



## REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

# Request for Direction of LPAT Appeals of Official Plan Amendment 231 on Land Use Compatibility and Mitigation Issues

**Date:** April 16, 2018

**To:** City Council

**From:** City Solicitor

**Wards:** All

### **REASON FOR CONFIDENTIAL INFORMATION**

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This report is about litigation or potential litigation that affects the City or one of its agencies or corporations and contains advice subject to Solicitor client privilege.

### **SUMMARY**

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City Council adopted Official Plan Amendment No. 231 (OPA 231) regarding Employment Areas in December 2013. OPA 231 is currently under appeal before the Local Planning Appeal Tribunal (LPAT), formerly the Ontario Municipal Board (OMB). Since the proclamation of Bill 139 in force as of April 3, 2018, the OMB has been replaced by the LPAT. However, the hearing for OPA 231 will be adjudicated under the former system, including legal tests and procedural rules.

The LPAT has scheduled July 9 to 13, 2017 to hear the remaining appeals regarding contested uses in Employment Areas. This report requests direction from City Council for the LPAT hearing respecting land use compatibility and mitigation issues.

### **RECOMMENDATIONS**

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The City Solicitor recommends that:

1. City Council adopt the confidential recommendations in Confidential Attachment 1.
2. If the confidential instructions in Confidential Attachment 1 are adopted, City Council authorize the public release of:
  - a. the recommendations contained in Confidential Attachment 1, with the remainder of Confidential Attachment 1 to remain confidential, as it contains advice subject to solicitor-client privilege; and

b. Confidential Attachment 2 and Confidential Attachment 3.

## **FINANCIAL IMPACT**

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There is no financial impact arising from the above recommendations.

## **DECISION HISTORY**

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At its meeting on December 16, 17 and 18, 2013, City Council adopted OPA 231 with respect to the economic health policies and the policies, designations and mapping for Employment Areas following the Five-Year Official Plan and Municipal Comprehensive Reviews regarding employment lands. On July 2014, the Minister approved the majority of OPA 231 with some modifications. The City's decision can be accessed at this link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.PG28.2>

A total of 178 appeals were received to the Minister's decision to approve OPA 231. There are multiple appeals relating to the compatibility and mitigation of sensitive land uses adjacent or near to Employment Areas.

## **COMMENTS**

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The OMB held the first Pre-hearing Conference (PHC) on OPA 231 in 2015 and directed appellants who filed city-wide appeals to scope their appeals to identify those parts of OPA 231 they were contesting. Upon reviewing appellant scoping letters, the City was able to propose a phased approach that was agreed to by the Board and appellants, including dealing with all policy matters under appeal and seeking to resolve the two new employment designations during early phases of the hearing process.

To date the Board has held a total of 9 PHCs, 3 motion hearings, 11 days of mediation and 3 hearing days. The Board has also reserved 27 hearing days between March and July 2018.

The OMB has issued two Orders partially approving OPA 231. An Order in December 2016 brought into force the Core Employment Areas and General Employment Areas designations, except for sites subject to appeals and certain use permissions that remain contested. Nine days of OMB led mediation was held in July 2016 to consider these contested uses.

At the July 2016 mediation, OPA 231 policies pertaining to compatibility and mitigation of sensitive land uses adjacent or near to Employment Areas were also considered. A 14-day hearing has been scheduled for compatibility and mitigation policies commencing on May 24, 2018.

Policy 2.2.4.5 of OPA 231 requires that new residential and other sensitive land uses adjacent or near to Employment Areas be designed, buffered and/or separated from impactful industries as necessary to prevent or mitigate adverse effects from noise, vibration, traffic, odour and other emissions and contaminants upon the occupants of the new development. Appellants to OPA 231 have appealed this policy as well as certain sidebars, non-policy text and other related policies.

This report requests direction from City Council for the ongoing LPAT hearing respecting OPA 231. Since the proclamation of Bill 139 in force as of April 3, 2018, the OMB has been replaced by the LPAT. However, the hearing for OPA 231 will be adjudicated under the former system, including legal tests and procedural rules.

## **CONTACT**

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## **SIGNATURE**

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Wendy Walberg  
City Solicitor

## **ATTACHMENTS**

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Confidential Attachment 1 - Confidential Instructions to Staff and Confidential Advice  
Subject to Solicitor-Client Privilege

Confidential Attachment 2 - Confidential Information

Confidential Attachment 3 – Confidential Information