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March 6, 2023

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Envision Durham
Durham Region Planning and Economic Development Department
605 Rossland Road East
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Re: Envision Durham
Comments on the Draft New Regional Official Plan
Regional Natural Heritage System (Map 2a)

This brief is submitted on behalf of Pickering Developments (401) Inc., Pickering Developments (Bayly) Inc. and Pickering Developments (Squires) Inc., (herein called “Pickering Developments”) the owners of Durham Live, and on behalf of Triple Properties III Inc., the owner of the property at 915/935 Sandy Beach Road.

Property Locations and Designations

The subject properties are in the City of Pickering. Durham Live is situated northwest of the intersection of Bayly Street and Church Street, and 915/935 Sandy Beach Road is located on the east side of Sandy Beach Road south of Bayly Street (see Figure 1).

Map 1 (Regional Structure) of the Draft new Regional Official Plan designates both Durham Live and 915/935 Sandy Beach Road as “Employment Areas”. There is also a “Regional Corridor” overly designation along Bayly Street that affects Durham Live. Map 1 does not show any other land use designations on either property (see Figure 2).

Figure 1: Location Map

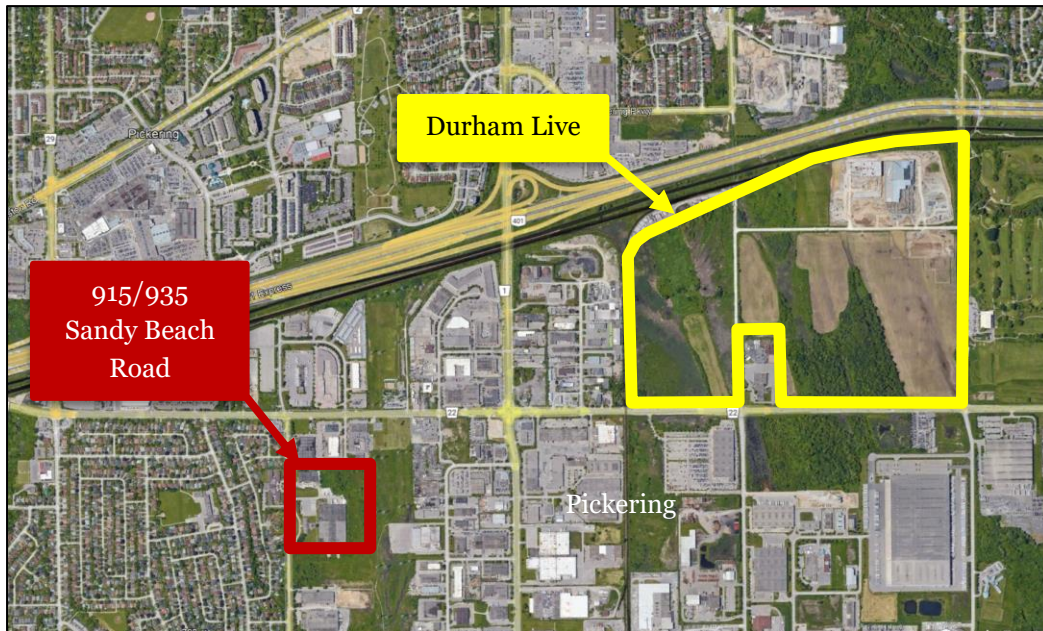
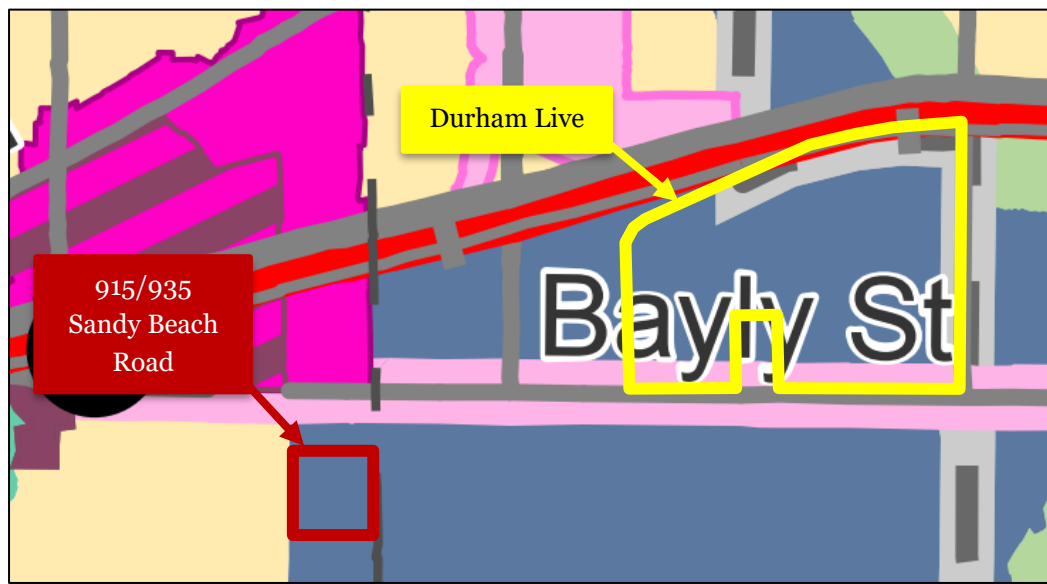











Figure 2: Draft New Regional Official Plan – Map 1 (Regional Structure)



- | | | |
|--|--|--|
|  Urban Growth Centres (UGC) |  Rapid Transit Corridor |  Community Areas |
|  Protected Major Transit Station Area (PMTSA) |  Regional Corridor |  Employment Areas |
|  UGC / PMTSA Overlap |  Existing GO Station |  Major Open Space Areas |

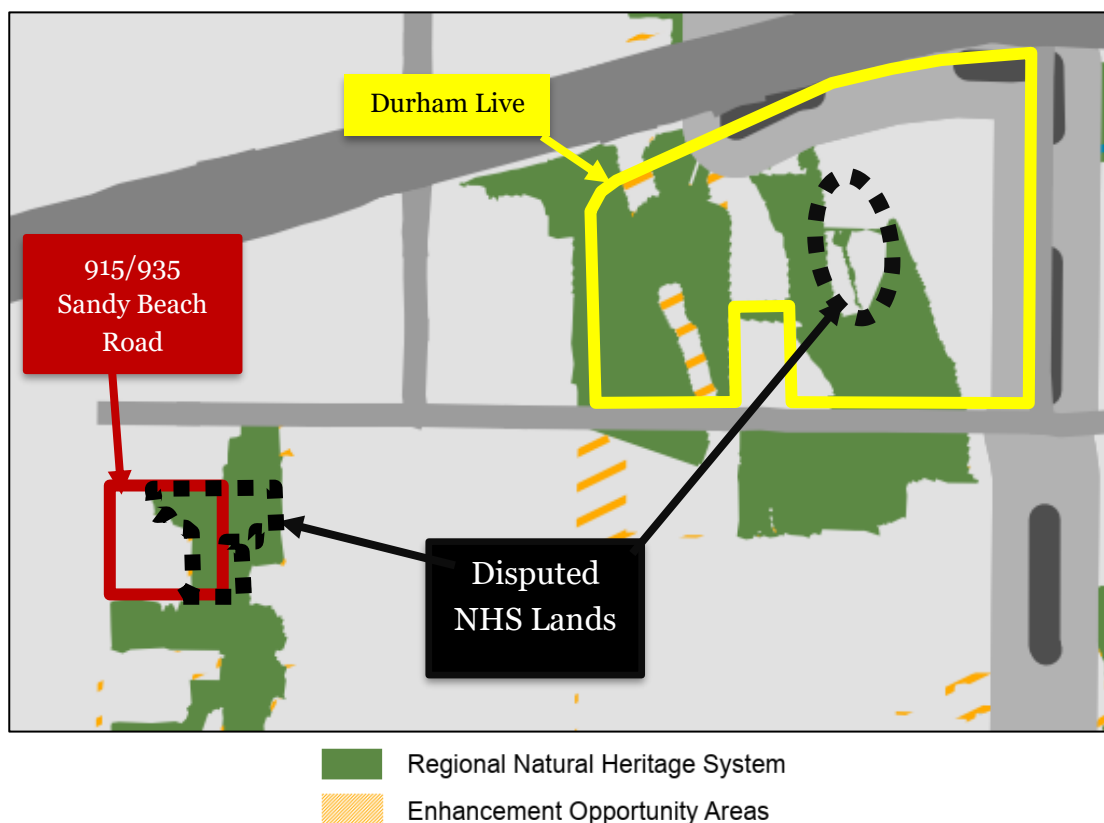
Comments on Map 2a (Regional Natural Heritage System)

Pickering Developments and Triple Properties III Inc. provided written submissions in March 2022 to Envision Durham in response to the draft natural heritage system (NHS) overlay mapping that was released for comment at that time. These submissions are attached to this brief as Appendices 1 and 2.

Both submissions objected strongly to the inclusion of lands in Durham Live and at 915/935 Sandy Beach Road on the draft NHS overlay map (these lands are herein referred to as the “disputed NHS lands”). Reasonable arguments were presented in both submissions against the inclusion of these lands in the regional NHS, but no response was received to either submission to explain why the disputed NHS lands had been included in the draft NHS overlay map.

Despite these objections and arguments, the disputed NHS lands continue to be included as part of the regional NHS, as shown on Map 2a (Regional Natural Heritage System) of the Draft New Official Plan (see in Figure 3).

Figure 3: Draft New Regional Official Plan – Map 2a (Regional Natural Heritage System) and Disputed NHS Lands on Durham Live and at 915/935 Sandy Beach Rd



Because the requested NHS mapping changes were not made and no explanation was provided, Pickering Developments and Triple Properties III Inc. continue to object strongly to the inclusion of the disputed NHS lands in the regional NHS. The reasons for objecting are outlined in the previous submissions (Appendices 1 and 2), as well as in this brief.

The Draft new Regional Official Plan describes the regional NHS as comprising the Oak Ridges Moraine Natural Core Areas and Natural Linkage Areas, Greenbelt Natural Heritage System, Growth Plan Natural Heritage System, area municipal natural heritage systems, key natural heritage features and key hydrologic features and functions and the linkage areas that connect these features in a system. The Draft new Plan states that “key natural heritage features” include:

- wetlands
- significant woodlands
- significant valleylands
- habitat of endangered and threatened species
- fish habitat
- significant wildlife habitat
- life science areas and earth science areas of natural and scientific interest;
- sand barrens, savannahs and tallgrass prairies
- alvars
- lakes and their littoral zones
- permanent and intermittent streams
- kettle lakes
- seepage areas and springs
- Lake Simcoe Shoreline; and
- natural areas abutting Lake Simcoe.

From the Draft new Regional Official Plan, it would therefore be reasonable to conclude that at least one of the natural heritage features listed above needs to be present on the lands to justify the inclusion of the disputed NHS lands within the regional NHS.

However, none of the listed features currently are present on the disputed NHS lands on Durham Live or at 915/935 Sandy Beach Road.

The Ministry of Natural Resources and Forestry’s (MNR) web-based natural heritage area mapping tool shows only a small hedgerow (which no longer exists) on the Durham Live disputed NHS lands (see Figure 4). And on the disputed NHS lands at 915/935 Sandy Beach Road, the MNR mapping tool does not show the existence of any significant natural heritage features (see Figure 5).

Figure 4: MNRF Natural Heritage Map – Durham Live (mapped February 2023)

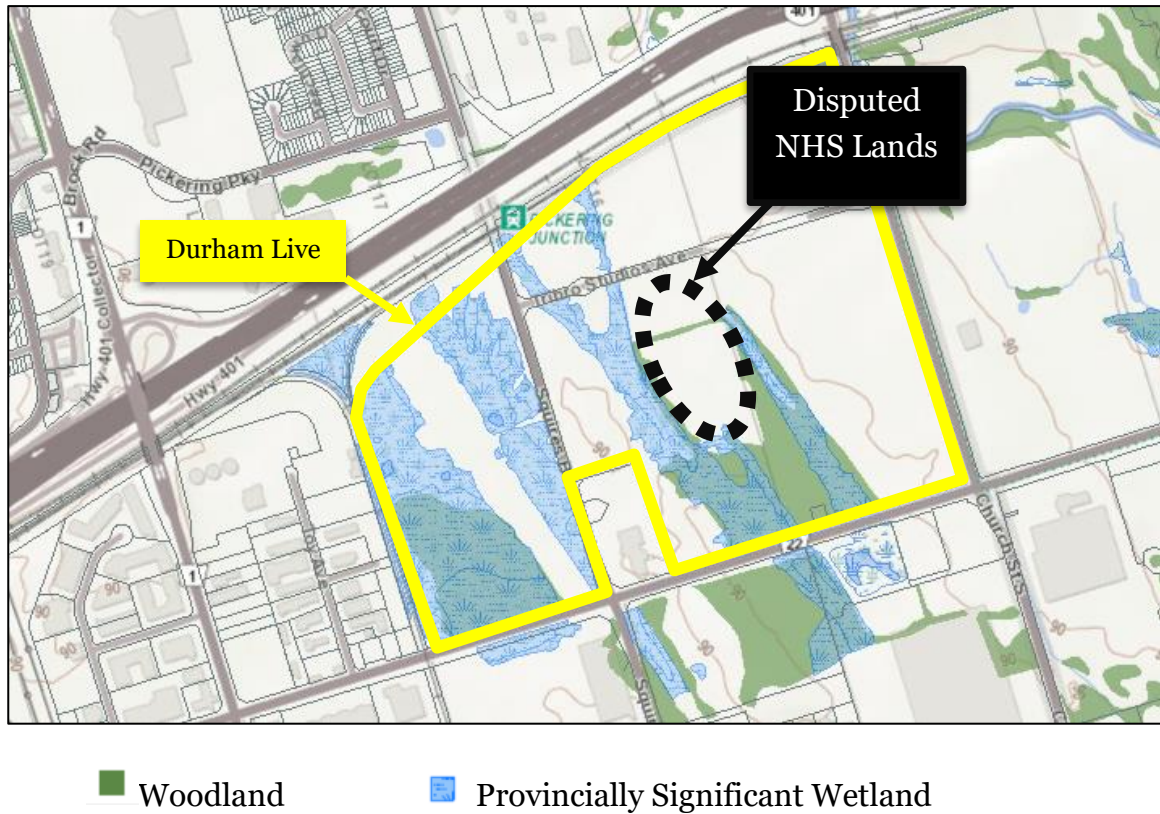
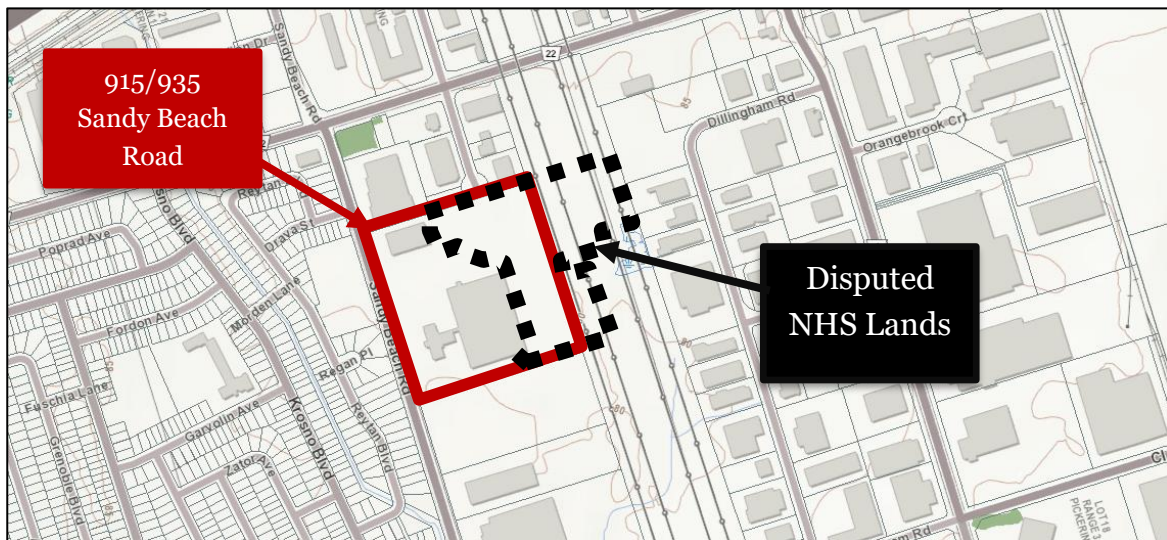
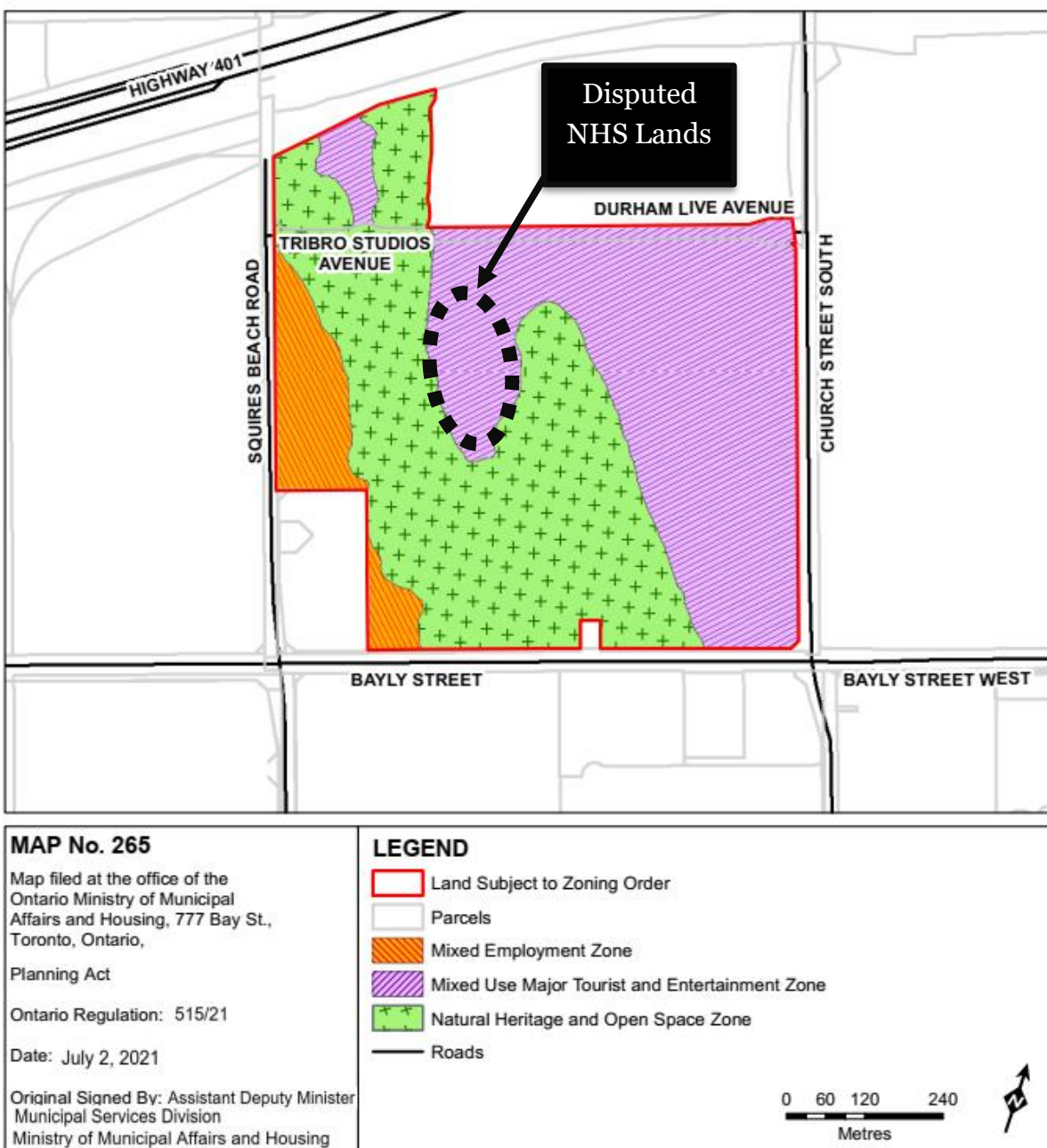


Figure 5: MNRF Natural Heritage Map –915/935 Sandy Beach Road (mapped February 2023)



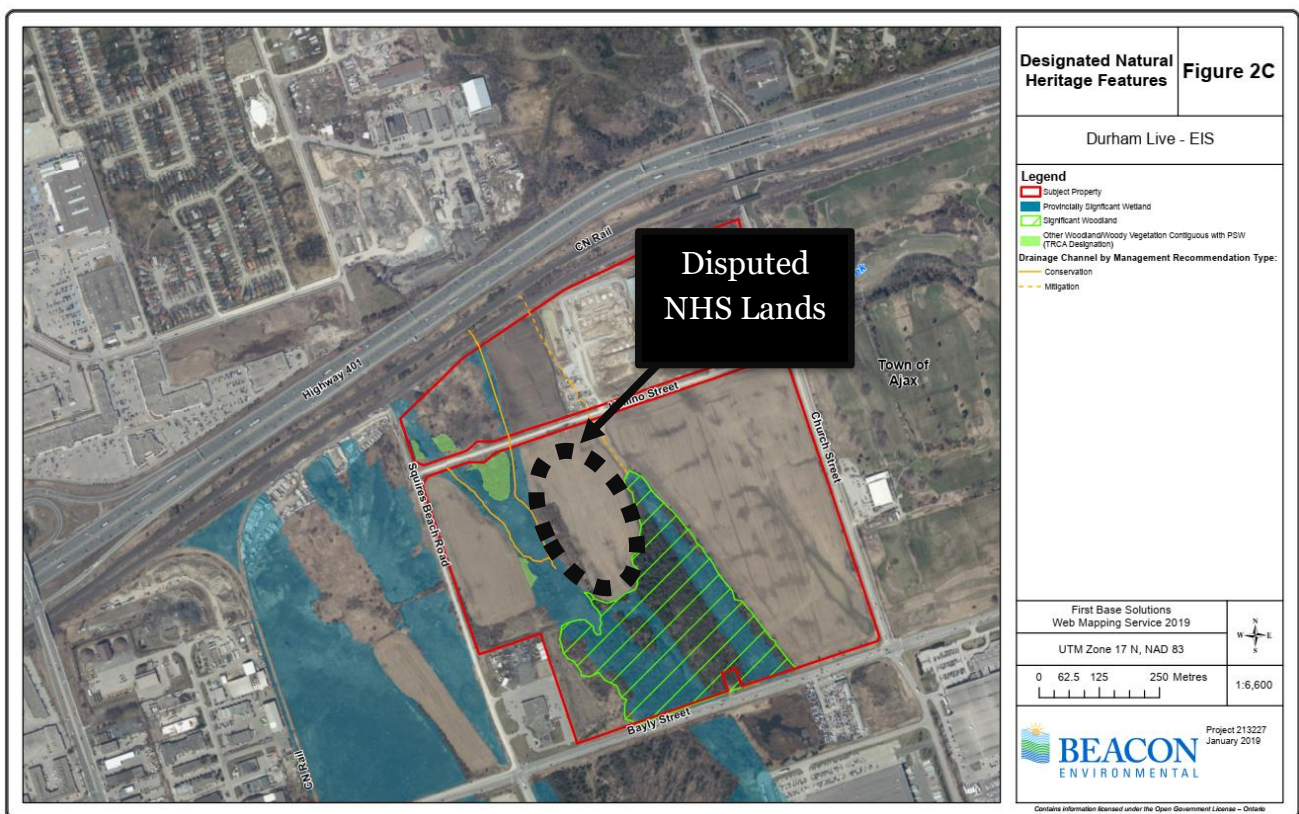
Also, a Provincial Minister’s Zoning Order (MZO) has been enacted on a portion of the Durham Live property (MZO 607/20, as amended). The MZO zones the Durham Live disputed NHS lands as “Mixed Use Major Tourist and Entertainment Zone” (see Figure 6).

Figure 6: Zoning Map – MZO 607/20 as amended



In support of the MZO, an environmental investigation was completed by Beacon Environmental. That investigation did not identify any significant wetlands, woodlands or other designated natural heritage features on the Durham Live disputed NHS lands (see Figure 7). Had the investigation found any such features, the MZO would have zoned the Durham Live disputed NHS lands as “Natural Heritage and Open Space” not as “Mixed Use Major Tourist and Entertainment Zone”.

Figure 7: Beacon Environmental Impact Study for Durham Live (February 2020)
Map 2C – Designated Natural Heritage Features



Comments on the Map 2c (Water Resources System – Key Hydrologic Features)

Map 2c (Water Resources System – Key Hydrologic Features) of the Draft new Regional Official Plan also shows natural heritage features of significance. And like Map 2a, Map 2c also incorrectly identifies a natural heritage feature on the Durham Live disputed NHS lands. It shows a Provincially Significant Wetland feature that no longer exists (see Figure 8).

Figure 8: Draft New Regional Official Plan – Map 2c (Water Resources System - Key Hydrologic Features) and Disputed NHS Lands



As previously noted in this brief, the most recent MNR Natural Heritage Map (Figure 4) and the Beacon Environmental investigation for Durham Live (Figure 7) both clearly show that there currently are no significant natural heritage features, including Provincially Significant Wetlands, on the Durham Live disputed NHS lands.

Conclusion

In conclusion, as explained in this brief and outlined in the previous submissions attached as Appendices 1 and 2, the disputed NHS lands on Durham Live and at 915/935 Sandy Beach Road do not contain any natural heritage features of regional significance. These lands should therefore not be shown in the Draft new Regional Official Plan either on Map 2a (Regional Natural Heritage System), or for Durham Live on Map 2c (Water Resources System – Key Hydrologic Features).

Accordingly, Pickering Developments and Triple Properties III Inc. again respectfully request that the disputed NHS lands described in this brief be removed from Map 2a and Map 2c of the Draft new Regional Official Plan.

Please contact the undersigned should you have any questions or require additional information.

Sincerely,

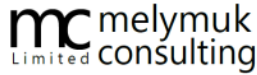
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Thomas Melymuk MCIP, RPP
President, Melymuk Consulting Limited

Copy: Steve Apostolopoulos, Pickering Developments and Triple Properties III Inc.
Ira Kagan, Kagan Shastri DeMelo Winer Park LLP
Catherine Rose, Chief Planner, City of Pickering

Appendix 1

March 2022 NHS Submission – Durham Live



Melymuk Consulting Limited
320 Keewatin Avenue
Toronto ON M4P 2A5

March 22, 2022

Envision Durham
Durham Region Planning and Economic Development
605 Rossland Road East
Whitby ON L1N 6A3

Re: Envision Durham
Draft Natural Heritage System Overlay Mapping
Comments on Mapping for Durham Live, Pickering

To whom it may concern:

This brief is submitted on behalf of the owners of Durham Live, developers of an integrated major tourist destination located in Pickering, northwest of the intersection of Bayly Street and Church Street. The owners are Pickering Developments (401) Inc., Pickering Developments (Bayly) Inc. and Pickering Developments (Squires) Inc., herein called “Pickering Developments”.

PROPERTY LOCATION

The location of the property is shown in Figure 1. It includes four parcels of land, one located west of Squires Beach Road, and three located east of Squires Beach Road, including the former Kellino Street which is in the process of being acquired from the City of Pickering.

The Pickering Casino Resort is in the northeast portion of the property. The Casino is operational, and construction is nearing completion on an associated hotel and performing arts arena. As well, site plan and building applications have been submitted for the Pickering TriBro Studios southwest of the Pickering Casino Resort, and a site plan application is expected to be submitted shortly for a Porsche Experience Centre in the southeast portion of the property. The general locations of these developments are also shown in Figure 1.

Appendix 1 (cont'd)

March 2022 NHS Submission – Durham Live

Figure 1: Durham Live Location Map



MINISTER'S ZONING ORDER

A Minister's Zoning Order (MZO 607/20) was issued by the Provincial Government in October 2020 and amended in July 2021 (MZO 515/21). The MZO, as amended, applies to the Durham Live lands east of Squires Beach Road, other than the Pickering Casino Resort. The MZO establishes three zones as shown in Figure 2: a Mixed Use Major Tourist and Entertainment Zone, a Mixed Employment Zone, and a Natural Heritage and Open Space Zone.

The Mixed Use Major Tourist and Entertainment Zone permits a wide variety of tourist, entertainment and other uses including arenas, convention centres, film studios, hotels, restaurants, waterparks, major tourist establishments, recreational facilities, casinos, museums, nightclubs, offices, retail stores and residential uses.

The Mixed Employment Zone permits all the uses in the Mixed Use Major Tourist and Entertainment Zone as well as laboratories, manufacturing plants, software development and processing establishments, vehicle service facilities, and warehouse and distribution facilities.

Appendix 1 (cont'd)

March 2022 NHS Submission – Durham Live

Uses in the Natural Heritage and Open Space Zone are restricted to the protection, maintenance, enhancement and restoration of ecosystem forms and functions, and drainage, flood control and erosion control measures.

As can be seen in Figure 2, the Natural Heritage and Open Space Zone does not extend into the Pickering TriBro Studios lands, which in their entirety are zoned Mixed Use Major Tourist and Entertainment Zone.

Figure 2: Durham Live MZO 607/20 Zoning Map



ENVISION DURHAM DRAFT REGIONAL NHS OVERLAY

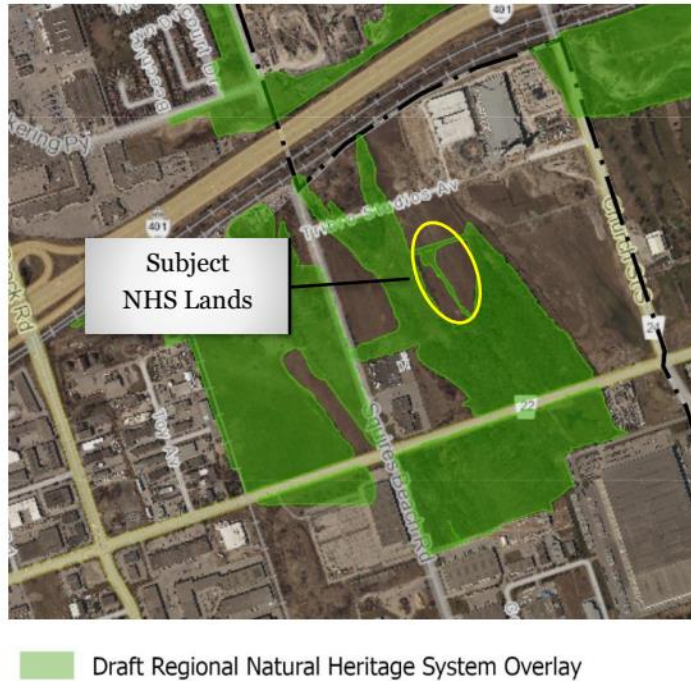
On March 2, 2022, draft Natural Heritage System (NHS) overlay mapping was released by Durham Region as part of its Envision Durham comprehensive planning review. The draft NHS mapping for Durham Live is shown in Figure 3.

The draft NHS mapping is not correct with respect to Durham Live. The draft includes a wetland arm and associated features on the Pickering TriBro Studios lands that no longer exist, having been removed by a previous owner of the property. The location of the wetland arm and associated features (herein called the “subject NHS lands”) are also shown in Figure 3.

Appendix 1 (cont'd)

March 2022 NHS Submission – Durham Live

Figure 3: Envision Durham Draft NHS Mapping (excerpt)



HISTORY

A Provincially Significant Wetland (PSW) complex was identified on the property in 2007 by the Province. The complex included the subject NHS lands that existed at the time but were removed and converted to agriculture by a previous owner, it appears sometime between the spring of 2008 and the spring of 2010.

In 2014, staff from the Ministry of Natural Resources & Forestry (MNR) along with representatives from the Toronto and Region Conservation Authority (TRCA), the City of Pickering, Beacon Environmental, and the current owner, attended the site with professional surveyors to update the PSW mapping. During the site visit, agreement was reached that the subject NHS lands had been converted to agricultural, and no longer showed evidence of wetland conditions.

However, despite this agreement, the subject NHS lands were not deleted from MNR's wetland mapping at that time. Pickering later relied on MNR's mapping in preparing OPA 27, the City's Environment and Countryside amendment, and as a result, the subject NHS lands were included in the schedules that formed part of OPA 27.

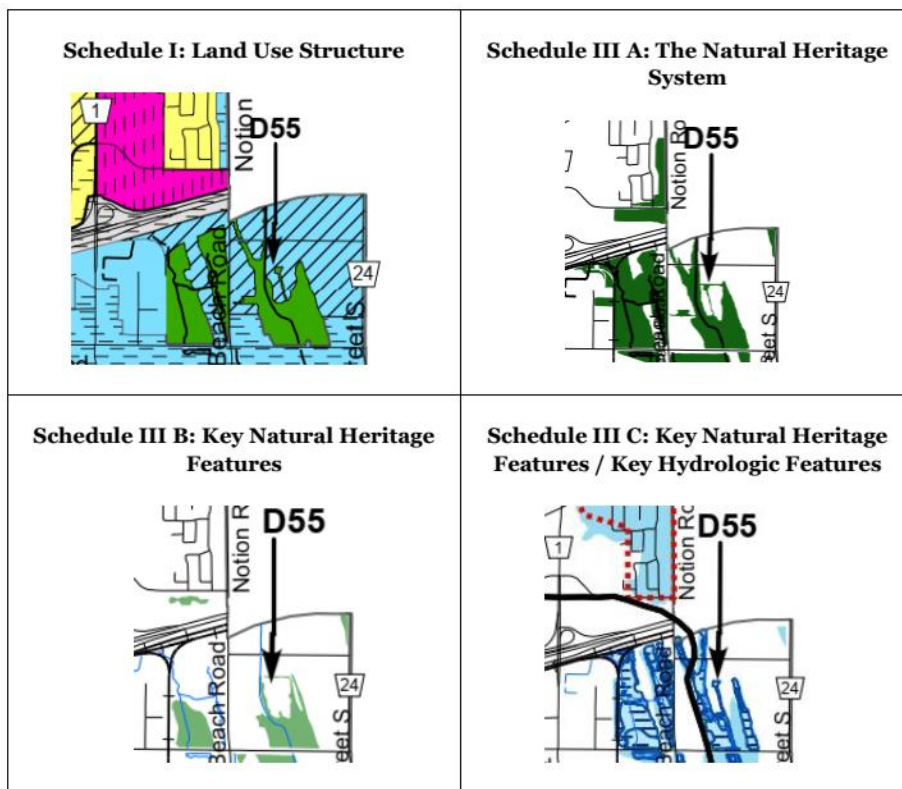
Appendix 1 (cont'd)

March 2022 NHS Submission – Durham Live

When OPA 27 was submitted to the Region for approval, Pickering Developments objected to the inclusion of the subject NHS lands. In response, and after consulting with the City, Durham Region deferred the matter pending further discussion between the landowner, MNRF, TRCA, the Region, and the City.

The deferral is currently shown as D55 on Schedules I, III A, III B, and III C of the City's Official Plan, as indicated below in Figure 4.

Figure 4: Pickering Official Plan Schedules I, III A, III B and III C (excerpts)



In early 2020, a rezoning application was submitted to the City to amend By-law 7404/15 to allow development on the Durham Live property to within approximately 30 metres of the significant natural features on the property (By-law 7407/15 only permitted development to within 120 metres of these features). Amongst other projects, the proposed rezoning would permit the construction of the Pickering TriBro Studios, for which a site plan application had also been submitted to the City in early 2020.

Appendix 1 (cont'd)

March 2022 NHS Submission – Durham Live

Envision Durham, Comments on Draft NHS Mapping

Melymuk Consulting Limited, March 2022

TRCA had several technical comments on the rezoning and site plan applications but did not object to either application, even though both allowed for development on the subject NHS lands. Instead, TRCA requested ecosystem compensation for the removal of the subject NHS lands by a previous owner. A compensation agreement between Pickering Developments and TRCA has since been drafted and is expected to be executed shortly.

CONCLUSION

In conclusion, we respectfully request that the Regional NHS overlay on the TriBro Studios parcel be deleted for several reasons, including the following.

1. The subject NHS lands have been removed and converted to agriculture approximately 10 years ago by a previous owner and currently there are no signs of wetland conditions on these lands.
2. The natural heritage designations proposed by Pickering on the subject NHS lands through OPA 27 are not in force, having been deferred by the Region (D55).
3. MZO 607/20 zones the subject NHS lands “Mixed Use Major Tourist and Entertainment Zone” not “Natural Heritage and Open Space Zone”.
4. Rezoning and site plan applications have been submitted to the City of Pickering to allow a film studio development that includes the use of the subject NHS lands. TRCA had technical comments on these applications but did not object to the use of the subject NHS lands.
5. An agreement between Pickering Developments and TRCA is expected to be executed shortly compensating for the removal of the subject NHS lands by a previous owner.

Please contact the undersigned should you have any questions or require additional information.

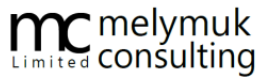
Sincerely,



Thomas Melymuk MCIP, RPP
President, Melymuk Consulting Limited

Appendix 2

March 2022 NHS Submission – 915 /935 Sandy Beach Road



Melymuk Consulting Limited
320 Keewatin Avenue
Toronto ON M4P 2A5

March 22, 2022

Envision Durham
Durham Region Planning and Economic Development
605 Rossland Road East
Whitby ON L1N 6A3

Re: Envision Durham
Draft Natural Heritage System Overlay Mapping
Comments on Mapping for 915-935 Sandy Beach Road
City of Pickering

To whom it may concern:

This brief is submitted on behalf of Triple Properties III Inc., the owner of the properties at 915-935 Sandy Beach Road, Pickering.

PROPERTY LOCATION AND DESCRIPTION

The properties at 915 and 935 Sandy Beach Road (herein called the “subject properties”) are located on the east side of Sandy Beach Road south of Bayly Street as shown in Figure 1. North and south of the subject properties are industrial employment uses, immediately east is a Hydro One transmission corridor, while further east is Don Beer Arena and additional industrial employment uses. To the west, across Sandy Beach Road, is a residential neighbourhood.

The subject properties in their entirety are designated “Employment Areas” in the Durham Regional Official Plan and “Prestige Employment” in the Pickering Official Plan.

Pickering By-law 2011, as amended, zones the entire subject properties “M1” Storage and Light Manufacturing. Permitted uses include a business or professional office; service or repair shop; warehouse or distributing depot; garage; dry-cleaning, pressing or laundry

Appendix 2 (cont'd)

March 2022 NHS Submission – 915 /935 Sandy Beach Road

Envision Durham, Comments on Draft NHS Mapping

Melymuk Consulting Limited, March 2022

establishment; creamery; printing or duplicating shop; bakery; dairy; and light manufacturing or assembly of manufactured products.

At present, the subject properties are used for warehousing and distribution purposes.

Figure 1: Location Map, 915 / 935 Sandy Beach Road



EXISTING NATURAL HERITAGE SYSTEM MAPPING

The current Durham Regional Official Plan does not show any part of the subject properties as being within the greenbelt or natural heritage system (NHS), and does not indicate the presence of any key natural heritage or hydrologic features on the properties.

Schedule III A of the Pickering Official Plan shows NHS lands along the easterly portion of the subject properties. However, as indicated in Figure 2, Schedules III B and III C of the Plan clearly indicate that there are no key natural heritage features and no key hydrologic features on these NHS lands, or elsewhere on the subject properties.

When asked about the reason for identifying NHS lands on the subject properties, the City advised that their mapping picked up what appears to be successional tree / shrub growth east of the existing buildings. The City also noted that the subject properties are well removed from any actual natural heritage features as shown on Schedules III B and C, and that the owner would not be prevented from developing the NHS lands subject to the submission of an environmental report (scoped to basically a tree inventory).

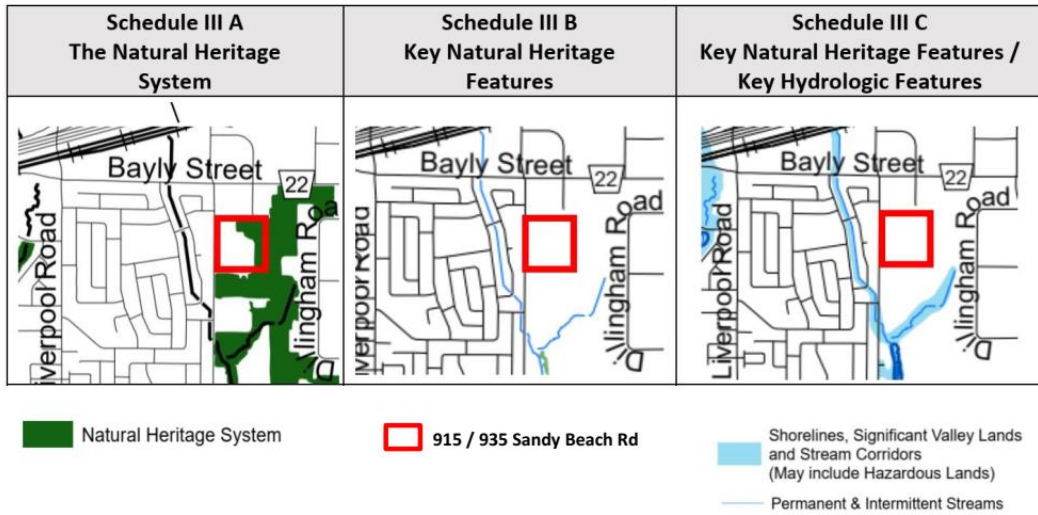
Appendix 2 (cont'd)

March 2022 NHS Submission – 915 / 935 Sandy Beach Road

Envision Durham, Comments on Draft NHS Mapping

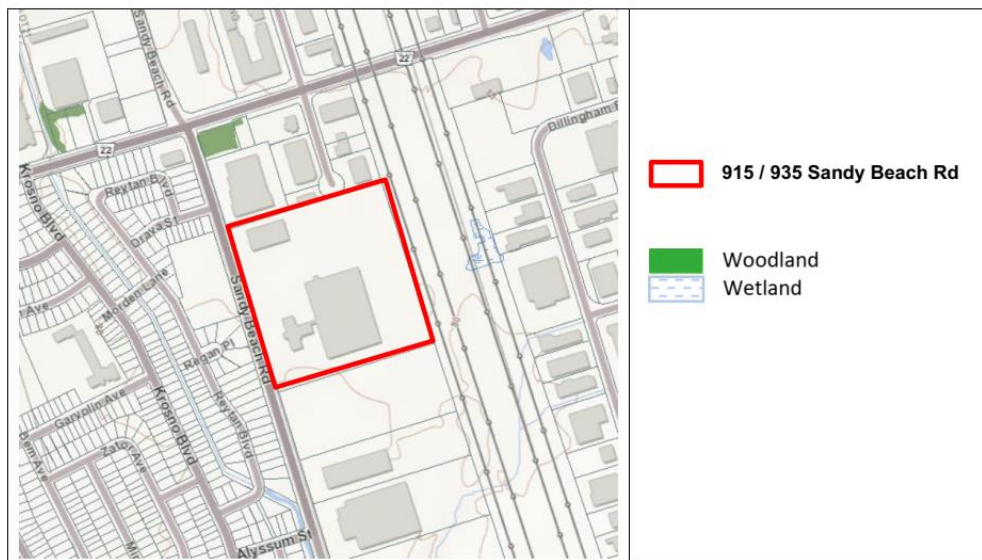
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Figure 2: Pickering Official Plan Natural Heritage System (excerpts)



It should also be noted that mapping currently available online from the Ministry of Natural Resources and Forestry (MNR) does not indicate any natural heritage features on the subject properties, as shown in Figure 3.

Figure 3: MNR Natural Heritage Area Map



Appendix 2 (cont'd)

March 2022 NHS Submission – 915 /935 Sandy Beach Road

Envision Durham, Comments on Draft NHS Mapping

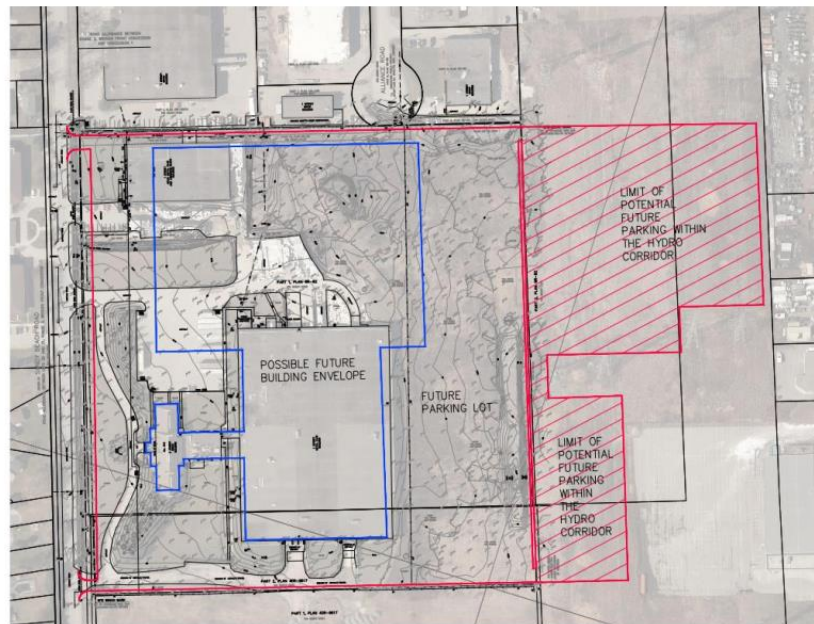
Melymuk Consulting Limited, March 2022

MINOR VARIANCE APPLICATION

Given the City's position that the owner of the subject properties would not be prevented from developing the NHS lands east of the existing buildings, in December 2021, a minor variance application (PCA 33/22) was submitted to Pickering's Committee of Adjustment.

The purpose of the application was to permit a private parking lot within the Hydro One Corridor immediately east of 915 and 935 Sandy Beach Road to facilitate and support the development of a large-footprint, high employment use on these properties, as shown conceptually in Figure 4.

Figure 4: Potential Development Concept for 915 / 935 Sandy Beach Road



In January 2022, the Committee of Adjustment approved PCA 33/22. The decision is now final and binding.

ENVISION DURHAM DRAFT REGIONAL NHS OVERLAY

On March 2, 2022, Durham Region released draft Regional NHS Overlay mapping as part of its Envision Durham comprehensive planning review. The draft Regional NHS Overlay map for the subject properties and surrounding lands is shown in Figure 5.

Appendix 2 (cont'd)

March 2022 NHS Submission – 915 /935 Sandy Beach Road

Envision Durham, Comments on Draft NHS Mapping

Melymuk Consulting Limited, March 2022

As can be seen, the draft Regional NHS Overlay includes all lands on the subject properties east of the existing buildings, as well as the abutting Hydro One Corridor, except for a parking lot associated with Don Beer Arena.

The Overlay includes the area of land required for the development of a large-footprint, high employment use on the subject properties as shown conceptually in Figure 4 and identified in Figure 5 as the “Required Development Lands”.

Figure 5: Draft Regional NHS Overlay Map for 915-935 Sandy Beach Road (excerpt)



 Draft Regional Natural Heritage System Overlay

COMMENTS

The Draft Regional NHS Overlay was released without any accompanying Regional NSH Policies making it very difficult to assess the significance of having developable lands included as part of the Regional NHS Overlay.

Appendix 2 (cont'd)

March 2022 NHS Submission – 915 /935 Sandy Beach Road

Envision Durham, Comments on Draft NHS Mapping

Melymuk Consulting Limited, March 2022

That said, even without the benefit of having the accompanying Regional NHS Policies, the owner of 915 and 935 Sandy Beach Road strongly objects to the inclusion of the “Required Development Lands” shown in Figure 5 as part of the Regional NHS Overlay for the following reasons:

- There are no key natural heritage features and no key hydrologic features within the “Required Development Lands”, as confirmed by current NHS mapping available from the City, the Region and the MNRF.
- The “Required Development Lands” that are located on the properties at 915 and 935 Sandy Beach Road are designated and zoned in their entirety for employment purposes, and the City of Pickering has confirmed that these lands are developable subject to the submission of a tree inventory.
- The “Required Development Lands” that are located within the Hydro One Corridor have recently been approved for use as a private parking lot to facilitate and support the development of a large-footprint, high employment use on the properties at 915 and 935 Sandy Beach Road.
- The “Required Development Lands” do not meet the Provincial Policy Statement (PPS) definition of ‘Natural Heritage System’ as set out below. The lands have no natural heritage features and areas; do not provide a linkage that supports natural processes necessary to maintain biological and geological diversity, natural functions, viable populations of indigenous species, and ecosystems; have not been restored to a natural state, nor do they have a realistic potential of being restored to a natural state given recent planning applications and approvals. Accordingly, in this regard, the draft Regional NHS Overlay is not consistent with the PPS.

Natural Heritage System means a system made up of natural heritage features and areas, and linkages intended to provide connectivity (at the regional or site level) and support natural processes which are necessary to maintain biological and geological diversity, natural functions, viable populations of indigenous species, and ecosystems. These systems can include natural heritage features and areas, federal and provincial parks and conservation reserves, other natural heritage features, lands that have been restored or have the potential to be restored to a natural state, areas that support hydrologic functions, and working landscapes that enable ecological functions to continue. (emphasis added)

Appendix 2 (cont'd)
March 2022 NHS Submission – 915 /935 Sandy Beach Road

Envision Durham, Comments on Draft NHS Mapping

Melymuk Consulting Limited, March 2022

For the above reasons, we therefore respectfully request that the “Required Development Lands” shown in Figure 5 of this brief be removed from the Regional NHS Overlay.

Please contact the undersigned should you have any questions or require additional information.

Sincerely,

A handwritten signature in black ink, appearing to read 'T Melymuk', with a long horizontal flourish extending to the right.

Thomas Melymuk MCIP, RPP
President, Melymuk Consulting Limited