



## REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

# Request for Direction on Local Planning Appeal Tribunal Appeals of Official Plan Amendment 231 on Employment Land Retail Issues

**Date:** February 19, 2020

**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 remains partially under appeal before the Local Planning Appeal Tribunal (LPAT or Tribunal).

The LPAT has scheduled a 9-day hearing commencing May 19th, 2020 regarding appeals to policies pertaining to retail uses in OPA 231. This report requests further direction from City Council for the LPAT hearing.

### 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 are no financial implications resulting from the recommendations included in the report in the current budget year or in future years.

## **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. In 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>

The Minister approved the majority of OPA 231 with limited 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>

On January 30, 2020, the LPAT issued a written decision approving OPA 231 Employment Land Conversion and Forecasting policies as modified by City Council on June 18, 2019.

City-initiated OPA 94 added a policy that was to be applied when retail commercial uses in Mixed Use Areas were proposed to be redeveloped. OPA 94 was enacted by Council in 2010 and appealed to the Ontario Municipal Board. However, when the Official Plan Review (OPA 231) commenced, City staff and counsel for the appellants to OPA 94 agreed to adjourn the matter, and have the policies considered as part of OPA 231. OPA 231 proposed to repeal OPA 94, and included a revised version of the policies in OPA 231. At the OPA 231 Pre-Hearing Conference held on January 30, 2019, the Tribunal ordered the hearing of OPA 94 appeals under Case No. PL01120 with the OPA 231 appeals during the Retail Phase hearing.

On September 6, 2019, the Province filed O.Reg 305/19 (Transitional Matters – Growth Plans), which transitions OPA 231 under the Growth Plan (2006). This Regulation sets out that the recently approved Growth Plan (2019) and the policies contained within it, including the Provincially Significant Employment Zones framework, will not be applicable to those sites and policy matters that have appeal status under OPA 231. The Regulation can be accessed at this link:

<https://www.ontario.ca/laws/regulation/r19305>

## **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 Tribunal 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 Tribunal has held 14 PHCs, five mediation sessions and six hearings. The Tribunal convened three days of mediation on the retail policies of OPA 231 on October 24, 25 and December 13, 2019. Additionally, it has scheduled 9 hearing days in May 2020 for retail policies.

A number of parties appealed the OPA 231 policies pertaining to retail uses on a city-wide basis. These appellants represent retail developers and industry representatives. The parties to the upcoming phase of the OPA 231 hearing proceedings have appealed policies pertaining to retail uses and related non-policy text. Some parties are also contesting the proposed policies related to public realm and built form requirements for retail development, the requirement to replace certain retail during redevelopment, and major retail development in Employment Areas.

On April 4, 2019 the LPAT issued a procedural order containing the issues raised by appellants pertaining to the retail phase of the OPA 231 hearing. In total, 83 issues were received. Three days of LPAT Mediation were convened October 24, 25 and December 13, 2019.

This report requests direction from City Council for the ongoing LPAT hearing respecting OPA 231.

## **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