing the provincial interest in natural hazards to Conservation Authorities. In evaluating the subject application, HCA staff must ensure that HCA policies regarding development and hazardous lands, which are informed by Provincial direction and policy, are considered and met. The summary of key provincial policies below provides important background and context, and is followed by a description of the HCA hazard policies and legislative requirements that are applicable to the subject application.

Provincial Policy

The Provincial Planning Statement (PPS) provides policy direction on matters of provincial interest related to land use planning and development. The PPS provides a policy framework for allowing development, while protecting resources of provincial interest, conserving the natural and built environment, and ensuring public health and safety.

With respect to natural hazards, the PPS states that development shall generally be directed to areas outside of hazardous lands, including hazardous lands adjacent to river and stream systems which are impacted by flooding hazards and/or erosion hazards (PPS 5.2.2). Development is not to be permitted within areas that would be rendered inaccessible to people and vehicles during hazardous conditions, unless it has been demonstrated that the site has safe access appropriate for the nature of the development and the natural hazard (PPS 5.2.3). Notwithstanding these restrictions, development may be permitted in those portions of hazardous lands where the effects and risks to public safety are minor and can be mitigated in accordance with provincial standards, and new hazards are not created or existing hazards aggravated (PPS 5.2.8).

Conservation Authorities Act and HCA Policy

Section 28(1) of the *Conservation Authorities Act* states that no person shall undertake development activity in a regulated area. Under Section 28.1, a Conservation Authority may issue a permit for development activity in a regulated area if, in its opinion, the activity is not likely to affect the control of flooding, erosion, dynamic beaches or unstable soil or bedrock, or create conditions or circumstances that, in the event of a natural hazard, might jeopardize the health or safety of persons or result in the damage or destruction of property.

Development activity is defined broadly under the *Conservation Authorities Act*, and includes the construction or reconstruction of a building or structure of any kind, and any change to a building or structure that would have the effect of altering the use or potential use of the building or structure.

HCA's *Planning & Regulation Policies and Guidelines*, as approved by the HCA Board of Directors in October 2011, were developed to implement the development regulations and requirements of the *Conservation Authorities Act*, as well as provincial natural hazard policies under the PPS. HCA applies these policies to its review of planning and regulation proposals. In general, the HCA policies seek to direct development to areas not affected by natural hazards.

On April 4, 2024, the HCA Board of Directors endorsed the adoption of *Interim Policy Guidelines for the Administration and Implementation of Ontario Regulation 41/24 (Prohibited Activities, Exemptions and Permits)*. These guidelines were developed by Conservation Ontario to provide Conservation Authorities with interim direction to support the implementation of O. Reg. 41/24, which came into effect on April 1, 2024, while existing policy documents are reviewed and updated as may be necessary. The guidelines provide that existing Conservation Authority policies should continue to be considered and applied, with appropriate consideration given to the newly proclaimed sections of the *Conservation Authorities Act* and *Ontario Regulation 41/24*, and that where discrepancies exist between the legislation, existing CA policies and the interim guidelines, that the provisions of the text of the legislation and regulation will prevail.

The following provides a summary of the key policies and requirements of HCA's Planning & Regulation Policies and Guidelines, as they apply to the subject application.

2. 1. 1 Flooding Hazard Limit

The Hamilton Conservation Authority manages flood plain lands at the Regulatory Flood level of the Regional Storm (Hurricane Hazel) with the exception of those numbered watercourses in the Stoney Creek area that have undergone a criteria reduction in the Regulatory Flood level to the 100 year flood event and the Special Policy Areas (SPAs) in Dundas. The Conservation Authority manages these lands as one zone areas with the exception of the Dundas SPAs, which utilize the floodway and flood fringe management approach, and are treated as two zone areas.

As they currently exist, the Dundas SPAs were created in 1999 as the result of an Official Plan amendment, which amalgamated and officially designated a wider range of SPAs. There are now four officially recognized SPAs within the former municipality of Dundas, which are regulated through a set of policies separate from those used for the Hamilton Conservation Authority's one zone areas. The policies for the former Town of Dundas SPAs are provided in Section 2.1.1.4.1 within this document.

2. 1. 1. 4. 1 Special Policy Areas

Due to historical development in the now former Town of Dundas, the HCA and the Town underwent a technical assessment in 1978 and the SPA was incorporated into the Town of Dundas Official Plan. This had the effect of creating four designated Special Policy Areas (SPAs) within the former Town of Dundas and these lands are managed as two zone areas. In instances where Authority staff receive applications for development within the SPAs of the Spencer Creek watershed for hazardous lands surrounding the Spencer, Sydenham, and Anne Creeks they will refer to the following policies.

Any development and/or site alteration within the jurisdiction of the Authority and within the former Town of Dundas Special Policy Areas (SPAs) must be in accordance with the following policies and guidelines and must be to the satisfaction of the Authority.

a. When considering development within SPAs in the former Town of Dundas, Authority staff will refer to, and require conformity to, SPA policies within the former Town of Dundas' OP, dated October 27, 2000, or any amendments, updates, or revisions thereto (see Appendix H). At such a time that the new City of Hamilton's OP SPA policies are in effect, Authority staff will refer to, and require conformity to, the City of Hamilton's OP SPA policies or any amendments, updates, or revisions thereto.

b. All floodproofing measures noted in the SPAs policies will be in accordance with Section 8.1, of this document, and its sub-sections.

8. 1 General Policies

Any development within the jurisdiction of the Authority and within any and all flooding hazards (i.e. rivers and streams, shorelines, karst areas) must be in accordance with the following policies and guidelines, where applicable, and must be to the satisfaction of the Authority.

a. Floodproofing is dependent on the following characteristics of a flood. These criteria will be taken into consideration when deciding floodproofing on a site-specific basis:

- i. The combination of depth and velocity of the flood waters;
- ii. The duration of the flood;
- iii. The rate of rise and fall of the flood waters; and
- iv. The type of flood warning system in place.

b. All mechanical and electrical systems must be designed and installed so that the heating, lighting, ventilation, air conditioning and other systems are not vulnerable to flood damage during the flood standard. Where flooding could interrupt key power supplies, it may be necessary to provide stand-by or backup systems, with power and controls located above the level of the flood standard.

8. 1. 1 Safe Access

- a. Safe ingress and egress for pedestrians and vehicles must be such that the depth is less than 0.3 m (1 ft) and the velocity is no greater than 1.7 m/s (5.5 ft/s).

8. 1. 3 Dry Floodproofing

- a. The use of dry active floodproofing measures will only be accepted in instances where it is not possible and/or practical to utilize dry passive approaches.
- b. When reviewing dry passive floodproofing designs, Authority staff shall ensure that adequate use of fill, columns or design modifications are used in order to ensure that openings in buildings or structures will be elevated above the level of the Regulatory Flood, plus a freeboard of 0.3 m (1 foot), where possible.
- c. Where Authority staff determine that it is not viable or practical to use dry passive floodproofing measures, dry active measures may be explored and utilized. In reviewing such approaches, staff shall ensure that the use of water tight doors, seals, berms/floodwalls or other similar measures to prevent water from entering openings below the Regulatory Flood level are adequately and appropriately incorporated into the design.
- d. All dry floodproofing designs must be prepared and certified by a qualified engineer.
- e. Wherever possible, dry floodproofing measures should be passive rather than active.

City of Hamilton Urban Official Plan – Dundas Area Specific Policies

UD-3 Dundas Two Zone Floodplain Area

1.0 Within the area identified on Map D-1 as Area Specific UD-3, the permitted land uses shall be in accordance with the policies of Volume 1 of this Plan, subject to the following requirements:

- a) All development shall be floodproofed to the regulatory flood elevation. Where this is not feasible or practical a lower level of floodproofing may be considered but in no case shall the minimum acceptable level be less than 1.1 metre below the regulatory flood elevation.
- b) All new buildings and structures shall be designed such that their structural integrity is maintained during a regulatory flood event. The City may require that plans for all development be designed and certified by a qualified professional engineer or architect.
- c) The construction or erection of a building or structure on the footprint of a previous structure which has been destroyed or demolished by fire or other natural causes may be permitted if appropriately zoned in the implementing Zoning By-law subject to the written approval of the City and the Hamilton Conservation Authority.

- d) New development associated with the manufacture and/or bulk storage of substances of a chemical, hazardous or toxic nature which may pose an unacceptable threat to public safety damaged as a result of flooding or failure of floodproofing measures, shall not be permitted.
- e) New long term care facilities, hospitals, homes of the aged, senior citizen apartments, housing with supports, or other similar uses for which flooding could pose a significant danger to the inhabitants shall not be permitted.
- f) Parking spaces for permitted commercial or industrial uses may be permitted at lower elevations to be determined by Hamilton Conservation Authority.
- g) No habitable room shall be located in a basement or cellar.
- h) New building services such as electrical and heating systems should be located above the regulatory flood elevation, but where this location is not feasible, building services shall be floodproofed to the regulatory flood level.
- i) Transition slopes within the limits of a parcel of land that are necessary to match grades with existing streets shall be deemed to conform with the provisions of this area specific policy.
- j) Residential development, redevelopment or major renovation/addition to residential structures shall be permitted in accordance with this Plan and the Zoning By-law provisions provided the structure complies with the minimum flood proofing elevation and:
 - i) the habitable room elevation of any residential dwelling unit is located above the regulatory flood level;
 - ii) safe access and safe parking can be achieved;
 - iii) mechanical, electrical, heating and air/conditioning equipment are located above the regulatory flood level;
 - iv) minor renovations/additions to existing buildings used solely for residential purposes shall be permitted in accordance with Hamilton Conservation Authority policy provided that, in no case, the proposed floor level is lower than the existing ground floor level; and,
 - v) a permit has been issued from the Hamilton Conservation Authority.
- k) The Zoning By-law shall attach an 'FP' suffix to all lands within the boundary of this Area Specific Policy Area to indicate that lands are susceptible to flooding and erosion and that the lands are subject to the regulations of the Hamilton Conservation Authority and that approval of the Hamilton Conservation Authority is required prior to undertaking any development, redevelopment, site alteration or minor alterations to structures.
- l) Site plan control shall be extended to include all lands within or partially within the boundary of this Area Specific Policy Area.

- m) Site plan applications shall not be given final approval until such time as the Hamilton Conservation Authority has advised the City of its endorsement of the flood proofing methods proposed.
- n) The City and the Hamilton Conservation Authority shall maintain and implement a flood emergency plan including the implementation of a flood warning system.

Application Assessment

The property at 55 Cootes Drive is located in the floodplain associated with Spencer Creek. As outlined above, HCA's policies generally seek to direct development away from lands that could be affected by flooding hazards. Notwithstanding this, a Special Policy Area has been identified for portions of the Town of Dundas given its historic development in the Spencer Creek floodplain. The policies of SPA 3, which are applicable to the subject property, allow for the consideration of development subject to certain criteria being satisfied. Any new development in SPA 3 (commercial, residential, etc.) must be floodproofed to the Regulatory flood elevation (RFE) or at least a minimum of 1.1m below the RFE, and be designed so that the structural integrity of any building or structure is maintained during a Regulatory storm event. Residential development is subject to additional requirements, including demonstration of safe access and safe parking.

The Regulatory flood elevation (RFE) for the subject property is 82.14m. Based on the plans submitted in support of the application, all openings of the building are proposed at an elevation of 82.14m or higher, and the parking garage ramp crest is associated with an elevation of 82.15m which is above the RFE. Therefore, the development concept meets the dry floodproofing requirements of HCA's policies. A letter from a structural engineer has also been provided to note that the building would be designed to withstand the hydrostatic (flood) forces that would be associated with a Regional storm floodplain and to outline the proposed design concept. While HCA has no objections to the proposed conceptual design, further details and drawings would be required to support the proposed design and issuance of a permit.

Further, safe parking is achieved given the elevation of the parking garage entrance is above the RFE. However, existing ground elevations at King Street are approximately 79m. Under these conditions, the driveway access from the municipal road to the subject site is affected by flood depths of over 3m. This does not meet HCA's policies or provincial standards for safe access set out in the "Technical Guide - River and Stream Systems: Flooding Hazard Limit" (Ministry of Natural Resources, 2002). HCA's policies set out that in order for safe access to be provided for pedestrians and vehicles, that flood depths should be less than 0.3 m (1 ft) and velocities less than 1.7 m/s (5.5 ft/s). Under the conditions at the subject property, safe access would not be available for pedestrians, vehicles or emergency services.

In considering the applicable regulations and policies, it is HCA staff's opinion that the conditions under which a permit can be issued under the *Conservation Authorities Act*

are not met for the proposed development activity. In particular, staff note that given safe access to the property is not available, the proposed development activity would create conditions or circumstances that, in the event of a regulatory flood, might jeopardize the health or safety of persons, which is contrary to the conditions for issuance of a permit under Section 28.1(b) of the *Conservation Authorities Act*.

AGENCY COMMENTS

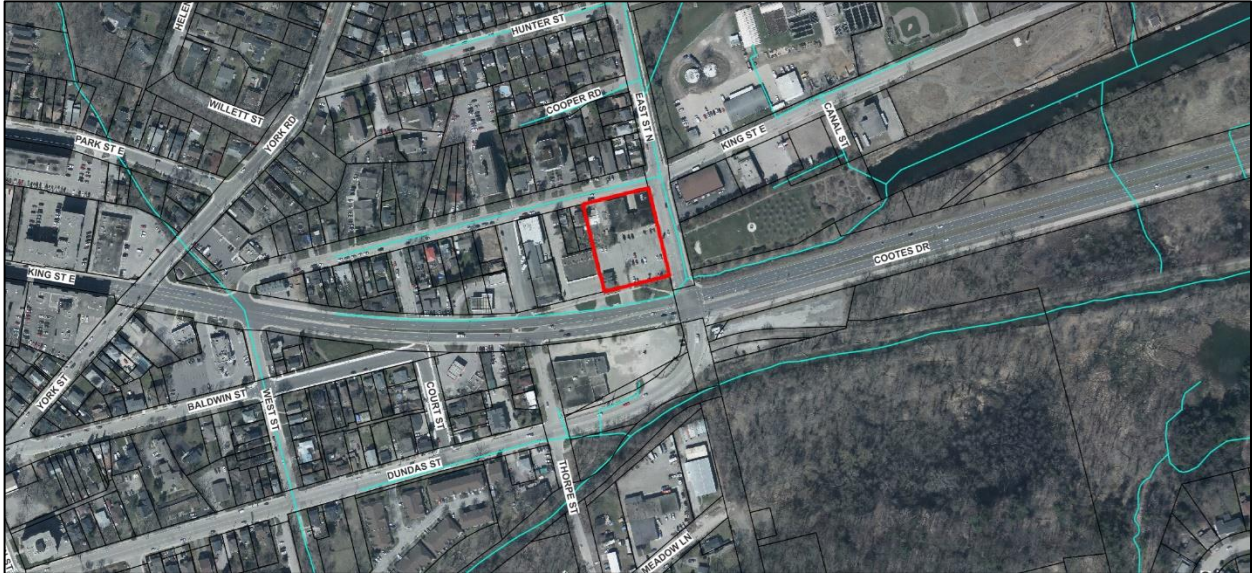
None.

CONCLUSION

The subject application proposes development activity within the regulated floodplain of Lower Spencer Creek. The subject property would not have safe access during a regulatory flood. Provincial and HCA policies take a preventative approach to addressing the potential risks and impacts associated with natural hazards by generally directing development to areas outside of hazardous lands. It is HCA staff's opinion the policy framework outlined in HCA's *Planning and Regulation Policies and Guidelines (October, 2011)* does not support the proposed development.

On this basis, the proposed development does not meet the conditions under which HCA may issue a permit under the *Conservation Authorities Act*. As such, it is the recommendation of HCA staff that the application be refused.

Attachment A – Site Location



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DUXBURY LAW
TRIAL & TRIBUNAL LAWYERS

Brian Duxbury B.A., LLB Certified
Specialist - Civil Litigation
brian@duxburylaw.ca

Joshua J. Perell B.A. (Hons), LLB, BCL, MA, PhD
Barrister & Solicitor
joshua@duxburylaw.ca

December 16, 2024

VIA EMAIL - Scott.Peck@conservationhamilton.ca

T. Scott Peck, B.A., DPA, MCIP, RPP, CMMIII
Deputy Chief Administrative Officer/
Director, Watershed Planning & Engineering
Hamilton Conservation Authority

Attention: Scott Peck

Dear Mr. Peck:

RE: 51 & 55 Cootes Drive & 110 King Street East (Dundas) – Application for Permit

In accordance with the Conservation Authority's requirements in preparation for the January 9, 2025 Board meeting, please find attached the presentation and submission materials on behalf of 7612737 Canada Corp. Could you kindly acknowledge receipt of these materials.

I anticipate that the presenters on January 9, 2025 will be myself, Nancy Frieday and William Neal. Also in attendance will be my client's representative, Dr. Allen Greenspoon, Steve Frankovich and Andrew Thistlewaite.

Yours very truly,

DUXBURY LAW
PROFESSIONAL CORPORATION
Per:



Brian Duxbury
BDD/td

cc: Dr. Allen Greenspoon

IN THE MATTER OF A Hearing Under Section 28.1(5) of the *Conservation Authorities Act* for an Application by 7612737 Canada Corp. for Development Activity in a Regulated Area of Spencer Creek at 51 and 55 Cootes Drive and 110 King Street, City of Hamilton (Dundas)

**PRESENTATION AND SUBMISSION MATERIALS
ON BEHALF OF 7612737 CANADA CORP.**

**DUXBURY LAW
PROFESSIONAL CORPORATION**
Barristers and Solicitors
500 – 1 King Street West
Hamilton, ON L8P 1A4

Brian Duxbury (LSO #23341M)
brian@duxburylaw.ca

T. 905-570-1242
F. 905-570-1955

Lawyers for 7612737 Canada Corp.

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TAB A

IN THE MATTER OF A Hearing Under Section 28.1(5) of the *Conservation Authorities Act* for an Application by 7612737 Canada Corp. for Redevelopment Activity in a Regulated Area of Spencer Creek at 51 and 55 Cootes Drive and 110 King Street, City of Hamilton (Dundas)

INTRODUCTION

1. 7612737 Canada Corp. (Dr. Allen Greenspoon) hereinafter (“761”) requests a decision from the Board of Directors of the Hamilton Conservation Authority (HCA) approving, with conditions, the Application for a permit by 7612737 Canada Corp. dated December 4, 2023.
2. 761 proposes to redevelop its property located at 55 Cootes Drive in Dundas for the construction of a six-storey residential condominium building with 129 dwelling units, 81 parking spaces and associated grading and landscaping. Conditional Site Plan Approval, with conditions, was granted by the City of Hamilton in 2020. 761’s consultants, including its land use planner and architect, have exchanged extensively with staff of the HCA in respect to the site plan process and in respect to the permit application that is the subject matter of this Hearing. Extensive further work has been undertaken on behalf of the Applicant to design this development to be fully flood-proofed such that the proposed development is safe, secure, achieving structural integrity under flood level conditions and provides full protection for its residents and occupants. Achieving this flood-proofed standard has been the core focus of discussion between the Applicant’s consultants and HCA staff.
3. Only now, years later, has an issue emerged in respect to “safe access”. It is an issue that has the potential to fundamentally undermine the feasibility and developability of this property for a revitalized gateway to downtown Dundas.
4. It is not the intention of these materials to find fault. Rather, there is a history and context that is important to the Board’s consideration of this matter and to its exercise of discretion as to whether this proposed development creates conditions or circumstances that, in the event of a natural hazard, might jeopardize the health or

safety of persons or result in the damage or destruction of property. In addition to providing context, these materials and the Applicant's presenters will address the assessment of risk, offer a comprehensive package of solutions and invite the Board to consider that, with appropriate, if not far-reaching conditions, this redevelopment will not result in conditions that "might jeopardize the health or safety of persons".

THE LAST REMAINING ISSUE

5. The Hearing of Report of Mike Stone, prepared for this matter, notes that "The development concept meets the dry flood-proofing requirements of HCA's policies." Mr. Stone's report also notes that "A letter from a structural engineer has also been provided to note that the building would be designed to withstand the hydrostatic (flood) forces that would be associated with a Regional storm floodplain and to outline the proposed design concept." Further details and drawings would be required and this is further discussed below in these materials.

6. Staff also note that "Safe parking is achieved given the elevation of the parking garage entrance is above the RFE."

7. The issue is safe access. Staff note the following:

However, existing ground elevations at King Street are approximately 79m. Under these conditions, the driveway access from the municipal road to the subject site is affected by flood depths of over 3m. This does not meet HCA's policies or provincial standards for safe access set out in the "Technical Guide – River and Stream Systems: Flooding Hazard Limit" (Ministry of Natural Resources, 2002). HCA's policies set out that in order for safe access to be provided for pedestrians and vehicles, that flood depths should be less than 0.3m (1ft) and velocities less than 1.7 m/s (5.5 ft/s). Under the conditions at the subject property, safe access would not be available for pedestrians, vehicles or emergency services.

8. Therefore, while the proposed building's entrance doors are safe and flood-proofed, the depth of flood water at the King Street East vehicle access would not

allow the movement of vehicles in and out of the property. Respectfully, and notwithstanding a long history of consultation on this matter which focused upon the flood-proofing, this issue potentially jeopardizes the entire effort and undertaking to date.

SOME ADDITIONAL HISTORY

9. Staff have provided a history of this Application beginning at page 2 of the Hearing Report. Notably, this matter now dates back some 14 years to 2012. In the Report, staff have noted the HCA correspondence of October 22, 2012 (attached at Tab 1) which was a letter authored by Watershed Officer, Darren Kenny. The focus of Mr. Kenny's correspondence was in respect to issues around flood-proofing requirements. Mr. Kenny did reference several "other requirements" stipulated in the SPA3 policies such as safe ingress-egress, dry flood-proofing, design of the structure below the flood elevation to address the hydrodynamic/hydrostatic forces, including flow velocity, hydraulic gradeline calculations for draining the underground parking lot and floodplain assessment to determine potential impacts on neighbouring properties resulting from any fill placement or changes of grade on the lot. While safe ingress/egress was mentioned, there was no delineation of what safe ingress/egress required nor any indication that, in these circumstances, that issue was going to be a fundamental issue. These comments were carried forward by the HCA but, again, there was never any articulation, delineation or flagging of the fundamental impact and importance of considering this issue. Indeed, the chronology as provided by the staff verifies an extensive series of consultations, meetings and exchanges whereby the focus has been on achieving flood-proofing standards for the building.

10. Additional documentation is included in these presentation materials. At Tab 2, there is correspondence from HCA staff (Darren Kenny) dated February 2, 2018 where Mr. Kenny is responding to the Applicant's Site Plan Control Application with the City. In that correspondence, Mr. Kenny again references and deals with

in some detail the flood-proofing requirements for the proposed structure. He notes in his letter that “The submitted plans included with the circulation demonstrate that the proposed development is adequately flood-proofed based on geodetic elevations. However, a structural engineering assessment of the development remains outstanding and will be required as part of the future regulation application to our office.” The issue of safe access was not referenced.

11. It is the experience and observation of the Applicant’s consultants that the issue of safe access has always been assessed through the lens and context of achieving a high degree of flood-proofing for the development. The Applicant can provide safe ingress and egress to its residential building at the building itself. However, it has no ability to compel public infrastructure improvements to raise public streets or other systems or, candidly, alter the geography of downtown Dundas. The Applicant proposes a multi-faceted approach, set out below, to address and significantly reduce any risk on this remaining issue.

THE POSITIVES

12. The proposed redevelopment is now designed to be fully flood-proofed. All mechanical systems for the development, heat, hydro, communications systems, will be above flood elevations. Pedestrian access into and out of the residential building will be above flood elevations. The elevation of the parking garage entrance is above the Regional Flood Elevation (RFE). This condominium will be safe and secure for all of its residents. William Neal, the Applicant’s architect from McCallum Sather will speak briefly to these design features. (See the graphics at Tab 3).
13. This redevelopment will provide a significant number of residential units for downtown Dundas and provides a critical component of intended intensification for the urban area in Hamilton and the sustained need for more housing (Land Use Planner, Nancy Frieday, will speak to planning issues and a brief history of

the Site Plan Application with the City of Hamilton. See Tab 4). This proposal has conditional site plan approval from the City.

14. There is a secondary issue flagged in the Hearing Report in respect to a request from HCA staff that “The Applicant must also demonstrate that development can safely withstand the hydrostatic and hydrodynamic forces that can result from inundation under Regional Storm conditions”. This request was a source of ongoing discussion between the Applicant’s consultants and HCA staff. Mr. Neal will review this history in his brief submissions to the Board. Mr. Neal will advise that on October 17, 2023, he, together with other members of the Applicant’s team, met with Mr. Stone and Mr. Nizharadze from Conservation Hamilton to discuss the HCA conditions. Mr. Neal specifically requested clarification of staff’s expectations in regard to the issue of demonstrating proof of “the structural integrity being maintained during a flood event”. It was agreed at that meeting that the Applicant’s consultants would provide a stamped engineer’s letter stating that the structural integrity is maintained during a regulatory flood event, specifically addressing the hydrostatic and hydrodynamic forces that can result from inundation under Regional Storm conditions. That letter was then provided (stamped with an engineer’s certification) by WSP dated October 23, 2023 (see Tab 5).
15. While the Applicant’s consultants believed that this issue had been addressed, staff requested further information in respect to this particular issue. In response, Ms. Frieday issued a further letter to HCA staff on November 15, 2024 (see Tab 6) further addressing this issue and providing a further certification letter from WSP dated November 14, 2024 (see Tab 7).
16. While Mr. Neal will address this, it is important to emphasize that the Applicant accepts that further detailed design drawing on this issue will need to be submitted. However, this level of design and detail is not typically undertaken until well forward in the process leading up to the submission of detailed drawings for the purposes of obtaining a building permit. In other words, these are building

permit level design documents that are being requested at this stage and while WSP makes it clear that this level of design and engineering certification can be achieved, this is not the appropriate place in the process to undertake such extensive and expensive drawing preparations.

17. If the permit is granted by the Board, this is one of the conditions that should be included in the permit.

ASSESSING RISK - FLOOD PREDICTING

18. What is now known and observed is that storm prediction information for 12 hour and 24-hour durations is significantly accurate. Predictability for storm events for 48 hours and beyond is nearly as precise. Rainfall predictions are similarly now extraordinarily precise over the near and short-term durations.

19. This level of predictable outcomes now enables residential complexes, such as a condominium building, under careful and professional management, to adequately assess the needs of its residents for potential evacuation or movement from the structure. In conjunction with early warning systems and protocols from public agencies, this level of detail also enables the condominium corporation to ensure that its residents have sufficient forewarning and guidance to ensure that all of their near-term necessities for food and other items are secured. The requirement for a detailed evacuation and storm event preparation and protocol as part of an ongoing condominium board requirement is addressed as one of the conditions below.

20. This then leaves the scenario of the need to provide for emergency evacuation of a resident from the structure. Firstly, a modern condominium project will be required to provide a broad array of medical supports including defibrillators. The building's communications systems are safeguarded. The City of Hamilton's fire and emergency services have detailed protocols for emergency management and establishing an evacuation protocol between the condominium corporation and

Hamilton's Fire and Emergency Services is set out as one of the proposed conditions for the condominium corporation (to be established as part of the condominium corporation's declarations).

21. The fact of a safe and secure flood-proofed residential structure with modern management, prediction and evacuation protocols in conjunction with a menu of other proposed conditions (indemnification, evacuation reserve fund and warning clauses further discussed below) brings this proposal to a level where there can be no reasonable conclusion that this redevelopment "might jeopardize the health or safety of persons".

SPA 3 AND STERILIZING MEANINGFUL DEVELOPMENT IN DOWNTOWN DUNDAS

22. The catchment area for SPA 3 captures some of downtown Dundas. Rigorous application of the safe access issue without consideration of reasonable access will preclude development or re-development of numerous properties leaving the potential for decline in an area that is historically important and otherwise ideal for re-development.

WILL APPROVAL OF THIS DEVELOPMENT CREATE A PRECEDENT? YES AND NO.

23. The Applicant appreciates that the Authority will be mindful as to whether approval of this Application, without conditions, might create a precedent allowing for development in a flood hazard area. However, it is a well known and accepted principle that every application should be considered on its own merits. In this instance, the property has its own locational characteristics and features. In this instance, a menu of important conditions is proposed to address and ameliorate the risk issue. Given this robust approach to the Application, it is submitted that approval of the redevelopment, with conditions, does not set any unfavourable precedent.

24. The Applicant is also aware that the Authority has approved other developments in Dundas within flood hazard limits. An example of a previous approval is the re-development of the Dundas District Highschool at 397 King Street West, Dundas. The Applicant appreciates that the matter had its own unique features and considerations and only brings this example to the discussion to underscore the submission that, with suitable conditions that are carefully developed for the subject Application, approvals can be achieved.

CONCLUSION

25. The subject proposal involves a complex development environment. There are many public interest issues and benefits to be considered. The Applicant has worked with staff of the City of Hamilton for years to achieve a proposal that will deliver meaningful residential redevelopment in downtown Dundas. The Application has worked with HCA staff over many years which has resulted in a robust re-design of a condominium building that is safe, secure and will withstand any climate threat, under any predictable circumstance. The security of the proposed structure mitigates most of the risk issue.

26. However, there remains the issue of safe access. The Applicant submits that the extensive conditions that are proposed for the approval of this development as set out in Schedule "A" will reduce risk to such a low level that the Board will not conclude that the development "might jeopardize the health or safety of persons". The Applicant asks for the Board's approval, with conditions.

All of which is respectfully submitted this 16^h day of December, 2024.



Brian Duxbury (LSO #23341M)
brian@duxburylaw.ca

DUXBURY LAW
PROFESSIONAL CORPORATION
Barristers and Solicitors
500 – 1 King Street West
Hamilton, ON L8P 1A4

T. 905-570-1242
F. 905-570-1955

Lawyers for 7612737 Canada Corp.

Schedule A

SCHEDULE “A”

PROPOSED CONDITIONS FOR APPROVAL OF APPLICATION PERMIT FOR 7612737 CANADA CORP. 55 COOTES DRIVE, CITY OF HAMILTON (DUNDAS)

1. Indemnity and save harmless covenant to be provided to the Hamilton Conservation Authority.
2. Appropriate warning clause or provisions in any agreement of purchase and sale for units in the proposed condominium;
3. Appropriate condominium declarations in respect to warning clauses regarding flood hazards.
4. Appropriate condominium by-laws that require the Board of the condominium to address, at least quarterly in its meetings, a review of its evacuation and early warning procedures to address severe or hazardous storm events.
5. An evacuation plan, to be distributed to all condominium owners and to be monitored and updated on a yearly basis by the Board of the condominium in respect to the prediction of severe storm events and assessing owners or occupants in need of evacuation.
6. A requirement in the condominium by-laws that the Board of the condominium meet semi-annually with Hamilton’s Fire and Emergency Services to discuss and agree upon evacuation protocols in the event of an emergency during a severe storm event.
7. The provision of a location in the common area of the condominium that provides for several emergency services and medical kits, including defibrillators.

8. Demonstration that the emergency services common room will provide sufficient pre-packaged emergencies foods for five days.
9. A requirement that the condominium corporation create a reserve fund to ensure that emergency devices and supplies are monitored and updated on an at least annual basis.
10. Prior to the issuance of a building permit, the applicant shall provide to the Hamilton Conservation Authority a letter, with applicable calculations, demonstrating that the building foundation walls and footings are designed to safely withstand hydrostatic pressure in the Regional Storm, stamped and signed by a qualified engineer.

TAB 1



Hamilton Conservation Authority

Healthy Streams...Healthy Communities!

BY FAX AND MAIL

October 22, 2012

File: FC-12-123

Mr. Chris Bell
City of Hamilton
Planning and Economic Development Department
71 Main Street West, 5th Floor
Hamilton, ON L8P 4Y5

Dear Mr. Bell:

**RE: FORMAL CONSULTATION MEETING – THISTLETHWAITE INTERIOR CONCEPTS
55 COOTES DRIVE AND 110 KING STREET EAST, CITY OF HAMILTON (DUNDAS)**

Staff of the Hamilton Conservation Authority (HCA) has reviewed the application and associated site plan, floor plans and cross-section plan prepared by Karp Namisniak Yamamoto Architects Inc. (revision date September 7, 2012) and note that the applicant proposes to demolish the existing office and commercial buildings located on the site and construct a four-storey, 86-unit residential apartment building, together with surface and underground parking.

Please be advised that the subject property is located on lands regulated by the HCA pursuant to HCA *Development, Interference with Wetlands and Alterations to Shorelines and Watercourses Regulation 161/06 under Ontario Regulation 97/04*. The lands are regulated as they are entirely within the Regulatory Floodplain of Lower Spencer Creek and within Special Policy Area 3 of the former Town of Dundas Official Plan. Any development on the property will have to comply with all policies of Special Policy Area 3 and will require a permit from the HCA.

The current application is a revision of the previous formal consultation application (FC-12-030) and removes the existing retail space on the ground floor. As was stated in our comments on FC-12-030, Special Policy Area 3 requires that new development be dry flood-proofed to at least 1.1 metres below the Regulatory Flood elevation (i.e. minimum opening elevations must be set to this height). The Regulatory Flood elevation for this property is 82.14 metres based on floodplain mapping completed by Paragon Limited in 1990. Existing ground elevations on-site (based on the submitted concept plan) are largely between 78 and 79 metres. Therefore, any new development would have to be dry flood-proofed to 2-3 metres above existing ground elevation. Electrical and heating systems have to be located above the Regulatory Flood elevation of 82.14metres.

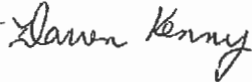
The current plan indicates that the applicant intends to meet these flood-proofing requirements. However, there are several issues that will have to be addressed as part of this application and future regulation application to the HCA. One item is the elevation of the entrance to the proposed underground parking. The current plan indicates a proposed entrance elevation of 81.71m. This elevation meets the elevation provided during our latest pre-consultation meeting with the applicant and City of Hamilton staff (Edward John) held on August 22, 2012. However, upon further review, staff has determined that it will not be sufficient for underground parking. While this elevation would allow for only 0.45m of flooding in a surface parking scenario, for underground parking, any entrance elevation below the Regulatory Flood elevation would allow significant depths of water to pool in the parking structure, greatly exceeding the maximum depth for safe parking.



Underground parking may still be possible, but the entrance elevations for the access ramps would have to be set at or above the Regulatory Flood elevation of 82.14 m. Additionally, the other requirements stipulated in the SPA 3 policies such as safe ingress/egress, dry flood-proofing, design of the structure below the flood elevation to address hydrodynamic/hydrostatic forces (including flow velocity), hydraulic grade line calculations for draining the underground parking lot, and floodplain assessment to determine potential impacts on neighbouring properties resulting from any fill placement or changes of grade on the lot will also still need to be addressed.

If you have any further questions, please contact the undersigned at ext. 131.

Yours truly,



Darren Kenny
Watershed Officer

c.c. Thistlethwaite Interior Concepts, Applicant (fax 905-719-0681)

TAB 2

BY E-MAIL

February 2, 2018

DA-18-018

Mark Kehler
Development Planning, Planning and Economic Development
City of Hamilton
City Hall - 71 Main Street West, 5th Floor
Hamilton, Ontario L8P 4Y5

Dear Mr. Kehler,

**Re: Site Plan Control Application by 7612737 Canada Corporation
51 & 55 Cootes Drive and 110 King Street East, Hamilton (Dundas) (Ward 13)**

Staff of the Hamilton Conservation Authority (HCA) have reviewed the above noted application and offer the following. It is noted that the application has been reviewed pursuant the HCA's responsibilities under the Conservation Authorities Act; the Memorandum of Understanding between the Ontario Ministry of Natural Resources, the Ontario Ministry of Municipal Affairs and Housing and Conservation Authorities relating to provincial interests for natural hazards; and the Memorandum of Agreement between the HCA and the City of Hamilton relating to Natural Heritage and Engineering issues and the Hamilton Harbour Remedial Action Plan.

Proposal

The applicant proposes to construct a six (6) storey mixed use building containing 1,115 m² of commercial space on the ground floor and a total of 55 residential dwelling units. A total of 105 parking spaces will be provided within a ground floor parking garage and above ground parking deck.

Memorandum of Agreement Hamilton Conservation Authority and City of Hamilton

The area of the subject lands drains to Hamilton Harbour, which has a Remedial Action Plan to restore the health of the harbour by reducing the amount of sediment entering the harbour and Lake Ontario and by improving stormwater quality. In accordance with the recommendations of the Remedial Action Plan, stormwater quantity and quality to the Enhanced Level is required to be addressed for new development proposals.

HCA staff have reviewed the *Stormwater Management Brief, 55 Cootes Drive, City of Hamilton* dated July 31, 2017 and prepared by S. Llewellyn and Associates along with the supporting grading and erosion and site servicing drawings dated July 31, 2017.

There are no significant concerns with the stormwater management scheme, but there are two items that should be addressed:

- It is recommended that the OGS unit be labeled on the Site Servicing Plan.
- The applicant should illustrate how CB1 and AD2 contribute flow to MH1.

Ontario Regulation 161/06

The subject properties are regulated by the HCA pursuant to *Ontario Regulation 161/06 (HCA's Regulation of Development, Interference with Wetlands and Alterations to Shorelines and Watercourses)* made under the *Conservation Authorities Act, R.S.O. 1990* as they are located in the Regulatory Floodplain of Lower Spencer Creek. The property is also within Special Policy Area 3 (UD3) of the *City of Hamilton Urban Official Plan (2013)*.

Any development on the property will have to comply with all policies of Special Policy Area 3 and will require a permit from the HCA. Special Policy Area 3 requires that new development be dry flood-proofed to at least 1.1 metres below the Regulatory Flood elevation (i.e. minimum opening elevations must be set to this height). The Regulatory Flood elevation for this property is 82.14 metres based on floodplain mapping completed by Paragon Limited in 1990. Existing ground elevations on-site (based on the submitted concept plan) are largely between 78 and 79 metres. Therefore, any new development would have to be dry flood-proofed to 2-3 metres above existing ground elevation. Electrical and heating systems have to be located above the Regulatory Flood elevation of 82.14 metres. The applicant must also demonstrate that the development can safely withstand the hydrostatic and hydrodynamic forces that can result from inundation under Regional Storm conditions.

The submitted plans included with the circulation demonstrate that the proposed development is adequately flood-proofed based on geodetic elevations. However, a structural engineering assessment of the development remains outstanding and will be required as part of the future regulation application to our office.

OMNR/OMMAH/CA Memorandum of Understanding –PPS Natural Hazards

Section 3.1.1 Natural Hazards of the Provincial Policy Statement (PPS) states that:

Development shall generally be directed to areas outside of:

b) hazardous lands adjacent to river, stream and small inland lake systems which are impacted by flooding hazards and/or erosion hazards.

Provided the proposed development can meet the flood-proofing requirements outlined above, and our office can issue a permit for the development under *Ontario Regulation 161/06*, the natural hazard policies of the PPS would be satisfied.

Based on the above, the following standard conditions would apply to a site plan application for the subject development:

Conditions of Site Plan Approval

2. (a) To show all erosion and siltation control features in detail on a Grading and Drainage Control Plan hereinafter described in Section 3(b); to the satisfaction of the City's Manager of Engineering Design and Construction; and to implement all such erosion and siltation control measures. The Owner further agrees to maintain all such measures to the satisfaction of the City's Manager of Engineering Design and Construction **and the Hamilton Conservation Authority** until the site has been fully developed as determined by the City's Manager of Development Planning.
2. (c) To obtain a permit from the **Hamilton Conservation Authority** pursuant to Ontario Regulation 161/06 (HCA's Regulation of Development, Interference with Wetlands and Alterations to Shorelines and Watercourses) made under the Conservation Authorities Act, R.S.O. 1990.
3. (b) To prepare a detailed Grading and Drainage Control Plan, including infiltration of rooftop runoff where soil conditions and by-law conditions permit, (a Stormwater Management Report prepared by a qualified engineer must be submitted to support the design), showing drainage details for the subject property, abutting properties and public rights-of-way so as to ensure compatible drainage, and to show thereon all existing and proposed connections to the municipal storm sewer, and all detailed erosion and siltation control features; all to the satisfaction of the City's Manager of Development Engineering **and the Hamilton Conservation Authority**.
3. (c) To submit to the satisfaction of the City's Manager of Engineering Approvals **and the Hamilton Conservation Authority** detailed engineering design for storm water management or to receive from the said Manager an exemption from this requirement.

If you have any further questions, please contact the undersigned at ext. 131.

Yours truly,



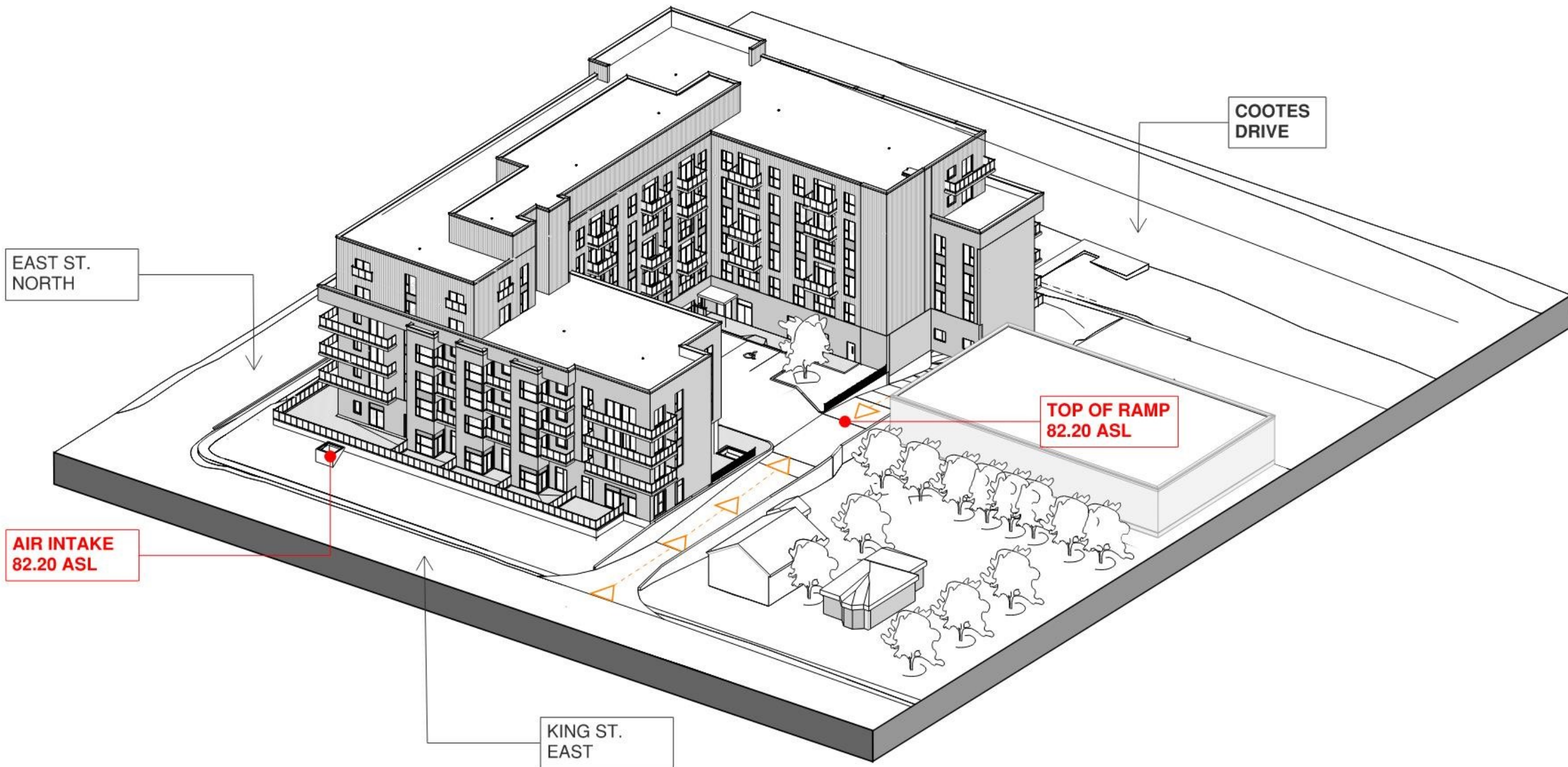
Darren Kenny
Watershed Officer

c.c. Brenda Khes, GSP Group Inc. (by e-mail)

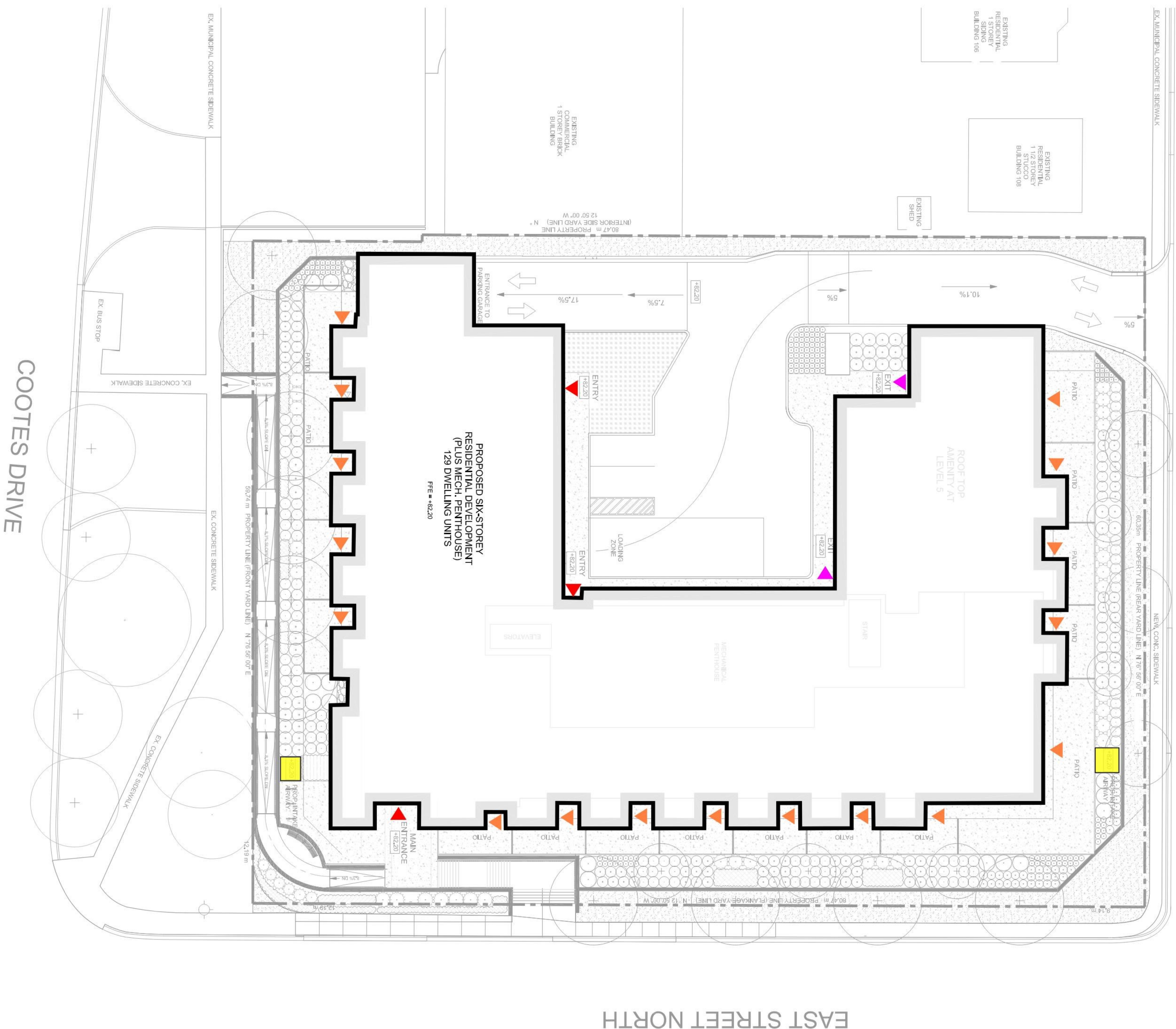
TAB 3



1 EAST STREET NORTH



KING STREET EAST



EAST STREET NORTH

REGULATION FLOOD LEVEL: 82.14 m
GROUND FLOOR LEVEL: 82.20 m

AIR INTAKE: 82.2M

MAIN DOOR ENTRANCE: 82.2M

▶ PATIO DOOR ENTRANCE: 82.2M

EXIT DOOR: 82.2M

GROUND FLOOR
- SEE ARCH. DWGS.

UNDERGROUND PARKING
- SEE ARCH. DWGS.

DAYLIGHT TRIANGLE

ENGINEERED WALL BY OTHERS

1
L2.2 BENCH

5
L2.1 CONCRETE PAVING

1070 GUARD BY OTHERS

5
L2.1 TOP OF WALL 81.68
CONCRETE PAVING

ENGINEERED WALL BY OTHERS

MULCHED PLANTING BED - TYP.

BOTTOM OF WALL 78.45

PROPERTY LINE

NOTES:

1. CONTRACTOR SHALL PROVIDE DETAILED SHOP DRAWINGS OF RETAINING WALL FOR APPROVAL BY THE CONTRACT ADMINISTRATOR PRIOR TO FABRICATION. SHOP DRAWINGS SHALL BE SEALED BY AN ENGINEER LICENSED IN THE PROVINCE OF ONTARIO.
2. AT THE CONCLUSION OF THE INSTALLATION OF THE RETAINING WALL PROVIDE FORMAL CERTIFICATION OF THE WORKS BY THE ENGINEER RESPONSIBLE FOR THE SEALED SHOP DRAWINGS.

TAB 4

Site Plan Approval Process

On December 22, 2017, on behalf of the Owner, GSP Group submitted a Site Plan application for the Subject Lands. At that time, the Site Plan showed a six (6) storey mixed use building including ground floor commercial uses and 5 storeys of residential units above (55 units). Together with all other required fees, a fee of \$4,180.00 was submitted to the Hamilton Conservation Authority (HCA). The City deemed the Site Plan application complete on **January 12, 2018**.

Comments were received in 2018, including comments from the HCA dated February 2, 2018. While advising of the requirement for flood proofing and a structural engineering assessment the letter did not mention the safe access requirement.

Following a detailed review, a new architect McCallum Sather was retained to redesign the building. GSP Group and other consultants met with City staff on a number of occasions in 2019 to discuss outstanding issues. On **August 29, 2019**, a revised set of Site Plan drawings was submitted to the City. The re-design included six (6) storeys with 121 dwelling units. In reply to the City's circulation of the revised Site Plan, HCA prepared a letter dated September 13, 2019. The letter did not mention the safe access requirement.

The Site Plan was conditionally approved on **January 15, 2020**, under the Concurrent Site Plan / Building Permit Review Process. One condition states:

To obtain a permit from the Hamilton conservation Authority, pursuant to the Development, Interference with Wetlands, and Alterations to Shorelines and Watercourses Regulation under Ontario Regulation 97/04.

A minor re-design of the building occurred in late 2022. GSP Group submitted revised drawings to the City showing 129 units. All zoning provisions were met, with the exception of the required number of parking spaces. On **May 1, 2023**, the Site Plan conditions were revised based on the Site Plan dated November 4, 2022. One of the conditions added was to receive approval of a minor variance for a reduced number of parking spaces.

A Parking Justification Report was prepared to support the parking minor variance. The minor variance for parking was approved on **June 15, 2023**. Due to an administrative error, the City subsequently informed us that another minor variance was required for the building setback from a street line (increase). That minor variance was approved on **April 23, 2024**.

One-year extensions to Site Plan approval were requested and granted during the Covid years. The first submission to clear Site Plan conditions was submitted to the City on December 22, 2023, before the January 17, 2024, lapsing date. Site Plan approval no longer lapses provided the project remains active.

The **March 26, 2024**, letter from HCA to the City starts by thanking the City for circulating the Site Plan application. We surmise that HCA staff were responding to the circulation of materials to clear Site Plan conditions. A separate HCA Permit application had been submitted directly to HCA on December 4, 2023. In the March 2024 letter to the City, HCA staff advised: "HCA staff note that since safe access at King Street is not available due to the depth of flooding at King Street,

residential development cannot be supported on this site.” We subsequently met with HCA staff to discuss the access at King Street East.

Urban Hamilton Official Plan Policies

UHOP

The Subject Lands are within the Community Node structural element (historic former downtowns) and designated Mixed Use – Medium Density in the Urban Hamilton Official Plan (Volume 1). This designation permits residential buildings as well as a range of commercial uses. Residential development is permitted and encouraged. Neither an Official Plan Amendment nor a Zoning By-law Amendment were required for the Site.

Volume 3 of the UHOP contains Area Specific Policies (ASPs), which provide more detailed direction for land use. The Subject Lands are identified as Area Specific UD-3. Section UD-3 Policy 1.0 states “the permitted land uses shall be in accordance with the policies of Volume 1 of this Plan, subject to the following requirements.” The specific requirements are stated in Policy 1.0 a) through n).

Policy 1.0 j) states that residential redevelopment shall be permitted in accordance with the UHOP and Zoning By-law provisions provided the structure complies with the minimum flood proofing elevation and certain other stipulations, including safe access and safe parking. Policy 1.0 i) states that transition slopes that are necessary to match grades with existing streets shall be deemed to conform with the provisions of this area specific policy. The driveway access matches the existing King Street East grade and then slopes up to the elevation of the floodproofed building. Policy 1.0 n) states “The City and the Hamilton Conservation Authority shall maintain and implement a flood emergency plan including the implementation of a flood warning system.”

By-law 05-200

The City of Hamilton passed the Commercial and Mixed-Use Zones on November 8, 2017. The Subject Lands are zoned Mixed Use Medium Density (C5) Zone with Special Exception 581. The zone permits “Multiple Dwelling.” The Special Exception prohibits certain uses including a hospital and long-term care facility. There is also a special provision for the Subject Lands permitting a 1.3 metre minimum interior side yard.

Information from HCA Planning & Regulation Policies and Guidelines, Board of Directors Approved October 6, 2011

Dry floodproofing: means *floodproofing* where the objective is to keep a *development* or structure and its contents completely dry during a flood event. There are two basic techniques to dry floodproofing:

- a. Dry passive *floodproofing* includes the use of *fill*, columns or design modifications to elevate openings in the structure at or above the level of the *Regulatory Flood*. These measures do not require flood warning or any other action to put the flood protection into effect.

- b. Dry active *floodproofing* utilizes techniques such as watertight doors, seals, berms/floodwalls to prevent water from entering openings below the level of the *Regulatory Flood*. Advance flood warning is almost always required in order to make the flood protection operational (i.e. closing of watertight doors, installation of waterproof protective coverings over windows, etc.).
[Flood Plain Planning Policy Statement]

The policies also state that wherever possible, dry floodproofing measures should be passive rather than active.

Section 8 is titled Floodproofing Standards

8.1.1 Safe Access

- a. Safe ingress and egress for pedestrians and vehicles must be such that the depth is less than 0.3 m (1 ft), and the velocity is no greater than 1.7 m/s (5.5 ft/s).

HCA now have Interim Policy Guidelines for the Implementation of Ontario Regulation 41/24 which took effect on April 1, 2024.

- 2) Assessing applications to determine whether the proposed activity would create conditions or circumstances that, in the event of a natural hazard, might jeopardize the health or safety of persons or result in the damage or destruction of property.
- 3) Attaching conditions to a permit only if the conditions (1) assist in preventing or mitigating any effects on the control of flooding, erosion, dynamic beaches or unstable soil or bedrock or (2) assist in preventing or mitigating any effects on human health or safety or any damage or destruction of property in the event of a natural hazard.

TAB 5



2023-10-23

Confidential

Ajdin Mehanovic
mcCallumSather
286 Sanford Ave. North, 2nd Floor
Hamilton, L8L 6A1

**Re: Cootes Condo – 55 Cootes Drive
Structural Requirements within Spencer Creek Floodplain**

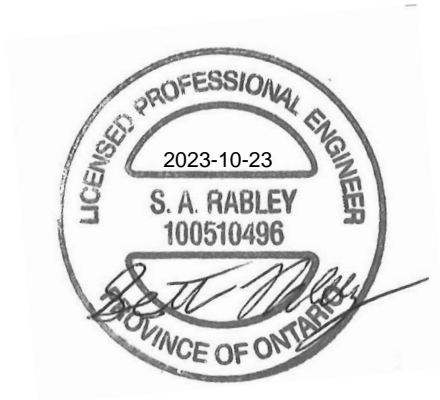
Dear Ajdin:

As required by the Hamilton Conservation Authority (HCA), this letter is to confirm the design requirements imposed by the building being located within the Spencer Creek floodplain. The grade, and the buildings ground floor, for the project is being raised to be above the regional flood elevation. In the event of a flood, the foundation walls and footings of the building will be designed to withstand the hydrostatic forces that will be present in that scenario.

If you have any further inquiries, please reach out.

Regards,

Scott Rabley, P.Eng.
Project Manager
Scott.rabley@wsp.com
Tel.: 289-267-0809



TAB 6

November 15, 2024

Project No. 17033

Hamilton Conservation Authority
P.O. Box 81067
838 Mineral Springs Road
Ancaster, ON L9G 4X1

Attn: T. Scott Peck, B.A., DPA, MCIP, RPP, CMMIII, Deputy Chief Administrative
Officer/Director, Watershed Management Services
Email: Scott.Peck@conservationhamilton.ca

Dear Scott:

**RE: Hamilton Conservation Authority (HCA) Permit Application
51 & 55 Cootes Drive & 110 King Street East (Dundas)
Conditional Site Plan Approval DA-18-018
City File: DA-18-08**

This letter is further to the submission of the HCA Permit Application for the above-referenced properties and the subsequent letter to the City of Hamilton from HCA staff dated March 26, 2024.

Background

Within an email to me, dated July 7, 2023, Mike Stone, Manager, Watershed Planning Services advised me that the HCA Permit application must be completed “and submitted along with the supporting plans/drawings and any reports to address the issues noted in our comment letters...”

I reviewed the comment letters from HCA staff dated February 2, 2018 and September 13, 2019. Both the 2018 and 2019 letters state “The applicant must also demonstrate that the development can safely withstand the hydrostatic and hydrodynamic forces that can result from inundation under Region Storm conditions.” The 2018 included: “a structural engineering assessment of the development remains outstanding and will be required as part of the future regulation application to our office.”

Within an email to Mike Stone, dated October 5, 2023, I advised that the project architect was enquiring about the information required within a structural engineering assessment. Based on this enquiry, a meeting was held with HCA staff and the applicant’s consultants on October 18,

2023, to discuss the requirements. Following this meeting, WSP prepared a letter dated October 23, 2023, that was submitted with the HCA Permit Application.

On March 26, 2024, HCA staff provided a letter to the City pertaining to the Site Plan application (conditional Site Plan approval was granted in 2020). Within this letter, reference was made to the HCA Development Permit application. HCA staff advised the City that the WSP letter submitted with the HCA Permit application “does not provide sufficient information. The HCA requires a formal response with applicable calculations, stamped and signed by a qualified engineer prior to Site Plan approval.”

Revised WSP Letter

The WSP letter attached hereto, provides some additional information regarding how the proposed building will be designed to withstand hydrostatic and hydrodynamic forces. The attached letter states “This will be accomplished by having a “bathtub” type of foundation system, where all walls and the mat foundation are designed to withstand any hydrostatic pressure from fully saturated soils acting on the structure. The mat foundation will also provide enough weight to ensure that any buoyancy requirements of the building are met.”

The WSP letter is stamped and signed by a qualified engineer, however, “applicable calculations” as referenced in the March 26, 2024, HCA staff letter are not available. The WSP letter advises that the calculations will be provided when detailed structural drawings are prepared for a building permit application, as this is when this level of detail would normally be required and be more appropriate.

Please advise if the revised WSP letter meets your requirements to issue a conditional HCA Permit, provided all other matters are addressed. The condition would be that HCA staff be satisfied with the detailed structural engineering drawings.

Should you have any questions, or require any additional information, please do not hesitate to contact me at 289-778-1431 or by email at nfrieday@gspgroup.ca.

Yours truly,

GSP GROUP INC.



Nancy Frieday, MCIP, RPP
Senior Planner

cc: 7612737 Canada Corp.

TAB 7



2024-11-14

Confidential

William Neal
 mcCallumSather
 286 Sanford Ave. North, 2nd Floor
 Hamilton, L8L 6A1

**Re: Cootes Condo – 55 Cootes Drive
 Structural Requirements within Spencer Creek Floodplain**

Dear William:

As required by the Hamilton Conservation Authority (HCA), this letter is to confirm the design requirements imposed by the building being located within the Spencer Creek floodplain. The grade, and the buildings ground floor, for the project is being raised to be above the regional flood elevation. In the event of a flood, the foundation walls and footings of the building will be designed to withstand the hydrostatic forces that will be present in that scenario. This will be accomplished by having a “bathtub” type of foundation system, where all walls and the mat foundation are designed to withstand any hydrostatic pressure from fully saturated soils acting on the structure. The mat foundation will also provide enough weight to ensure that any buoyancy requirements of the building are met.

Currently, approval from the HCA is required prior for a building permit application and it requires detailed calculations supporting the design approach mentioned above. This level of detail and calculations are akin to that of what would be required to prepare drawings for building permit submission, and we propose to amend the requirements to be “prior to issuance of a building permit”. This will allow concurrent review of both the permit and conservation permit. This change will also significantly help the schedule and with submitting the building permit prior to March 31, 2025 when the current buildings code grace period expires and the new 2024 Ontario Building Code takes effect.

If you have any further inquiries, please reach out.

Regards,

Scott Rabley, P.Eng.
 Project Manager
 Scott.rabley@wsp.com
 Tel.: 289-267-0809

