

**LPAT Appeal of OPA 231 - Appeal 134 by Parc
Downsview Park and Canada Lands Company Ltd -
Request for Direction**

Date: January 26, 2021

To: City Council

From: City Solicitor

Wards: All

REASON FOR CONFIDENTIAL INFORMATION

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

Parc Downsview Park and Canada Lands Company Ltd. (the "Appellants") filed an appeal to Official Plan Amendment 231 ("OPA 231") to the Local Planning Appeal Tribunal ("LPAT") regarding the lands designated Employment Areas in the Downsview Area Secondary Plan area (the "Lands"). City Council adopted OPA 231 policies for the entire city following the Five-Year Official Plan and Municipal Comprehensive Reviews regarding employment lands. At its meeting on June 29-30, 2020, City Council directed the City Solicitor and other staff to advance negotiations with the Appellants in an effort to resolve the appeal. The City Solicitor has received a With Prejudice offer to settle from the Appellants and requires directions for the OPA 231 LPAT hearing process.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the confidential instructions to staff 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 the Confidential Attachment 1, with the remainder of the Confidential Attachment to remain confidential, as it contains advice subject to solicitor-client privilege; and
 - b. Confidential Attachment 2.

FINANCIAL IMPACT

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

DECISION HISTORY

OPA 231

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 limited modifications. The City's decision can be accessed at this link: <http://app.toronto.ca/tmmis/viewAgendaltemHistory.do?item=2013.PG28.2>

The LPAT received a total of 178 appeals to OPA 231, including site-specific Appeal 134 by the Appellants regarding the Lands.

The LPAT has issued several 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 under appeal and regarding particular uses that remain contested. An Order in January 2019 brought into force the remainder of the policies for the two *Employment Areas* designations, except with respect to retail policies that remain subject to appeal. On May 8, 2020, the LPAT issued an Order approving the *Employment Land Conversion and Forecasting* policies as modified by City Council on June 18, 2019. LPAT Decisions can be accessed at this link: <https://www.omb.gov.on.ca/ecs/CaseDetail.aspx?n=PL140860>

With respect to site-specific appeals to OPA 231, the LPAT has issued a number of Orders that approve and bring into force settlements that the City reached with appellants to resolve the appeals. Several examples of approved settlements of site-specific appeals involve large areas of land, such as the former *Celestica* and *Mr. Christie's* factory lands. At its meeting on June 7, 8 and 9, 2016, City Council accepted an offer to settle the appeal regarding the former *Celestica* lands, a 23 hectare site located at 844 Don Mills Road and 1150 Eglinton Avenue East. At its meeting on July 16, 17 and 18, 2019, City Council accepted an offer to settle the appeal regarding the former *Mr. Christie's* factory lands, an 11 hectare site located at 2150-2194 Lake Shore Boulevard West and 23 Park Lawn Road. The basis for both of these proposed settlements was the retention of *Employment Areas* land and a build out of a significant amount of non-residential gross floor area, a site size large enough to enable the development of a complete community on part of the lands and a location abutting both planned higher order transit stations and *Mixed Use Areas* with existing and planned residential uses.

The remaining citywide policy matters before the LPAT relate to retail uses and office replacement. There are approximately 80 site and area specific appeals that remain to

be resolved. The LPAT's webpage on the OPA 231 proceedings can be accessed at this link:

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

Negotiations to Resolve Appeal

At its meeting on June 29 and 30, 2020, City Council directed the City Solicitor, the Chief Planner and Executive Director, City Planning and other staff to advance negotiations with the Appellants in an effort to resolve the appeal by applying the Draft Downsview Area Secondary Plan Principles (the "Principles") contained in Confidential Attachment 3 to the report (June 1, 2020) from the City Solicitor which was made public as directed by City Council.

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

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.PH14.5>

Downsview Area Secondary Plan

The Downsview Area Secondary Plan was approved by the Ontario Municipal Board in August 2011 and includes all of the Lands subject to appeal, as well as additional lands designated Neighbourhoods, Apartment Neighbourhoods, Mixed Use Areas, Parks and Natural Areas. The Downsview Area Secondary Plan can be accessed at this link:

<https://www.toronto.ca/wp-content/uploads/2017/11/902d-cp-official-plan-SP-7-Downsview.pdf>

COMMENTS

Although under appeal, the Lands are designated Core Employment Areas in OPA 231, a designation that for the most part applies to lands geographically located in Employment Area interiors. Residential and other sensitive land uses as well as uses that would attract the general public into the interior of Employment Areas and possibly disrupt industrial operations are not permitted in Core Employment Areas.

The Lands are approximately 307 hectares (579 acres) in area and are located west of Allen Road, south of Sheppard Avenue West, east of the GO Transit Barrie railway line and north of Wilson Avenue and Hanover Road. Three TTC subway stations - Wilson, Sheppard West and Downsview Park - and the Downsview Park GO Station are located along the east and north peripheries of the Lands. Highway 401 is located less than 500 metres from the south end of the Lands.

The Lands include the Downsview Airport and Bombardier Aerospace campus (approximately 150 hectares/370 acres), which are owned by the Public Sector Pension Investment Board ("PSP"). Bombardier's lease expires in 2023, at which time they will vacate these lands and the airport will no longer be required.

With Prejudice Settlement Offer

As directed by City Council in June 2020, staff from Legal Services, City Planning, Economic Development and Culture, and Parks, Forestry and Recreation Divisions have advanced negotiations with the Appellants in an effort to resolve the appeal by applying the Council adopted Principles. On January 22, 2021 the Appellants submitted a with prejudice letter to Legal Services offering to settle the appeal on the basis of proposed modifications to Official Plan Amendment 231, summarized below.

The proposed settlement would result in changes to the Official Plan designations from Core Employment Areas to a combination of General Employment Areas and Regeneration Areas. Official Plan Map 2, Urban Structure would be amended to remove the Employment Areas overlay from the lands that are proposed to be redesignated to Regeneration Areas. The Official Plan Regeneration Areas designation policies state that this designation, "is applied to areas with significant vacant lands and/or buildings and in need of revitalization as a means of fostering growth and physical change." Official Plan Policy 4.7.2 requires that development should not proceed prior to the approval of a Secondary Plan for each Regeneration Area.

The proposed Regeneration Areas approach is consistent with other recent Council adopted OPA 231 settlements that required a Secondary Plan be approved in advance of development on the lands proceeding. Through the Secondary Plan review process detailed policies have been developed to provide greater direction for how such lands would redevelop. It is important to note that the process has provided for fulsome opportunities for community engagement through the development of these Secondary Plans.

The recent settlements for the former Celestica and Mr. Christie's sites secured a minimum of 70,000 square metres and 98,000 square metres of employment gross floor area (GFA), respectively. The proposed settlement for the Lands secures a minimum of 1,114,000 square metres of employment GFA, which is a 345 percent increase from the existing employment GFA of approximately 322,525 square metres.

The proposed amount of land retained as General Employment Areas amounts to approximately 50 hectares (22 percent of the total land area under appeal), which is an amount similar to that retained in the Celestica settlements (22 percent or 5.6 hectares), and greater than the amount secured in the Mr. Christie's settlement (13 percent or 1.4 hectares). Provisions have also been included in the proposed settlement for consideration of additional General Employment Areas lands, to be determined through the Secondary Plan review process.

Consistent with the Regeneration Areas Official Plan requirements, the proposed settlement would introduce a new Site and Area Specific Policy No. 596 ("SASP 596") to Chapter 7 of the Official Plan that sets out both general and specific requirements that must be addressed through a revised Downsview Area Secondary Plan. Residential uses would only be permitted on the Lands after a revised Secondary Plan is considered by Council and subsequently approved. Generally, the proposed requirements to be addressed in the revised Downsview Area Secondary Plan (outlined in the proposed SASP 596) include, but are not limited to:

- New land use plan that re-designates lands from Regeneration Areas to other designations and addresses key city building objectives of complete communities, economic function of the lands, increasing the public open space network, along with an increase of lands designated as General Employment Areas;
- Phasing approach to distribute the required minimum employment GFA across the Lands in pace with any residential development. The proposed SASP 596 prioritizes the following employment uses: office, creative industries, scientific research and development, light industrial, and others;
- Series of technical analyses that would be coordinated with the land use plan and phasing approach (described in the above two bullets) intended to integrate the following building blocks of a complete community: distribution and location of public realm features, parkland, street network, community services and facilities, Transportation Master Plan, servicing infrastructure, and others;
- Housing plan that puts in place a strategy for the provision and minimum amount of affordable housing across the Lands that also considers opportunities for exceeding the minimum requirements; and
- Detailed engagement strategy that is designed to provide a full range of approaches to ensure the broadest outreach to members within the community and interest groups. The engagement strategy would be developed in consultation with the local Councillor, resident associations, local businesses, BIAs, and various other stakeholders.

A virtual public information session hosted by City Planning staff was held on January 21, 2021 to provide the public with an update regarding negotiations with the Appellants in an effort to resolve the appeal and to receive public input. Over 60,000 notices of the public sessions were distributed to the public and approximately 200 people attended the session.

This report requests direction from City Council regarding the with prejudice settlement offer and for an upcoming case management conference scheduled by the LPAT for March 4, 2021 regarding OPA 231.

CONTACT

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SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

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

Confidential Attachment 2 - Confidential Information