



## 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:** June 14, 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 Since the proclamation of Bill 139, in force as of April 3, 2018, the OMB has been replaced by the LPAT.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, 2018 to hear the remaining appeals regarding contested uses in *Employment Areas*. This report requests further direction from City Council for the LPAT hearing respecting sensitive land uses within *Employment Areas*.

### 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.

## **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. The City's decision can be accessed at this link:

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

The Minister approved the majority of OPA 231 with some modifications in July 2014. The LPAT received a total of 178 appeals to OPA 231. The LPAT has issued two Orders partially approving OPA 231. The December 2016 Order brought into force the *Core Employment Areas* and *General Employment Areas* designations, except for sites under appeal and regarding particular uses that remain contested. LPAT Decisions can be accessed at this link:

<https://www.omb.gov.on.ca/ecs/CaseDetail.aspx?n=PL140860>

At its meeting on April 24 -27, 2018, City Council adopted a settlement concerning the Land Use Compatibility and Mitigation phase of the OPA 231 hearing. City Council also directed the City Solicitor to continue negotiations with remaining appellants to the Land Use Compatibility and Mitigation phase in an effort to resolve all outstanding issues under appeal and to take all necessary steps to bring resolution to the matter in consultation with the Chief Planner and Executive Director, City Planning. The City's decision can be accessed at this link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.CC39.9>

## **COMMENTS**

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The LPAT 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.

The LPAT has issued 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 LPAT-led mediation began in July 2016 to consider these contested uses.

At the mediation, OPA 231 policies pertaining to sensitive land uses within Employment Areas was considered. Phase 1B, Part IV, a 5-day hearing for remaining sensitive land use policies under appeal, is scheduled to commence on July 9, 2018.

Parties to OPA 231 have appealed policies 4.6.1, 4.6.2, and 4.6.3 as they apply to permitted uses within Core Employment Areas and General Employment Areas. Parties have also reserved their right to seek changes to the policies, non-policy text and sidebar definitions that were adopted by City Council in April 2018 as part of the Compatibility and Mitigation phase as they relate to "sensitive land uses" permitted or proposed within Employment Areas. Specifically, these are policies 2.2.4.2e), 3.5.1.2b), and the sidebar definitions of "Major Facilities", "Influence Area" and "Sensitive Land Use".

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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Kelly Matsumoto, Practice Lead, Planning and Administrative Tribunal Law, Tel. 416-392-8042, Fax. 416-397-5624, Email. [kelly.matsumoto@toronto.ca](mailto:kelly.matsumoto@toronto.ca)

## **SIGNATURE**

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Wendy Walberg  
City Solicitor

## **ATTACHMENTS**

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1. Confidential Attachment 1 - Confidential Instructions to Staff and Confidential Advice Subject to Solicitor-Client Privilege
2. Confidential Attachment 2 - Confidential Information