TORONTO

Toronto Local Appeal Body

40 Orchard View Blvd, Suite 211
Toronto, Ontario M4R 1B9

Telephone: 416-392-4697
Fax: 416-696-4307
Email: tlab@toronto.ca
Website:www.toronto.ca/tlab

DECISION AND ORDER

Decision Issue Date Tuesday, July 26, 2022

PROCEEDING COMMENCED UNDER Section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): ABIOLA NOSIRU, CITY OF TORONTO

Applicant: MICHAEL FLYNN

Property Address/Description: 1745 ALBION RD

Committee of Adjustment Case File: 18 222102 WET 01 MV

TLAB Case File Number: 18 255818 S45 01 TLAB

Last Submission Date: Wednesday, April 28, 2021

DECISION DELIVERED BY S. GOPIKRISHNA

INTRODUCTION AND BACKGROUND

2146137 ONTARIO INC is the owner of 1745 Albion Ave., located in Ward 1(Etobicoke North) in the City of Toronto. The owners applied to the Committee of Adjustment for variances to construct a hotel, above the existing banquet hall at the southwest corner of the property. On October 25, 2018, the Etobicoke York Panel of the COA reviewed the application, and approved the variances. Ms. Abiola Nosiru, the owner of 1780 Albion Ave., and the City of Toronto appealed the COA's Decision to the TLAB on13 November, 2018 and November 14 ,2018, respectively. In other words, there are two different Appeals on the same property; the Proceeding before the TLAB commenced on 25 April, 2019, and culminated on February 8, 2021, including eleven (11) Hearing days.

It may also be noted that Party Nosiru settled with the Applicant in mid 2020, and did not participate in any of the Hearings held from September 28, 2020.

MATTERS IN ISSUE

It is important to note that the original Application requested variances from By-Laws 569-2013 as well as variances related exclusively to parking from the Etobicoke By-Law. The latter set of variances became redundant, as a result of the Settlement between the Applicant, and Party Nosiru, and are consequently not recited here.

Consequently, only the requested variances from By-Law 569-2013 are recited below.

REQUESTED VARIANCES FROM BY-LAW 569-2013

1. The proposed hotel is not a permitted use in an E Zone.

2. The building setback to the lot line abutting Highway No. 27 of 3.4m instead of minimum 26m.

3. The Landscape strip is 0.06m along the Highway No. 27 front lot line, instead of minimum 3m

JURISDICTION

Variance – S. 45(1)

In considering the applications for variances from the Zoning By-laws, the TLAB Panel must be satisfied that the applications meet all of the four tests under s. 45(1) of the Act. The tests are whether the variances:

- maintain the general intent and purpose of the Official Plan;
- maintain the general intent and purpose of the Zoning By-laws;
- are desirable for the appropriate development or use of the land; and
- are minor

EVIDENCE

The Applicant was represented by Ms. Amber Stewart, a lawyer, and Mr. Franco Romano, a planner, while the City of Toronto was represented by Mr. Michael Mahoney, a lawyer, Mr. Matthew Premru, a City planner with the Economic Development Division, and Mr. Jeff Cantos, another planner, who works for the City of Toronto as the Manager of Official Plan, and Municipal Comprehensive Review (MCR), Strategic Initiatives, Analysis and Policy. Preliminary submissions, Evidence and Oral Argument was heard over 11 days- April 25, 2019, October 17, 2019, October 18, 2019, November 5, 2019, November 14, 2019, November 15, 2019, December 20, 2019, September 28, 2020, November 12, 2020, December 7, 2020, and February 8, 2021. Final Submissions were completed on April 26, 2021.

At the beginning of the Hearing, after Mr. Romano was sworn in, and recognized as an Expert in the area of land use planning, the Applicants brought forward information from the City of Toronto Ward Profiles, to demonstrate that the community in the vicinity of the Site consisted of a significant percentage of newcomer, racialized communities, many of whom had not completed high school. According to the Applicants, an approval of the Hotel would result in the creation of twenty jobs , which would pay minimum wages. Mr. Romano also stated that there were a few management positions, which would pay more than minimum wage. Mr.

Di Vona objected to the use of this information for decision making purposes, because the information had not been pre-filed, as well as the fact that Mr. Romano had not been qualified as an Expert in demographics, or sociology. Mr. Mahoney objected throughout the Hearing to the introduction of any information about who would be employed, and the relationship between the proposal, and equity principles, because "it is beyond the jurisdiction of the TLAB to examine such matters", and the examination of any conditions, to be imposed on the proposal, if approved, would mean consultation with many departments at the City, "who have not been consulted".

The Applicants also discussed NAICS (North American Industry Classification System), which was developed jointly by the statistical agencies of Canada, Mexico and the United States, to classify various industries, and different types of employment- they demonstrated that "*Sector 72 , accommodation and food services*" was defined as "*This sector comprises establishments primarily engaged in providing short-term lodging and complementary services to travellers, vacationers and others, in facilities such as hotels, motor hotels, resorts, motels, casino hotels, bed and breakfast accommodations, housekeeping cottages and cabins, recreational vehicle parks and campgrounds, hunting and fishing camps, and various types of recreational and adventure camps. This sector also comprises establishments primarily engaged in preparing meals, snacks and beverages, to customer orders, for immediate consumption on and off the premises".*

The Applicants also demonstrated that the proposed Hotel Uses, would be classified as Accomodation Services, categorized as Sector 721, under NAICS, and constituted a Service Use because it had been classified as such by NAICS

This subsector comprises establishments primarily engaged in providing short-term lodging for travellers, vacationers and others. In addition to lodging, a range of other services may be provided. For example, many establishments have restaurants, while others have recreational facilities. Lodging establishments are classified in this subsector even if the provision of complementary services generates more revenues.

Establishments that operate lodging facilities primarily designed to accommodate outdoor enthusiasts, are also included in this subsector. These establishments are characterized by the type of accommodation and by the nature and the range of recreational facilities and activities provided to their clients.

Establishments that manage short-stay accommodation establishments, such as hotels and motels, on a contractual basis are classified in this subsector if they provide both management and operating staff. These establishments are classified according to the type of facility they manage.

By way of providing information about the Site, as well as provide an outline of the overall approach taken by the Applicants, Mr. Romano stated that the Subject Site

has a General Employment Area designation. The proposal, Mr. Romano explained, conformed to the Employment Districts Policies found in Policies 2.2.4, 3.5.1, Employment Area designation Policies found in 4.6., as well as the Built Form Policies, found in Policy 3.1.2, all of which can be found in the City of Toronto's Official Policy. He asserted that the proposal conforms with the intent of the Employment Areas to ensure that employment areas are used for compatible business and economic activities. Mr. Romano asserted that the "simple fact that the Employment Area policies list hotels as a permitted land use before and after OPA 231 was adopted", supports the proposition that hotels are an appropriate economic and business-related use that also meets the intent of the Official Plan (altogether and with respect to this MCR/conversion policy).

Mr. Romano referred to the LPAT Oder dated January 8, 2019, which held that Hotels would be allowed only in an Area appximately bounded by SASP 531, and would not be allowed on Employment lands anywhere else, throughout the City of Toronto.

By way of an editorial comment, this decision made by the former OMB, dated June 8, 2019, resulted in a number of substantive changes to Section 4.6 of the Official Plan (Employment Areas), that "Policy 2 of Section 4.6*, Employment Areas*, is modified by deleting the word "hotels", as well as modifying Chapter Seve, Site and Area Specific Policies, by adding a new Site and Area Specific Policy No 531, for *Employment Area* lands in in proximity to Toronto Pearson International Airport, as follows:

"*531. Hotels are permitted within land designated as Employment Areas generally bounded by Highways 427, 401, and Rexdale Boulevard and in proximity to Toronto Pearson International Airport"*

followed by a Map of SASP 531.

.Mr. Romano referred to the Clergy Principle, and stated that the proposal could not impacted by this Order since the submission of the proposal to the Committee of Adjustment had preceded the release of this Order. He asserted that the Hotel was not impacted by a previous "Interim" Order , released by the LPAT in August 2018, due to the "Interim" nature of the Order. He added that a previous LPAT decision in December 2016, had continued to permit Hotels within the "Employment Areas" designation. Lastly, Mr. Romano pointed out that the COA had already approved a banquet hall to be constructed on the same Site, and referred to the approval of Hotels in the vicinity of the Site, such as 30 Baywood Road, 1790 Albion Road, and 2045 Codlin Crescent.

Mr. Romano described the zoning of the Subject Site as Employment Industrial (E), and said that the overall general intent and purpose of this Zoning is to "accommodate an orderly non-residential development that is compatible to its surroundings". He said that the general intent and purpose of the permitted use

section of the By-law is to ensure that business*/*employment-related uses are accommodated, which is satisfied in this case.

After pointing out that Hotels are uses under the former City of Etobicoke By-law, Mr. Romano brought forward various examples of Hotel uses, in the vicinity of the Site, which have been authorized by way of a decision by the COA, or by way of an amendment to By-Law the former exemplified through 30 Baywood Road via minor variance application A0977/17YK approved February 8, 2018, and By-law 215-2017 , which amended By-Law 569-2013 to introduce various uses, including Hotels, onto 1770, 1772, 1776, 1778, 1780 and 1790 Albion Road.

On the basis of this explanation, Mr. Romano concluded that the proposal satisfied the test of satisfying the intent and purpose of the By-law.

Mr. Romano referred to two reports, one produced by Valacoustics, and another by Trinity Consultants, regarding possible noise and noxious fumes impact on the proposal, and explained how the Reports demonstrated that there would be no impact as a result of noise, or fumes, which meant that there were no sensitive lands uses. Both Messrs. Mahoney, and Di Vona objected strenuously to the introduction of these Studies, on the ground that Mr. Romano had not been qualified to provide expert opinion evidence on noxious fumes, and noise related issues. Mr. Mahoney also stated (and reiterated numerous times during the Proceeding) that there were no peer reviews completed of the Reports, which meant that the results could not be relied upon for decision making purposes. Mr. Romano stated that it was not fair for the City to complain about “peer-review” when they had access to the aforemetioned Reports for more than a year, but did not ask for a Review.

The Section from Val Acoustics which analyzes the proposal, and its potential for being a source of contamination, (Sections 6 and 7 of the Report) is reproduced below, followed by the Conclusion- these appear on Page 3 of the 3 Page Report signed off by A.D. Lightstone, PhD, P.Eng:

DISCUSSION

1. *The proposed motel use is considered a noise sensitive commercial purpose under NPC- 300 noise guidelines.*
2. *As such, if the building is designed so that windows to any noise sensitive spaces (e.g. sleeping rooms) are inoperable (sealed/fixed), there would be no Points of Reception. Thus, there would be no land use incompatibility relative to neighbouring land uses.*
3. *Most of the neighbouring uses are not signicant sources of sound (noise), do not require formal environmental approvals, and are fundamentally compatible*
4. *For any industry or other stationary sources in the neighbourhood with an ECA, or EASR registration, since the proposal motel would not be a POR for determining noise compliance by the stationary source, the stationary source is not required to comply with plane of window or outdoor area*

sound limits at the motel. Thus, any stationary source environmental approval would not be affected.

7.0 CONCLUSION

It is my professional opinion that, providing the guest rooms are designed with inoperable (fixed or sealed) windows, the proposed motel use would not result in any land use incompatibility with the other adjacent neighbouring uses, with respect to environmental noise*. Any existing or future formal Environmental Compliance Approval, or EASR registrations of any nearby industries, or other stationary sources would not be expected to be jeopardized, or affected in any way.*

Commenting on the test of Minor, Mr. Romano asserted that the proposal creates no unacceptable adverse impact. The hotel will complement existing land uses and can be functionally accommodated on site in a suitable and appropriate manner. He added that the " *proposal does not seek a land use that is new to the area. The area has the same land use located and approved across the street, just beyond and nearby within similar employment lands"*. In the absence of any substantive change being made to the land, or new, sensitive uses being introduced as a result of the proposal,it satisfies the test of minor.

Speaking lastly to test of appropriate development, Mr. Romano stated that the proposal will integrate well with the mixture of land uses (including hotel, banquet facility and other retail, industrial and commercial uses). He said that the proposal will not conflict with any of the existing uses, and will be supportive of travellers looking for hotels close to the airport, and local economy. Mr. Romano also opined that the hotel is well positioned to also serve the needs of various other nearby facilities such as Humber College, and the Woodbine Centre.

Mr. Romano was then cross-examined by, Mr. Mahoney, the lawyer for the City followed by Mr. Di Vona, Counsel for Party Nosiru.

Mr. Mahoney established that there were no references to NAICS in the higher level Provincial Policies, OP or the Zoning By-Law, nor was NAICS used by the Government of Canada for classification of industries- Mr. Mahoney then suggested that there was no nexus between NAICS, and the planning process itself, because the former was a federal document, with no demonstrable connection to a planning process. While Mr. Romano agreed generically with Mr. Mahoney that the planning processes being defined by the Province's perspectives, and municipal documents, he asserted that NAICS was used to measure the success of Economic development, and was consequently relevant to the discussion.

On the matter of the opinions brought forward by the Applicant with respect to acoustics, Mr. Mahoney asked if an independent, third party, "peer review" opinion had been obtained about the results of the studies, to which Mr. Romano replied in

the negative, and added that it "wasn't the custom to seek independent opinions, when submitting such studies". Mr. Mahoney asked questions about the alignment of the higher level policies, and the proposal, with specific reference to the Provincial Policy Statement (2014), Growth Plan (2019), and OPA 231. Mr. Romano insisted that Hotels are a permitted use on Employment Lands, notwithstanding the removal of the word "Hotel", as a result of OPA 231. He insisted that while the word "Hotel" itself may have been removed, the language still suggested that it was an allowed use, and referred to the language of Policies 4.6.1 -4.6.3.

4.6.1 *Core Employment Areas are places for business and economic activities. Uses permitted in Core Employment Areas are all types of manufacturing, processing, warehousing, wholesaling, distribution, storage, transportation facilities, vehicle repair and services, offices, research and development facilities, utilities, waste management systems, industrial trade schools, media, information and technology facilities, and vertical agriculture*.

4.6.2. *The following additional uses are permitted provided they are ancillary to and intended to serve the Core Employment Area in which they are located: parks, small-scale restaurants, catering facilities, and small-scale service uses such as courier services, banks and copy shops. Small scale retail uses that are ancillary to and on the same lot as the principal use are also permitted. The Zoning By-law will establish development standards for all these uses.*

4.6.3 *General Employment Areas are places for business and economic activities generally located on the peripheries of Employment Areas. In addition to all uses permitted in Policies 4.6.1 and 4.6.2, permitted uses in a General Employment Area also include restaurants and all types of retail and service uses.*

According to Mr. Romano, "Hotels" were formerly explicitly allowed in the Core Employment Areas, as stated in Policy 4.6.1 of the OP- He explained that as a result of the Mondelez Settlement, discussed earlier in this Proceeding, the "Hotels" use had neen removed from the Core Employment Areas. According to Mr. Romano, notwithstanding the removal of Employment Areas from the Core Employment Areas, they were still allowed in General Employment Areas- he emphasized that a careful reading of the LPAT's decision regarding the Mondelez Settlement demonstrated that Hotel uses had not been removed from all Employment Areas, but only from the Core Employment Areas. "The Monodelez Settlement", Mr. Romano insisted, had no impact on Hotel uses in General Employment Areas, where they could be introduced as "service" uses.

By way of an explanatory note to help explain the changes alluded to in the previous paragraph, Employment Lands in Toronto are divided into Core Employment Lands, and General Employment Lands. Hotels were allowed on Core Employment Lands till Mondelez Inc. commenced litigation before the OMB to have Hotels excluded from Core Employment Lands. As a result of the Settlement reached between Mondelez Inc., and the City of Toronto, Hotel uses were disallowed on all Core Employment Lands, with the exception of SASP 531, discussed earlier in this

Section. It may be noted that the Appeal in question, is focused on a Site in the General Employment Areas, where the Applicants contend, that Hotel Uses are allowed as “service” uses, while the City contends that Hotels are disallowed, as a consequence of the Mondelez Settlement.

Mr. Romano also disagreed with Mr. Mahoney’s contention, that By-Law 569-2013, which did not allow hotel uses on Employment lands,(and which would eventually replace the former City of Etobicoke Zoning Code) was the more “modern” Zoning By-Law, and consequently took precedence over the former By-Law in terms of determining which uses are allowed or disallowed- he asserted that both laws were applicable. Mr. Romano also disagreed that Mr. Mahoney’s question that from a process perspective, a Zoning By-Law Amendment would be necessary to bring about a new use in a given Employment Area, in cases where City was not the the initiator of the change in question. In response to the question if sensitive uses are permitted regardless of sensitive factors, Mr. Romano said that if the Plan permits something in an Employment Area, then the use in question could not be considered to be a sensitive use, added that “residual uses are sensitive uses”. When asked if a Hotel use may be a sensitive use, if it were outside an Employment area, Mr. Romano’s answer was that “it might”.

Referring to the OPA 231 decisions released on August 16, 2018 and January 10, 2019, Mr. Romano said that this was a good example of the confusion caused by a Partial decision- he disagreed with the suggestion that the latter decision was no different from the former, but with the addition of some “ housekeeping matters”. When asked if his client had participated the litigation before the LPAT regarding the Hotels agreement, Mr. Romano said “that nobody had reached out” to his client.

Mr. Romano’s cross-examination by Mr. Di Vona is not reproduced in detail here, because it touched on many of the points that Mr. Mahoney brought up in his questioning. However, Mr. Di Vona vociferously questioned the Applicants’ position that the LPAT issued an “Interim decision” regarding the Mondelez Settlement in August 2018 , and a “final decision” in January 2019. He also questioned the use of this Procedding to “re-litigate” OPA 231.

Mr. Premru, a planner working for the City of Toronto’s Economic Development division, as an Economic Development Advisor, was sworn in as an Expert Witness in the area of Economic Development.

Mr. Premru discussed the nature of his duties, which concentrated on medium- and large-size businesses, to help them expand their businesses, and attract new businesses, and said that “an important role for an Economic Development Officer is to resolve disputes on a broad range of local issues faced by business, including land use disputes”. Mr. Premru discussed the importance of Employment Areas, and said that approximately 80% of all manufacturing establishments reside in designated *Employment Areas*, accounting for the vast majority of the over 70,000 manufacturing jobs in Toronto, based on information obtained from a City of Toronto Employment Survey, 2017.

According to Mr. Premru, manufacturing is a “high economic multiplier sector”, meaning that the loss of economic activity on one site is expected to have far reaching off-site repercussions. For each manufacturing job created, another 1.2 are created through suppliers to that industry and it is estimated that every $1 invested in manufacturing generates $3.25 in total economic activity, based on a City of Toronto Staff Report to Economic Development Committee, dated October 5, 2013.

Mr. Premru said that a number of important locational criteria can inform why a property is ideal for employment and non-sensitive land uses. The Subject site has prime features for hosting employment lands uses, as it is:

- 'pre-zoned' to permit a vast array of as-of-right employment uses;
- well served by a transportation system that has immediate access to higher order local roads and close proximity to major provincial highways;
- accessible to public transit;
- located in close proximity to other businesses needed for clustering;
- serviced by municipal infrastructure designed to support industry; and
- located where a further proliferation of sensitive land uses including “hotels would not be expected based on the current land use regulatory framework and predominant historical development patterns”.

Mr.Premru drew attention to how the Etobicoke-York District “urgently lacked buildings and land available for sale or lease that are suitable for industrial employment purposes”. He said that the industrial availability (vacancy) rate in Etobicoke for Q3 2018 was 2.6%, compared to 2.8% and 3.7% for the same periods in 2017 and 2015 respectively (Source: Cushman and Wakefield Marketbeat Industrial Snapshot Q4 2015, 2017, and Q3 2018).

Mr. Premru said that the Hotel use was a sensitive use, and that “having a sensitive use occupy an employment land parcel diminishes the viability of employment lands for industrial use and there is a lasting impact on the City's economy”. According to Mr. Premru, the impacts include losses in employment opportunities, reduction in economic activity and an erosion in the property tax base, “ considering that the industrial tax rate is approximately 2.8 times greater than that of residential uses”.

Mr. Premru specifically spoke to the issues caused by Environmental Compliance Approvals, and Encroachment from Sensitive Uses. He said that operational or environmental complaints are a major, unexpected expense for businesses, as well as a “deterrent” when considering future reinvestment.

He said that bringing significant numbers of the public into the *Employment Area* has the potential to increase the level of “complaints regarding noise, odour and vibration toward area industry”. Mr. Premu was concerned that these complaints may impact the Environmental Compliance Approvals of area industry issued by the Ministry of Environment, Conservation and Parks (ECA)of area industry issued by the Ministry of Environment, Conservation and Parks(MoECP). An ECA provides a business with authorization to discharge regulatedcontaminants (solid, liquid, gas, odour, heat,

sound, vibration, or radiation) that maycause an adverse effect to the natural environment (i.e. air, water). An ECA stipulatesprescribed discharge limits and conditions of operation which in part may be affectedby proximity to sensitive land uses. Companies operating under ECA's are commonly found throughout the City's *Employment Areas* and are an essential part of their coreoperations/activities.

Mr. Premru specifically discussed how hotel use is considered a sensitive use for MoECP purposes. He said that the Province of Ontario's Ministry of Environment defines a sensitive use as:

"any building or associated amenity area (i.e. may be indoor or outdoor space) which is not directly associated with the industrial use, where humans or the natural environment may be adversely affected by emissions generated by the operation of a nearby industrial facility".

He added that the NPC-300 Environmental Noise Guidelines issued by the Ministry consider hotels to be" sensitive uses". Based on the guidelines Mr. Premru defined a "noise sensitive commercial purpose building" to be a building used for a commercial purpose that includes one or more habitable rooms used as sleeping facilities, such as a hotel and a motel.

Several active industrial operations in the immediate vicinity of 1745 Albion Road are subject to MoECP Environmental Compliance Approvals. Registered complaints may affect MoECP Environmental Compliance Approvals and may result in restrictions to other important business practice matters such as hours of operation, outdoor activities, choice of mechanical equipment, etc. They may also be affected by the imposition of new costly mitigation measures.

According to Mr. Premru, properties subject to environmental compliance approvals that are at potential risk of encroachment from sensitive uses include:

- Orbis Corporation (Norseman Plastics Limited) at 39 Westmore Drive (approximately 190m from subject property);
- Dana Industries Inc at 109 Woodbine Downs Boulevard (approximately 50 metres from site);
- Good Price Alternator and Starter Ltd. at 23 Westmore Drive (approximately 120 metres from site);
- Cordoba Coffee Limited at 67 Westmore Drive (approximately 365 metres from site); and
- Club Coffee Company Inc. at 65 Carrier Drive (approximately 470 metres from site).

Mr. Premru expressed a concern that "every application, which succeeds in developing *Employment Areas* lands for uses, other than the permitted employment uses undermines the long-term economic prosperity of the City", and that "approval

of one application makes it difficult to refuse subsequent applications when the circumstances are similar".

Mr. Premru added that the " encroachment of sensitive land uses has a marked destabilizing effect whereby the potential for conflict and land costs rises with each successful application, putting increased pressure on each of the remaining businesses until it is no longer feasible for them to remain".

Mr. Premru next spoke to the reasons why the proposal did not meet the four tests under Section 45.1 of the Planning Act. This evidence is not recited because it is centred on the Site being in the *Core Employment Area* as opposed to the *General Employment Area,* consequently resulting in an error of fact. I have also discussed the consequence of excluding this evidence in the Analysis, Reasons and Findings Section.

Ms. Stewart, Counsel for the Applicant, cross-examined Mr. Premru, during which the, the following points were made:

Mr. Premru disagreed with Ms. Stewart's characterizarion of NAICS as a "planning tool", through he added that information given through NAICS could be of interest in understanding the impact of economic development. When asked if his job focused on concentrating "manufacturing" in the Employment Area, Mr. Premru replied in the negative, and said that his work would support all uses that were appropriate for use in a given Employment District, irrespective of whether it constituted manufacturing. Mr. Premru said that he relied on the permissible zoning to come to conclusions and that he was "not sure if NAICS followed the same definitions as Zoning By-law". When discussing the concept of "clustering", Mr. Premru disagreed with the notion that there could be a symbiotic relationship between the Hotel, and other retail areas, because Hotels are not permitted on Employment areas. Mr. Premru disagreed with Ms. Stewart's reading of the Hotels Report, because in his opinion, the Hotels were "not losing ground". He also disagreed with Ms. Stewart's contentions that the Hotel sector is at an disadvantage, because it could not bid for large conferences, and that the decisions made by the Economic Development division were mutually inconsistent in terms of allowing, and disallowing uses

Mr. Premru disagreed with Ms. Stewart that allowing a Hotel at the Site in question, could augment the capacity of a "cluster of Hotels" close to the Airport, such that Toronto's overall capacity to bid for conferences, is increased. Mr. Premru also disagreed with Ms. Stewart's conceptualizing "Hotels" as an Export- while Ms. Stewart's questioning depicted Hotels to be providing a service to people living outside the country in exchange of payment, Mr. Premru's replies focused on the lack of evidence to demonstrate that foreigners are the majority of Hotel users in Canada. Mr. Premru also said that he wasn't sure if the Hotel was in the "proximity" of the cluster of Hotels identified by SASP 531, because o f the 6.8 km distance between the Hotel, and the cluster of hotels under SASP 531. Lastly, in response to Ms. Stewart's demonstrating that each of the 5 contaminators identified by him in the vicinity of the Site, were closer distance wise to at least one sensitive use, when

compared to the Site, Mr. Premru acknowledge that Ms. Stewart's observations were backed up by the evidence, but added that all the certificates from MoECP could change if there was a new sensitive use, such as the proposed Hotel.

The Applicants also demonstrated, through their cross-examination of Mr. Premru, the City's Expert Witness on Economic Development, that each of the businesses that he had expressed a concern about not getting a certificate from MOECP because of the proposal, had already obtained a certificate, and had atleast one "sensitive use" closer to it, than the Subject Site. The listing of Sites cited by the Applicabts is as follows:

Address	**Distance from Residential Area (m)**	**Distance from Site (m)**
23 Westmore (Good Price Alternator)	117	195
39 Westomore (Orbis)	124	434
67 Westmore (Cordoba Energy)	112	434
65 Camer (Club Coffee)	212	710
109 Woodbine	77	253

It is important to note that Mr. Premru's cross-examination established that the average pay of $ 25.67 in "Manufacturing related industries" would result in a gross payment of approximately $ 39,000 for a "full time position" of 30 hours/week, or $ 52,000 for a conventional full time position of 40 hours/week, which contrasted favourably with the maximum paid in the Hotel industry, of $ 16.74/hour.

Mr. Jeff Cantos , the Manager of the team responsible for the Official Plan, MCR and Strategic Initiatives,, at the City of Toronto, was affirmed, and then recognized as an Expert Witness in the area of land use planning. Mr. Cantos said that he had adopted the evidence of Ms. Daniela DeGasperis, the City Witness who was originally to appear before the TLAB. He spoke to the relationship between the Planning Act, the PPS, and the Growth Plan for the Greater Golden Horseshoe (Growth Plan, 2017). It is important to recite the various parts of the Planning Act, and the Provincial Statements that he referred to, as presented below:

Section 26(1) of the Planning Act requires that municipalities revise its official plans as required to ensure that it:

a. conforms with provincial plans;
b. has regard to the matters of provincial interest listed in Section 2; and
c. is consistent with policy statements issued under subsection 3(1).

The Preamble of Part 1 of the PPS 2014 states:

"Provincial plans and municipal official plans provide a framework of comprehensive, integrated, place-based and long-term planning that supports and integrates the principles of strong communities, a clean and healthy environment and economic growth, for the long term."

Policy 1.1.1(a) of the PPS 2014 states that healthy, liveable and safe communities are sustained by promoting efficient development and land uses patterns which sustain the financial well-being of the Province and municipalities over the long term.

Policy 1.2.6.1 of the PPS 2014 speaks to the matter of land use compatibility. It states:

"Major Facilities and sensitive land uses should be planned to ensure they are appropriately designed, buffered and/or separated from each other to prevent or mitigate adverse effects from odour, noise and other contaminants, minimize risk to public health and safety, and to ensure the long-term viability of major facilities."

An *Employment Area* is defined in the PPS 2014 as:

those areas designated in an official plan for clusters of business and economic activities including, but not limited to, manufacturing, warehousing, offices, and associated retail and ancillary facilities."

Policy 1.3.2.1 states that planning authorities shall plan for, protect and preserve *employment areas* for current and future uses.

Policy 1.3.2.2 states that the conversion of lands within *employment areas* to nonemployment uses may only occur within a *comprehensive review,* where it has been demonstrated that the land is not required for employment purposes over the long term and that there is a need for the conversion.

Policy 1.3.2.3 states that planning authorities will protect *employment areas* in proximity to *major goods movement facilities and corridors* for employment uses that require those locations.

Major goods movement facilities and corridors is defined as follows:
"transportation facilities and corridors associated with the inter- and intraprovincial movement of goods. Examples include: inter-modal facilities, ports, airports, rail facilities, truck terminals, freight corridors, freight facilities, and haul routes and primary transportation corridors used for the movement of goods. Approaches that are freight-supportive may be recommended in guidelines developed by the Province or based on municipal approaches that achieve the same objectives

Mr. Cantos spoke to the Growth Plan 2019, which recognizes that the region is experiencing a dramatic economic change. Section 2.1 of the Growth Plan 2019 states the following:

"Traditional industries, such as manufacturing and agri-food businesses, continue to play an important role, but globalization and technology are also transforming the GGH's economy. There has been a shift towards knowledge-intensive, high value-added activities that is increasing the significance of the service and knowledge-based sectors and spurring innovation in other segments of the economy. This change is providing opportunities for a variety of types of businesses to locate and grow in the GGH, which is fundamental to ensuring a more prosperous economic future. Therefore, it is important to ensure an adequate supply of land within employment areas – both for traditional industries and for service sector and knowledge-based businesses that warrant such locations – and sites for a broad range of other employment uses."

Section 2.2.5.6 states that upper-tier and single-tier municipalities will designate *employment areas*, including any prime employment areas, in official plans and protect them for appropriate employment uses over the long-term.

Section 2.2.5.7(a) further states that municipalities will plan for all *employment areas* within *settlement areas*, with the exception of any *prime employment areas*, by:
"prohibiting residential uses and limiting other sensitive land uses that are not ancillary to the primary employment use."

The definition of *sensitive land uses* in the Growth Plan 2017 is defined as follows:
"Buildings, amenity areas, or outdoor spaces where routine or normal activities occurring at reasonably expected times would experience one or more adverse effects from contaminant discharges generated by nearby major facilities. Sensitive land uses may be a part of the natural or built environment. Examples may include, but are not limited to: residences, day care centres, and educational and health facilities.

Summarizing his opinion regarding the relationship between the Provincial Plan, and the proposal, Mr. Cantos said that:

1) The request to allow a hotel use within an employment area is not consistent, and does not conform with the policies of the PPS 2014, and the Growth Plan 2017, both of which are intended to protect employment lands in order to support the achievement of economic growth.

2) The policies of the province direct municipalities to plan for the preservation of employment lands through their official plans. In this case, the Subject Site is designated as *Employment Area* in the City of Toronto Official Plan

3) The requested hotel is a sensitive land use that diminishes the long term viability of the *Employment Area* by creating an uncertain operating environment.

Mr. Cantos' evidence on OPA 231 is recited below:

In June 2010, the City Planning Division and the Economic Development and Culture Division of the City of Toronto began the Official Plan Five Year Review and concurrent MCR as it pertains to policies and designations for *Employment Areas*

As part of the City's ongoing Official Plan Five Year Review and Municipal Comprehensive Review (MCR), City Council adopted OPA 231 on December 18, 2013, which contains new economic policies and designations for *Employment Areas* with the intent to:
a. Promote office space on rapid transit;
b. Preserve the City's *Employment Areas* for business and economic activities; and,
c. Accommodate the growth of the retail and institutional sectors to serve the growing population of the City and the Region.

Mr. Cantos acknowledged that Sections 2.2.4.2, and 2.2.4.14 of OPA 231, as recited below in italicized letters, are under appeal at the LPAT, though OPA 231 was approved by City Council:

OPA 231 was approved, with minor modifications, by the Minister of Municipal Affairs (the Minister) on July 24, 2014. Portions of OPA 231 are under appeal at the LPAT.

OPA 231, as approved by City Council and the Minister, includes section 2.2.4.2 which outlined the policy objectives for Employment Areas which include, but are not limited to:
a. Retain sufficient available lands for industrial function;
b. Protect and preserve employment areas for current a future business and economic activities;
c. Provide for and contribute to a broad range of stable full-time employment opportunities; and
d. Provide a stable and productive operating environment for existing and new businesses.

OPA 231 as approved by City Council and the Minister, also includes Section 2.2.4.14 which provides clarity on conversion and removal policies for Employment Areas. The policy states that:

"*the resdesigation of land from an Employment Area designation to any other designation, by way of an Official Plan Amendment, or the introduction of a use that is otherwise not permitted in an Employment Area is a conversion of land within an Employment Area and is also a removal of land from an Employment Area, and may only be permitted by way of Municipal Comprehensive Review*

Mr. Cantos also highlighted the fact that OPA 231 had introduced Section 4.6 which distinguished between *Core Employment Areas* , and *General Employment Areas* within the *Employment Areas* designation and detailed the permitted land uses of each- by way of an editiorial note, the differentiation between the Core Employment Areas, and General Employment Areas, and a recitation of what uses are allowed in each type of Employment Area, is not repeated here, because this information appears in the evidence of the Applicant's Witness, Mr. Romano.

Mr. Cantos said that *General Employment Areas* are places for business and economic activities, and are generally geographically located on the major roads where retail, service and restaurant uses benefit from visibility and transit access to draw in the public. They also serve to support the workers of the *Employment Area*. OPA 231 was originally approved by City Council and the Minister with hotels as a permitted use in all *Employment Areas* across the City, including *General Employment Areas.*

Mr. Cantos' evidence was different from Mr. Romano on allowing Hotel uses in both types of Employment Areas- he stated that OPA 231, originally approved by City Council and the Minister, with hotels as a permitted use in all *Employment Areas* across the City, including *General Employment Areas.* However, the admissibility of Hotels as a permitted use in the Employment Areas was significantly impacted by what is referred to in this recitation as the " Mondelez Settlement". To add context, and reiterate information stated earlier in this Section, Mr. Cantos explained that Mondelez Canada Inc. is an international food manufacturer that owns and operates manufacturing various facilities within the City of Toronto. An appeal was filed by Mondelez Canada Inc. to delete hotels as a permitted use in *Employment Areas*.-the basis of this appeal is that a hotel may be subject to impacts from environmental uses, which may lead to complaints from other users in the vicinity, stating that hotel uses are inconsistent with the policy to protect employment uses.In addition, Mondelez Canada Inc. indicated that hotels are categorized as a 'noise sensitive commercial purpose building' under the new Ministry of Environment and Climate Change noise guidelines NPC-300. This may limit industries to operate in compliance environmental compliance approvals and the *Environmental Protection Act.*

As a result of the challenges to OPA 231 by Mondelez Canada, the Local Planning Appeals Tribunal (LPAT),(which has since been renamed the OLT (Ontario Lands Tribunal)), passed a series of Orders, which are discussed below. It may be noted that the LPAT was referred to as the Ontario Municipal Board, before it became the LPAT. By way of an editorial note, the acronyms OMB, LPAT and OLT are used interchangeably in this Section to refer to the same tribunal. Mr. Cantos discussed the Order released by the LPAT on December 20, 2016:

Order released by the LPAT on December 20, 2016

On December 20, 2016, the OMB issued an Order partially approving OPA 231., which brought into effect, among other matters, amendments to Section 2.2.4 of the Official Plan which recognized the importance of maintaining *Employment Areas* exclusively for business and economic activities by providing a stable and productive operating environment for existing business that also attracts new firms.

Section 2.2.4 of OPA 231 also states:
"The introduction of sensitive land uses into Employment Areas can force Industry to alter their operations, particularly when the environmental certificates that industries operate under are affected, or complaints are lodged about adverse effects from industrial operations."

The December 20, 2016 OMB Order also brought into effect amendments to Chapter 4 of the Official Plan, and indetified specific employment policies for *Core Employment Areas* and *General Employment Areas* land use designations.

The uses permitted in *General Employment Areas* are set out in Policy 4.6.3 of the OP, and include all types the uses in the *Core Employment Areas* such as manufacturing, processing, warehousing, distribution, storage, transportation facilities, vehicle repair and services, offices, research and development facilities, utilities, waste management systems and vertical agriculture. In addition, *General Employment Areas* also provide for restaurants, all types of retail and services uses.

March 26 & 27, 2018 City Council Decision to Remove Hotels from *Employment Areas*

At its meeting held on March 26 and 27, 2018, the City of Toronto's Council considered a report authored by the City Solicitor requesting direction on the appeal received by Mondelez Canada Inc. regarding hotel uses in the *Employment Areas* designation.

The report, dated February 5, 2018, recommended the adoption of a new site and area-specific policy 531 for the *Employment Areas* located close to Toronto Pearson International Airport that permits hotels. It also recommended the removal of hotel permissions from *Core Employment Areas* and *General Employment Areas.*

On August 8, 2018, the LPAT approved a modification to OPA 231 to delete hotels as a permitted use in the *Employment Areas* designation. This decision also approved Site and Area-Specific Policy 531 to expressly permit hotels in the area generally bounded by Highways 427, 401 and Rexdale Boulevard adjacent to Toronto Pearson International Airport.

Mr. Cantos was next cross-examined by Ms. Stewart. In the context of establishing what constituted a Conversion, Ms. Stewart asked Mr. Cantos "if the policies that existed when an Application was started allowed for the use in question, then would it be accurate to say that the application did not constitute a conversion". Mr. Cantos disagreed, and pointed out that the Growth Plan existed when this application was

started, and that the Growth Plan did refer to the concept of a Conversion. Mr. Cantos disagreed with the premise of a question from Ms. Stewart , that the Growth Plan's references to Conversions did not apply to the proposal, because what the Growth Plan looked to exclude were "non-employment uses", whereas Hotels constituted an Employment use, and insisted that the introduction of a Hotel onto this Site constituted a "Conversion" in his perspective.

Mr. Cantos emphasized that "Hotels were not allowed in this location" to which Ms. Stewart stated and reiterated that "Hotels were Employment uses, and it was Mr. Cantos' opinion that they are not allowed in this location". Mr. Cantos also disagreed with Ms. Stewart's premise that if the Official Plan permitted a use in a given land use designation, then a Proposal premised on that use would not constitute a Conversion request- he insisted that Conversions were the result of Provincial Policies, which had to be accorded more weight than municipal level policies.

In response to whether different uses can be introduced through a COA process, Mr. Cantos said that "Employment uses are different, and cannot be introduced through a COA process" Ms. Stewart then referred to 1791 Albion Road, where the COA had approved a medical office in the vicinity of the Site, though this site was zoned IC2 (Employment Zone), to which Mr. Cantos pointed out that this happened in 2012, before the concept of "Conversions" were introduced, and this was a use "that was otherwise permitted in the OP". Ms. Stewart brought up a number of other examples such as 1770-1778 Albion road (2012), 30 Baywood Road (2018) including uses that were explicitly prohibited on Employment Lands. In the latter, she pointed out that the application is similar to what is front of the TLAB, "because a second storey is to be added above the front portion of the the existing building". Mr. Cantos added that he had not reviewed that application, to which Ms. Stewart complained about how differently the City had treated the two applications – i.e. 30 Baywood and the Site, "though the applications were submitted close to each other". Ms. Stewart's contention was that the City was applying its discretion without illustrating the reasons for why one application had been treated differently from the other.

The next set of questions focused on the area delineated as being eligible for hotels under SASP 531. Ms. Stewart focused on how the Operating Order released by the LPAT with respect SASP 531, in January 2019, were not clear on the language. Mr. Cantos acknowledged the issue with the language, but also pointed out that the decision was accompanied by a diagram which mapped the area covered by SASP 531. Ms. Stewart then drew attention to how in her perspective, the language used was so imprecise that even the version that Council voted on, and the version released to the community at large were not the same. She concluded her discussion of this Section by stating that the final Orders from LPAT " did not do what the City thought it had done"- namely exclude Hotel uses from General Employment Areas.

Ms. Stewart then focused on how the Site was in the General Employment Area, and not the Core Employment Area, to which Mr. Cantos acknowledged he had

initially given evidence about the Site being in the Core Employment Area, but had corrected himself. Ms. Stewart disagreed, and pointed out that both Mr. Premru and Mr. Cantos' evidence assumed that the Site was part of the Core Employment Area, and that the only reference to the Site being in the General Employment Area was in Ms. DeGasperis' Witness Statement. Ms. Stewart then spoke about the lack of clarity in the documents generated by the City of Toronto, and wondered about how a new planner, who had freshy graduated from university, (referred to as "Evelyn" in this discussion) could make sense of what the City's policy was, given the "nebulousness" in the document.

Ms. Stewart then went through a discussion with Mr. Cantos, where she theorized that is that the prohibition against Hotels brought about as a result of the Mondelez Agreement, applies only to the General Employment Areas, but not the Core Employment Areas. In other words, this theory posits that while Hotels may have been allowed in the Core Employment Areas, they were removed as a result of the decision made by the LPAT with respect to OPA 231. However, the uses were permitted in the General Employment Areas, before and after the Settlement, for a variety of reasons, as discussed below

a) Hotels are allowed in the General Employment Area, by virtue of being service and retail uses ,

Ms. Stewart then constructed 2 circles, as represented below, such that the inner circle represented the Core Employment Area, and allowed uses, and the outer, the General Employment Area, followed by an annotation of the actual uses in each area. According to Ms. Stewart, Hotels were always allowed in the General Employment Areas, because they can be classified as "retail uses", though she agreed that the "service uses" was under Appeal

Ms. Stewart then referred to Retail uses, which permitted only though a Site Specific Zoning By-law. According to Ms. Stewart's questioning of Mr. Cantos, Hotels were specifically removed as uses, only in the Core Employment Areas, and not in the General Employment Areas, by virtue of the Mondelez Settlement. To back up her argument, she demonstrated how on Page 17/18 of By-Law 569-2013, Hotels were explicitly listed as uses in the Core Employment Areas, but removed as a result of the Settlement. However, they were always present in the General Employment Areas, by virtue of the fact that they have always used Retail and Services uses. When Mr. Cantos pointed out that no resolution had been reached by the LPAT regarding the relationship between Retail use, and Hotels, Ms. Stewart stated that Hotels could still be allowed, because they can be "seen to be "Service uses"". She said that according to Policy 4.6.3, a Hotel is a Service Use, which is permitted in the General Employment Area

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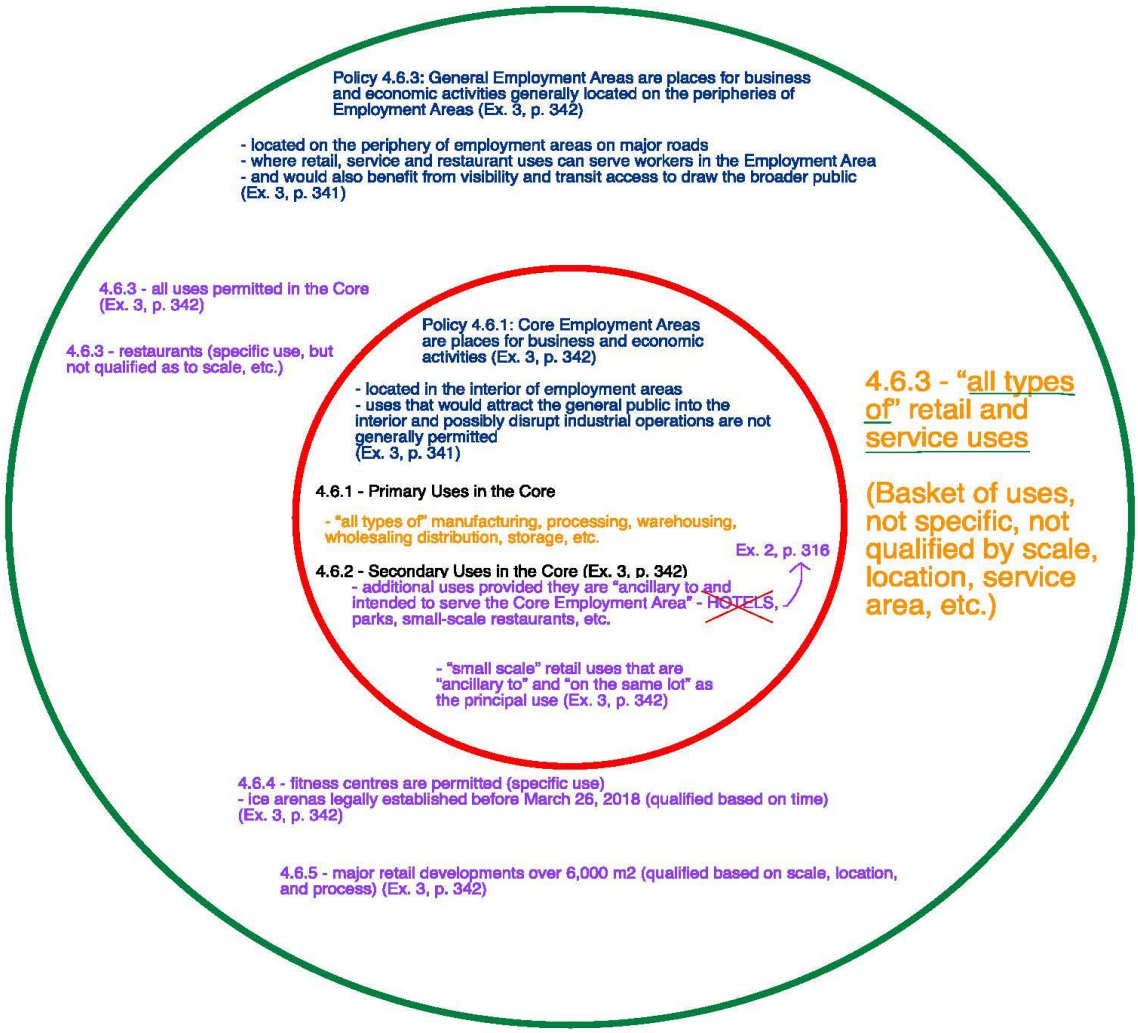


FIGURE 1- APPLICANTS' PICTORIAL REPRESENTATION OF ALLOWABLE USES IN CORE AND GENERAL EMPLOYMENT AREAS

Ms. Stewart also informed me that one of her principal submissions during Oral Argument would be that Hotels are allowed in General Employment Areas.

The Cross examination of Mr. Cantos then addressed how Hotels are considered to be "Service Uses" under NAICS, by virtue of the following definition:

This subsector comprises establishments primarily engaged in providing short-term lodging for travellers, vacationers and others. In addition to lodging, a range of other services may be provided. For example, many establishments have restaurants, while others have recreational facilities. Lodging establishments are classified in this subsector even if the provision of complementary services generates more revenues.

Establishments that operate lodging facilities primarily designed to accommodate outdoor enthusiasts, are also included in this subsector. These establishments are characterized by the type of accommodation and by the nature and the range of recreational facilities and activities provided to their clients.

Establishments that manage short-stay accommodation establishments, such as hotels and motels, on a contractual basis are classified in this subsector if they provide both management and operating staff. These establishments are classified according to the type of facility they manage.

The reference is provided below:

> https://www23.statcan.gc.ca/imdb/p3VD.pl?Function=getVD&TVD=1181553&CVD=1181576&CPV=721&CST=01012017&CLV=2&MLV=5

Mr. Cantos stated at numerous stages that NAICS was not a planning tool , to which Ms. Stewart reiterated Mr. Romano's view that NAICS is a planning tool because it is used to evaluate the impact of various employment uses.

Lastly, the Cross-Examination focused on how Hotel uses were involved in various SASPs across the City, as demonstrated below:

Hotels have been explicitly allowed in various SASPs:

The first SASP referred to in this discussion is ***Area 3- Certain lands located in the Blocks Bounded by King Street West, Dufferin Street, Lakeshore Rail Corridor, and Hanna Avenue***

The key sentence referring to hotels is as follows:

"*Although all "Employment Industrial" uses as defined under the City's new Zoning By-law (By-law 569-2013), are also permitted as primary uses, Area 3 is no longer an appropriate location for "Employment Heavy Industrial" zone uses. Secondary uses include small scale service uses such as banks, **hotels**, parks, workplace,*

ancillary daycares, small scale retain and restaurant uses, along with recreational uses to support the viability of the Site's primacy office use, and provide amenities for the Areas' current and future employees. "

The second example of such an SASP is SASP 154, which applies to a number of areas across the City- it is to be noted that the key word "hotel" does not appear, but there are references to "residential units"

a) *Employment, place of workship, and residential uses are permitted within single use, or mixed use buildings provided that:*

(i) *If the property is designated Employment Areas, any building containing a place of worship and/or residential units, will provide for a satisfactory environment compatible with any employment uses in the building and adjacent area*

Ms. Stewart asked Mr. Cantos if this sentence can be interpreted to mean that in an area designated "Employment Areas", a building with residential units, will by default, provide a satisfactory environment compatible with any employment uses in the building, and adjacent area, which Mr. Cantos disagreed with.

Ms. Stewart then proceeded to ask questions on the basis of a City Report which recommended that a Conversion Request for 900 York Mills be denied. She described how words and intepretrations are to be in found within the "four walls of the document", and discussed how retail/ services uses are explicitly permitted in some SASPs, as listed in By-Law 1714-2013, notwithstanding the Mondelez Settlement.

1. *Based on the criteria in the Growth Plan, the Provincial Policy Statement (PPS), and Official Plan Policies, City Council retain the lands at 900 York Mills as Employment Areas and designate them as General Employment Areas.*
2. *City Council include the rear portion of the lands in proposed Site and Area Specific Policy Area No 394 that prohibits major retail uses, and only permits restaurants, workplace daycares, recreation and entertainment facilities, and small and medium scale stores and services when those uses are located within the lower level floors of multi-storey buidings comprised of Core Employment Areas.*

   Conclusion – It is staff's opinion that there is no need for the requested conversion. Based on the criteria in the Growth Plan, the Provincial Policy Statement, and the Official Plan policies, ot os recommended that City council retain the lands at 900 York Mills, as Employment Areas, and designate them as proposed Site and Area Specific Policy 394 (SASP 394) that would prohibit major retail uses, and only permit restaurants, workplace daycares, recreation and entertainment facilities, and small and medium scale stores in

the lower level floors of multi-storey buildings, comprised of Core Employment Area uses, ***including hotels***.

Mr. Cantos' constant, and consistent reply to all the examples cited above, was that one could not apply the language of one SASP in part of Toronto, to another SASP in a different part of Toronto. He also pointed out that when interpreting a SASP, it was important to note that where the language of a SASP did not agree with the advice provided in the OP, then the SASP prevailed.

ANALYSIS, FINDINGS, REASONS

I begin by drawing attention to the repetition of concepts, ideas and arguments in this Section- the repetition is the consequence of how evidence and submissions, were completed in a comprehensive, if discursive fashion, and my preference to have all information pertaining to a given question in the same location, without having to cross-reference information in other parts of this Decision. On the basis of the questions raised by the Applicants, and Appellants, I identify specific questions, to which I have provide answers, before relying on the latter to make findings regarding the four tests under Section 45.1, and Section 3 of the Planning Act.

1. Are there any important axioms, and assumptions that are relied on to arrive at the final Decision?

I have relied on the following axioms, and assumptions for the purposes to arrive at my final Decision:

- **TLAB has the jurisdiction to interpret all Policies contained in the OP**: The City, on various occasions throughout the Proceeding, argued that employment related issues such as Equity, Access to Employment, are outside the jurisdiction of the TLAB, and discouraged this Tribunal from make any findings on the aforementioned issues.I disagree with this perspective, because the TLAB has the jurisdiction to interpret any, and all Policies, listed in the OP, even if the policy in question does not address core planning issues- examples of such policies relate to Heritage issues, Employment and Equity Issues, and Urban Forestry. While the work of the TLAB may not be governed by the Heritage Act, or the Employment Standards Act, under the Planning Act, it has the jurisdiction to interpret any, and all Policies, listed in the OP, even if they focus on topics, that some may not not consider to be planning issues.

- **The variances respecting the building setback, and the landscape strip are dependent on the variance requesting a Hotel on Employment Lands:** The Applicants agreed with my observation that Variances 2 and 3, listed in the Matters Section, respecting the setback to the lot line abutting Highway No. 27, and the Landscape strip along the Highway No. 27 front lot line respectively, are variances that would be required, only if the Hotel use were approved on Employment Lands, as requested in Variance 1. Given that that no separate

evidence was offered regarding these variances, I find that the question of approving Variances 2 and 3, would arise if, and only if the variance regarding the Hotel use would be approved; they would automatically be refused if the variance for the Hotel use would be refused.

- **The analysis assumes that the variance is not a conversion** One of the principal prongs of the City's evidence is that the variance for Hotel uses, constitutes a conversion- the confirmation of this perspective is beyond the jurisdiction of the TLAB. Since granting relief from applicable By-Laws, on requested variances is the core mandate of the TLAB, I have proceeded to analyze the variance for Hotel uses on the basis that it is not a conversion, and can be resolved within Sections 45.1, and 3 of the Planning Act.

2. What documents and components of evidence are relied on for Decision making?

I note that this Proceeding lasted eleven days, over a one and half year period, with Oral Argument being completed on February 8, 2021, and the completion of final submissions on April 26, 2021.

There is a significant corpus of evidence before me, that has been amassed as a result of a series of discussions which commenced as education, before morphing into expositions, when not expeditions. After reviewing the evidence, I find that focusing on the Applicant's evidence is the optimal approach to make findings because the the onus lies with the Applicants in a Hearing *de novo*. Consequently, maximal weight has been given to the Examination-in-chief, Cross- examination, and Re-examination of the Applicant's evidence.

While the Applicant's sole Witness was recognized as an Expert Witness in the area of land use planning, he also provided evidence on Noise and Sensitive land uses, on the basis of the "Valcoustics Report", and a Report by Trinity Consultants on Noxious fumes respectively. In response to a question from the City's lawyer about the extent of his expertise, the Applicant's Witness said that he could testify about noise, and other matters by virtue of "many decades of experience". While I am deeply respectful of the Witness' experience, I will weigh the Applicants' evidence on noise, and other non-planning related matters as a lay-person's evidence, and not as expert evidence, because the Witness was recognized only as an Expert only on planning related matters. The TLAB's practice in according Expert Witness status to a individual in a given discipline, relies on a combination of education, experience, and importantly, direct involvement of the preparation of the evidence presented to the Tribunal. In this case, it is undisputed that the Applicants' Witness played no part in the preparation of the Noise Report by Valcoustics, or the Report on Noxious fumes by Trinity Consultants, resulting in my finding of the Witness being assigned Expert Witness status solely in the area of land use planning. .

In this context, it is important to discuss how much weight was placed on the Valcoustics and Trinity Consultants Reports. The Applicants were successful in

drawing attention to the achievements, and accomplishments of the consulting firms contracted to produce these reports. In case of Valcoustics, I was advised that since the guidelines designed by this very organization underpin all studies undertaken by any organization that needs to complete sound and noise studies in any part of Ontario, it is important that the Study be assigned significant weight.

The City of Toronto, on the other hand, focused on how the Studies had been "voluntarily commissioned" by the Applicant, which meant that the Report only answered questions that the Applicants deemed to be pertinent, as opposed answering specific questions and concerns that could have been raised by the City regarding the proposal. The City was also concerned that the Reports in question had not been "peer reviewed", as would be their preference, and suggested that minimal weight be given to the Reports. The Applicants' answer was that they "waited more than a year " to hear from the City about clarifications and questions about the proposal, and proceeded to commission the Reports in question, just to go forward with their application".

I don't question the hard work that went into the production of these Reports, nor do I question the erudition and expertise of the authors of these Reports. Seen simply from the perspective of collecting relevant evidence, which requires questions to be asked of Witnesses, the authors of these Reports were not produced before the TLAB to answer questions, or be formally recognized as Expert Witnessess, whose duties and loyalties, are first and foremost to the TLAB. Given that the proof lies in the proverbial pudding, as opposed to the chef's qualifications, or the elegance of the recipe, I find that the conclusions of the Reports should be accorded minimal weight-- this means that information obtained the from the Report is to be taken literally, without the benefit of interpretation, and or expansion in the form of oral evidence. No finding is made regarding the weightage to be given to the Reports on the basis that it answers unasked questions.

3. What documents and components of evidence have <u>not been</u> relied upon for the purposes of Decision making?

It is important to identify components of evidence which are not relied upon for making findings for reasons discussed below.

The City's evidence on the relationship between Hotels, and Employment Lands, with special reference to the Official Policy: The City's Witnesses made the cardinal error of placing the Site in the Core Employment Areas, and provided evidence on this basis, when in reality, the Site is in the General Employment Areas. I note that when confronted about their confusion about where the Site lay, towards the end of Cross-Examination, the City's Planning Witness stated that even if the error had been made initially, he had "corrected "himself, and had given evidence on the basis that the Site was in the General Employment Areas. Even if this explanation is accepted, the City's evidence is diffuse about the location of Site is,

as a result of which the evidence is not mutually consistent- as a result, no weight is assigned to the City's Examination-in-Chief, and Cross-Examination, with respect to the Offiical Plan, with specific reference to the relationship between the Hotel, and the General Employment Lands. The evidence is not recited in detail, nor it is analyzed, because there is an error of fact in the City's evidence.

Settlements cannot be relied upon as authorities for planning decisions:: The Applicants' evidence dwelt on various Settlements negotiated by the City with various Parties, resulted in the introduction of a Sensitive uses on Employment Lands. They contrasted the Planning Department's purported flexibility in these cases, with the perceived rigidity of not allowing hotel uses in this proposal, notwithstanding the existence of "hotels across the road." I find that Settlements consented to by the Parties, contrasts with Proceedings that are contested, and that the former cannot be relied upon to arrive at Decisions regarding the latter. Settlements require all Parties to " give-and-take", as the colloquial expression goes, an approach which is not merely distinguishable, but diametrically different from contested proceedings , where the winners take all. As a result, the findings of contested proceedings cannot be modellled on the basis of Settlements.

Letters of Support Letters of support from individual elected politicians are not given any weight, because such letters provide no planning opinion, or planning based perspective. Such letters are to be distinguished from documents reflecting the position of the City of Toronto, as a result of discussion and completion of a formal vote, and adoption by the City's Municipal Council.

COA decisions in the vicinity of the Site: All examples of decisions made by the COA, cited as exemplars, are excluded from analysis. It is contradictory to say that every case must be determined on its own merits, and then rely on other decisions made by the COA, even if the latter are in the vicinity of the Site, especially when the decisions are made at different times, under the auspices of different zoning- the mutual relationship between COA decisions, even when in the vicinity of each other, don't exemplify the reasoning of what is good for the goose, is good for the gander, because of changes in zoning, timing and other governing factors

4. How are Employment Lands to be best utilized, based on documentation, and direction from Planning Documents?

It is important to note that the Hearing relied on the Provincial Policy Statement (PPS, 2014), and the Growth Plan for the Greater Golden Horseshoe (Growth Plan, 2014)- consequently these documents are relied on notwithstanding the introduction of an updated PPS and Growth Plan.

The fact that existing Employment Lands are special, and protected, is demonstrated through the following excerpts from the Growth Plan for the Greater Golden Horseshoe (2014), in the form of the following Policies:

Section 2.2.5.6

Upper- and single-tier municipalities, in consultation with lower-tier municipalities, will designate all employment areas in official plans and protect them for appropriate employment uses over the long-term

Section 2.2.5.7:

Municipalities will plan for all employment areas within settlement areas by:

a) prohibiting residential uses and prohibiting or limiting other sensitive land uses that are not ancillary to the primary employment use;

b) prohibiting major retail uses or establishing a size or scale threshold for any major retail uses that are permitted and prohibiting any major retail uses that would exceed that threshold; and

c) integrating employment areas with adjacent non-employment areas and developing vibrant, mixed use areas, and innovation hubs, where appropriate

The need to protect Employment Areas is also echoed through Section 1.3.2.1 of the Provincial Policy Statement (PPS, 2014) :

1.3.2.1 *Planning authorities shall plan for, protect and preserve employment areas for current and future uses and ensure that the necessary infrastructure is provided to support current and projected needs.*

On the basis of the excerpt cited above, I find that Employment Lands are unique , and special enough to be specifically identified as such, and "**protected**" (my emphasis) for appropriate employment uses- the word "protect" is a direct consequence of Policy 1.3.2.1 recited above.

The importance of Employment Lands, from the perspective of the City of Toronto, is best illustrated in the following excerpt, which appears at the following Website- the same information was also emphasized by way of evidence:

https://www.toronto.ca/city-government/planning-development/official-plan-guidelines/official-plan/official-plan-review/

An integral component of the City's economic health are the 8,000 hectares of lands designated as Core Employment Areas *and* General Employment Area*s. These two designations account for 13 per cent of all lands in the City, accommodating of 400,000 jobs. Since 2000, the value of new industrial building permits within* Employment Areas *averaged over $48 million annually, demonstrating continued investment, interest and confidence in these areas.*

As of 2017, approximately 80% of all manufacturing establishments reside in designated Employment Areas, accounting for the vast majority of the over 70,000 manufacturing jobs in Toronto (City of Toronto Employment Survey, 2017). Manufacturing is a high economic multiplier sector, meaning that the loss of

economic activity on one site is expected to have far reaching off-site repercussions. For each manufacturing job created, another 1.2 are created through suppliers to that industry and it is estimated that every $1 invested in manufacturing generates $3.25 in total economic activity (City of Toronto Staff Report to Economic Development Committee, dated October 5, 2013).

From the commentary above, I find that there is a very significant return on investment in the Employment Areas, as well as creation of ancillary employment.

Lastly, the City's evidence, unchallenged by the Applicants, is that manufacturing jobs, their preferred form of job creation on Employment lands, pay $ 25.67/hr- "a full time" job, at the rate of 30 hours/week, pays $ 39,000/annum, while a 40 hour workweek results in a payment of $ 52,000/year.

On the basis of the above recitation and analysis, I find that lands designated for Employment uses by the local Municipality have to proactively "protected", and that manufacturing and industrial uses, are the preferred form of the use of these lands. It is important to note that one of the important outcomes of using these lands for manufacturing and industrial uses, is the financial benefit to individuals who work in t manufacturing and industries, whose average hourly rate at $ 25.67/hr (even if this figure may be outdated), is significant higher than the minimum wage in the Province of Ontario, which is projected to rise to $ 15.50/hr in October 2022, from the existing rate of $ 15/hr.

On the basis of the above analysis, I find that preserving and protecting manufacturing and industrial uses on Employment Lands, is in the public interest, at the municipal and provincial level, because of its alignment with the advice of governments, as well as benefits accruing at the individual level, because the average wages to the worker in these industries is 60% more than the hourly wage. While manufacturing or industry uses are not synonymous with public interest, I find that the salaries that can be obtained in these industries are a good comparator for other kinds of businesses who want to set up shop on Employment Lands- in other words, the salary payable to employees who will work at a proposed business on Employment Lands, has to be comparable with the salaries available to individuals who work in manufacturing, and industrial uses, to be consistent with public interest.

5. Who, or what is the intended beneficiary of the principle of "generous interpretation" of the Official Policy?

It is also important to discuss the importance of "generous interpretation" of the Policies in various planning documents- while the City's Planning Witness agreed to the principle of "generous interpretation" in Cross-Examination, there was no evidence about what constitutes generous interpretation", or who is the intended beneficiary of the generousity alluded to in this phrase.

In the absence of such evidence, or submissions on this issue, I find that the Policies should be interpreted such that they align with, if not advance public

interest. The interests of individuals, or corporations are secondary compared to public interest.

6. Does the Clergy Principle apply to this Application?

The Applicants argue that the Clergy Principle should apply to this Application because their application was filed after August 16, 2018, but prior to January 9, 2019- the LPAT released two interrelated decisions, on these two dates, focusing on significant restrictions on Hotel uses on Employment Lands, as a result of the "Mondelez Settlement". A brief expalantion of the Clergy Principle is provided below, followed by the history of the Mondelez Application:

- The Clergy Principle advises that land use planning applications should be tested against the law and policy documents in place, on the date of the application - in other words, there can be no retroactive application of any Policies or Laws passed subsequent to the date on which the Application was filed.

- The LPAT's decision respecting the " Mondelez Settlement" is decisive with respect to allowing Hotel uses on Employment lands, because that the LPAT ruled that Hotels would not be allowed in Employment Areas, with the exception of SASP 531, which is close to Pearson Airport. It is important to note that notwithstanding the drawn out wrangling regarding the area covered by SASP 531 in this Proceeding, (addressed later in this Decision), the Site itself is not part of SASP 531.

The Applicant submitted his application to the COA for the approval of different variances in September 2018.. In the Applicants' narrative, the first order by the LPAT, dated August 16 2018, is an "Interim Order", while the second order dated January 9, 2019 is the "Final Order", which became "Operative" on the latter date. In other words, their position is that their Application, filed with COA in September 2018, predates the "Final Order" made in January 2019, and is consequently shielded by the Clergy Principle from the "Final" LPAT decision, dated January 9, 2019.

The Appellants' perspective, on the other hand, was succinctly expressed by the their Counsel as "***the sole purpose of the decision [issued in January 2019] is to do some housekeeping. The word "Interim" is not used anywhere in the decision dated August 16, 2018 "*.** Their position is that the Order precluding Hotels from *Employment Areas* was effective as of August 16, 2018 itself , because this Decision states clearly that Hotels cannot not be established on "Employment Lands". They argue that the Final Order, dated January 9, 2019, was of "an administrative nature to do housekeeping", which made no substantial difference to what had been determined in the Interim Order.

I find that it would be reasonable to expect that any Tribunal would explicitly characterize, or identify an intended interim decision to be an “Interim Decision ” , in so many words, especially if the decision were to be followed by a Final Decision. The Applicants are not able to point to any word, or expression in the LPAT decision dated August 16, 2018, on the basis of which a rational reader can conclude that this decision is of an “Interim” nature. Consequently, I find that the Applicants’ interpretation of the first decision, dated August 16/19, 2018, as an “Interim Order”, and the second decision, dated January 9, 2019, to be the” Final Order”, reflects their preference about how these two decisions should be interpreted, as opposed to the actual relationship between the decisions- I agree with the Appellants that the purpose of the second decision, dated January 9, 2019, is to do some “house-keeping” regarding the earlier decision. Secondly, there is no substantive difference between the two Orders on the question of whether Hotel uses can be permitted on Employment Lands.

Notwithstanding my finding above, I also point out that even if the Order dated August 16/19, 2018, were an “Interim Order”, there is an unmistakanle message from the the LPATabout its intention of excluding Hotels from Employment Lands. It would be trite to state that the relationship between “Interim Orders” and “Final Orders”, where such Orders are issued, is such that they travel in the same direction, and differ only in the final destination- the LPAT’s intention for exclusion of Hotels on Employment Lands is crystal clear, as seen below on the recitation of Paragraphs 26- 28 of the LPAT’s decision, dated August 16, 2018 below, which leave no doubt about how the word “Hotels” would be deleted from Section 4.6 of the Official Plan, which focuses on Employment Areas:

26) The motion brought by the City sought to delete the word “hotels” from Policy 2 of s. 4.6 Employment Areas and to introduce into Chapter 7, Site and Area Specific Policies, a new Site and Area Specific Policy 531, the purpose of which new policy will be to expressly permit hotels in the area generally bounded by Highways 427, 401 and Rexdale Boulevard.

27) Having read the affidavit of Christina Heydorn, hearing the submissions of counsel, there being no objection filed or raised, the Tribunal is satisfied that the modification is consistent with the PPS, conforms with the Growth Plan and represents good planning

28) The Tribunal allowed the motion and approved the modifications noted.

As a result, I find that the discussion of the Clergy principle to be redundant, because there has been no change in the applicable By-laws, or Official Policy, between the dates of August 16, 2018, and January 9, 2019.

7. What is the impact of SASP 531, if any, on this Appeal?

One of the major outcomes of the Mondelez Settlement decision, issued by the LPAT on August 16, 2018, and January 9, 2019, is that this decision resulted in the identification, and formation of the only Site and Specific Policy Area Plan (namely

SASP 531) where Hotels are allowed on Employment Lands- the Decision stated that SASP 531 is in the northwest part of Toronto, close to Pearson Airport.

The Applicants spent a significant amount of time, by way of cross examining the City's Witnesses on this matter, and successfully demonstrated how the map respecting SASP 531 submitted by the City, as included in the LPAT decision respecting the Mondelez Settlement, dated January 9, 2019, is flawed, because the description does not match the accompanying map supplied by the City to the LPAT for inclusion in the decision.

However, both the Applicants, and the City agreed that the Site is outside SASP 531, with the Applicants themselves stating that the Site is "3.5 km from SASP 531", which makes it evident that the Site will not form part of the same, irrespective of flawed the map accompanying SASP 531 may have been.

I therefore find that SASP 531 is not relevant to the Appeal, since the Site is not part of the SASP in question.

8. **Has the Applicant been impacted negatively by the lack of clarity in Planning documents? Would planners in training (e.g. ``Evelyn``) be prejudiced by the alleged lack of clarity in the OP?**

The Applicants submitted that the lack of clarity in planning documents and reports, produced by the City, about which Policies apply under what circumstances, has been prejudicial to their case. They firstly refer to the OP, which states that "all the pertinent document have to be read as a whole" to understand the planning rationale, and then point to the predicament faced by an aspiring planner by name "Evelyn", who despite her enthusiasm and knowledge, would be utterly confused by the "contradictory information given to her by various planning documents, attachments and maps, including erroneous information", exemplified by the confusion regarding the geographical limits of SASP 531, discussed earlier in this Section.

According to the Applicants, the resulting confusion does not merely impede the reader's ability to obtain useful information; it is fatal to the work of planners such as "Evelyn", irrespective of how sincere, and patient they may be. I am confounded by the Applicant's apparent inability to resolve their confusion, because I find it that a reasonable and rational reader,would at least attempt to resolve their confusion through contacting, and conversing with experienced planners, including those responsible for drawing up the OP, at the City. The "prejudice" to aspiring planners such as "Evelyn" is notional, because it impacts an individual who does not currently practice as a planner. There is no evidence before the TLAB to demonstrate that the OP has to be written such that it has to reveal its intricacies, in a crystal clear fashion, and serve the same on a platter to the reader.

I find it appropriate to question the Applicants' question about why Planning Documents have not been written to be simultaneously comprehensive, and comprehensible, as opposed to answering the question. To ask for the concurrence of comprehensiveness and comprehensiblesness in a given document is the epitome of an oxymoron; adding complexity to this concoction creates the ultimate literary conundrum, because it requires complexity, comprehensibility and comprehensiveness to cohabitate without clashing in a constrained space. By way of an *obiter* remark, I conclude that to ask for a series of complex concepts to be stated in crystal clear terms, without sacrificing comprehensiveness, while steering clear of contradiction, is as realistic as wishing not merely for the moon, but the moon accompanied by the entire galaxy of stars.

There is no prejudice arising to a Party, as a result of their perception of the inadequacy in terms of clarity, or comprehensibility in the OP.

9. How should the OP be read? Should the SASPs be read the same way as the rest of the OP?

The Applicants' approach towards reading, and interpreting the Official Plan is shaped by Policy 5.6.1:

The Plan should be read as a whole to understand its comprehensive and integrative intent as a policy framework for priority setting and decision making.

The Plan is more than a set of individual policies. Policies in the Plan should not be read in isolation or to the exclusion of other relevant policies in the Plan. When more than one policy is relevant, all appropriate policies are to be considered in each situation. The goal of this Plan is to appropriately balance and reconcile a range of diverse objectives affecting land use planning in the City.

While not explicit, I understand the Appellants' position to be that all occurences of a given word have to be interpreted identically, across the OP, irrespective of the word's occurrence.

The Applicants use the approach of collectively reading the Policies together, to interpret the various SASPs (Site and Specific Policy Area Plan), as stated explicitly in their submissions:

The word "hotel" appears in some SASPs, and therefore should be allowed in other SASPs because the policies have to be read together, and should be interpreted in a similar fashion.

This approach, unfortunately contradicts the following notes found in Policies 5.6.6, and 5.6.7 in the OP, about SASPs, as recited below:

Policy 5.6.6 The policies of this Plan apply to the areas subject to Secondary Plans contained in Chapter Six, except in the case of a conflict, the Secondary Plan policy will prevail.

Policy 5.6.7: The policies of this Plan will apply to areas subject to site/area specific policies contained in Chapters Six and Seven except where in the case of a conflict, the site/area specific policy will prevail.

Given how each SASP will prevail when there is ostensible conflict with the OP, I find that the language of the SASPs is unique, in that each policy has to be read individually. I also find that the impact of this unique "prevalence principle" of the SASP (i.e. the SASP will prevail over the OP in case of a conflict), results in a differential in terms of impact of a given word. In other words, a given word can mean different things in different SASPS- a meaning of a word, or a phrase, cannot be exported, or imported between different SASPs.

The Applicants argue that a Hotel is allowed on Employment Lands, based on the examples of the following SASPs:

- **SASP 3, which impacts Liberty Village**. The Applicants insisted that the phrasing of this SASP, including the use of the word "Hotel" suggests that Hotels are permitted in Employment Lands in SASP 3, and that this use can be analogized, or extrapolated onto the proposal before the TLAB.

SASP 3 states (with the word "Hotel" being highlighted):

"*Although all "Employment Industrial" uses as defined under the City's new Zoning By-law (By-law 569-2013), are also permitted as primary uses, Area 3 is no longer an appropriate location for "Employment Heavy Industrial" zone uses. Secondary uses include small scale service uses such as banks, **hotels**, parks, workplace, ancillary daycares, small scale retain and restaurant uses, along with recreational uses to support the viability of the Site's primacy office use, and provide amenities for the Areas' current and future employees"*

On the basis of the first sentence, I find that, "Employment Heavy Industrial" uses, will not be permitted in SASP 3, and that secondary "small scale services", which include Hotels, will be promoted in the same SASP, alongside the Primary Office Use- in other words, SASP 3 is a unique case where prohibiting industrial uses has resulted in the promotion of a variety of other uses, including Hotels. I find that the above statement is singulary important because it establishes a principle of what I find to be "a mutually exclusive relationship, between Industrial Employment uses and Hotel uses", such that hotel uses can increase when Industrial Employment uses decrease. In addition, I note that the expression "hotels" is used in SASP 3 explicitly, leaving us with no doubt about whether it is a permitted use or not- this explicit use contrasts with other situations where the Applicants assert that a Hotel is being referred to, even when the word is conspicuously absent.

The finding of "mutual exclusivity between Industrial Employment uses, and Hotel uses" is consistent with the spirit of the Mondelez Settlement, which states that Hotels cannot be permitted on Employment lands. While SASP 3 promotes hotel uses in Liberty Village in the absence of industrial Employment uses, the Mondelez Settlement promotes Industrial Employment Uses,and excludes Hotel Uses- as stated earlier, the overarching principle is that Industrial uses, and Hotel Uses cannot exist simultaneously on Employment Lands. I emphasize that these examples, notwithstanding their ostensibly promoting diametrically different uses, are two faces of the same coin- namely, they reinforce the principle of mutual exclusivity between Hotels, and Industrial uses on Employment Lands, with specific reference to SASPs.

I reiterate that the language of SASP in question will prevail where there is a conflict between the SASP in question, and other SASPs, and Policies which are intended to be read together. I also note that allowing Hotel uses in SASP 3, and excluding industrial uses, actually reinforces the City's position of the mutual exclusivity of Hotels, and Industrial uses.

- **The second example brought forward by the Applicants is SASP 154**:

The SASP begins with a long recitation of the Sites that it applies to, which is not pertinent to the findings to be made, followed by the following statements:

A mix of employment and residential uses are permitted provided that:

a) if the property is designated Employment Areas, the building will provide for a satisfactory living environment compatible with the employment uses in the building and adjacent area; or

b) if the property is designated as any designation other than Employment Areas, the employment uses are restricted to those compatible with residential uses in terms of emissions, odour, noise and generation of traffic.

SASP 154 discusses specific circumstances where Employment and Residential uses can be permitted together. It is difficult to understand how this is applicable to this Appeal, when there is no proposal to simultaneously have ***Residential uses*** (my emphasis) at the Site. There is no evidence before the TLAB to demonstrate the equivalence of Hotel uses with Residential uses, as a result of which I find that there is no evidence before me to demonstrate that Hotel Uses and Residential uses can be substituted for one other

Consequently, I find that uses that are allowable in SASP 154, cannot be applied automatically to the Site.

Lastly, the Applicants refer to a City Report from 2013, to argue that a Hotel was permitted at 900 York Mills Road, and that there was no need for a conversion, as can be seen below:

> "*It is staff's opinion that there is no need for the requested conversion. Based on the criteria in the Growth Plan, the Provincial Policy Statement, and the Official Plan policies, ot os recommended that City council retain the lands at 900 York Mills, as Employment Areas, and designate them as proposed Site and Area Specific Policy 394 (SASP 394) that would prohibit major retail uses, and only permit restaurants, workplace daycares, recreation and entertainment facilities, and small and medium scale stores in the lower level floors of multi-storey buildings, comprised of Core Employment Area uses*, ***including hotels***"

The Hotel at 900 York Mills has existed for a very long time- it was formerely referred to as the Westin Prince Hotel, and has been renamed as the Pan Pacific Hotel since. The Staff opinion cited above addresses the question of whether the ***pre-existing*** (my emphasis) Hotel at the Site had to undergo a "conversion" under the previous MCR. However, the Staff Report concluded that in this specific case the existing Hotel did not have to apply to the MCR to continue to be a Hotel- the Report suggests that it would be sufficient to designate the area in question, with a pre-existing Hotel, as an SASP (namely SASP 394) where major retail uses are prohibiited.

What I find happened at 900 York Mills Road is that an SASP was created, inclusive of a pre-existing Hotel, allowing for small retail uses on Core Employment Lands, without having to through a Convesion- the intention, and the result of this exercise are distinctly different from the Applicant's request for permitting a Hotel on Core Employment Lands.

Given the wide range of topics covered in the discussion above, I think it important to summarize my findings on different topics, under this question:

- The Site is outside the area bounded by SASP 531, irrespective of how the latter is defined pictoritally, or in writing. Consequently, any errors in the LPAT's Order regarding the limits of SASP 531, are immaterial to determining whether a Hotel should be allowed on the Site.
- There is no prejudice arising to any Party, on the basis of the alleged lack of clarity in the Official Plan, or any other Planning document. It must be remembered that the OP, or other Planning Documents are not on trial; the onus of understanding the perspective of various Planning Documents, and seeking clarity where there is ostensible confusion, lies with the reader.
- SASPs, as indicated very clearly in the Interpretation Section of the OP, are not to be intended to read together, and the SASP takes precedence over the OP, in case of conflict. Every SASP is unique, which means that a given word can mean different things in different SASPs.

10.How pertinent is the information about this Hote's improvingToronto's chances of competing for conventions, and conferences, as a result of the formation of a "cluster of Hotels" around the Site? :

The question to be answered by the Tribunal, is whether or not to allow a Hotel at the Site, on the basis of planning principles. The answer to this question involves an extensive evaluation of many factors related to the four tests under Section 45.1 of the Planning Act, whose scope goes beyond an examination of whether or not a "cluster" of hotels would be formed in the vicinity of the Site, as a result of the approval of this Hotel. While the nucleation of a cluster of businesses, followed by the growth of the same, may result in the attraction of even more Hotels, and the City of Toronto's eventually gaining a competitive edge in terms of hosting conventions, the latter cannot happen at the cost of violating basic planning principles- in other words, the four tests under Section 45.1, collectively take precedence over promoting a given business interest, even if the business interest in question, embodied the intent and purpose of the Employment Policies.

As a result, if the Hotel in question does contribute to the overall capacity of Hotels in Toronto, the consequence is restricted to the proposal's satisfying Component (c) of Policy 3.5.1.1 of the OP, which is one of many policies that proposals have to satisfy to satisfy the test respecting the OP. Satisfying Policy 3.5.1.1. f the OP. has no impact on whether or not the proposal satisfies other Policies in the OP, or satisfies the other three tests under Section 45.1.

11. Are Hotels an allowed use on *General Employment Lands*, notwithstanding the implications of the Mondelez Settlement*?*

One of the key arguments brought up by the Applicants is that Hotels are an Employment use, and that Hotels are allowed on Employment lands, with specific reference to *General Employment Areas*, notwithstanding the Mondelez Settlement. This argument has two parts to it- the first being that Hotels, according to the Applicants, constitute a "service" use, and the second being that "service" uses are allowed in *General Employment Areas.*

I address the first part of their argument, namely Hotels are a service use, by way of Question 12, and the second question by way of Question 13, below:

12. Can Hotels be classified as a "Service use" for planning purposes?

I agree with the Applicants that Hotels are listed as a service use under definition 722 of the North American Industry Classification System (NAICS), as was demonstrated by way of evidence. The Applicants asserted that NAICS in an Official Plan tool because it is used to "evaluate the impact of Economic Development". To determine if NAICS can be utilized as a Planning Tool, I rely on the Executive Summary of the Malone Given Parsons Report (2012), which says:

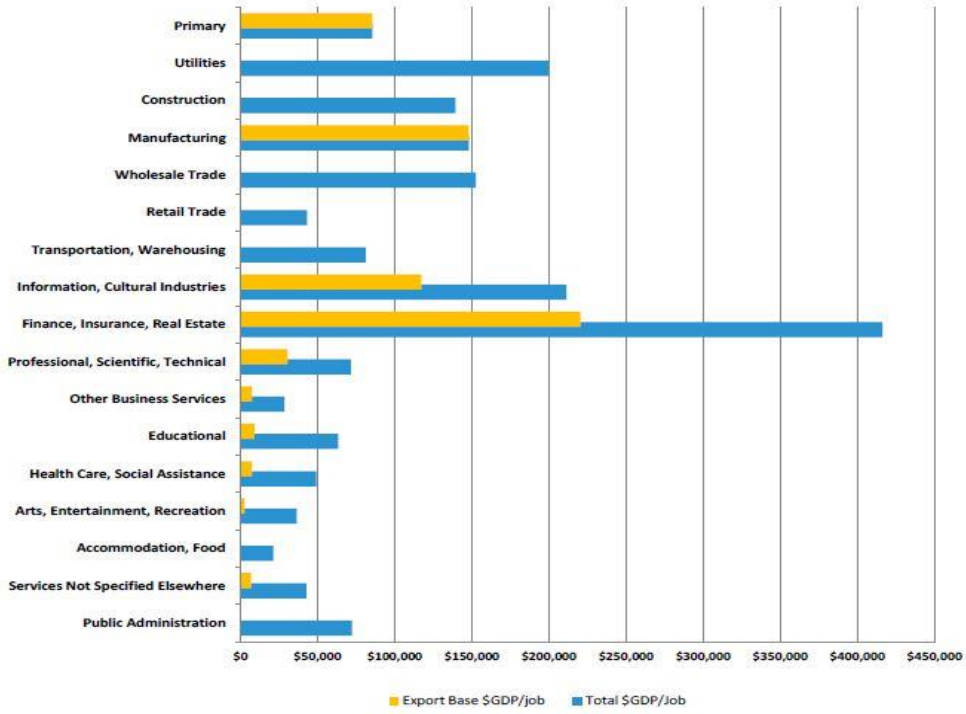
Figure A (referring to Total and Export-Based Wealth Generation ($GDP) by NAICS Sector-) below illustrates both the economic productivity of jobs in different sectors, and the extent to which those jobs are "traded" or export-based (e.g., manufacturing, finance and insurance), or community-based (e.g., retail, government services). Export-based sectors are generally considered to be the drivers of wealth creation in an economy. High export-based jobs sectors are also high job multiplier sectors –

manufacturing and finance and insurance leading among them. These are the highest leverage jobs in the city's economy.

By way of an editorial note, "Figure A" appears on the next page.

According to the Applicants, NAICS is an OP tool because it is used to evaluate the impact of Economic Employment. I respectfully disagree with the Applicants, because the evaluation they speak of, as seen in the paragraph on the previous page, helps to distinguish between jobs which are export based, versus those that are community-based- any question pertaining to export based versus community based jobs is not a planning question, let alone being pertinent to Employment Lands.

Figure A: Total and Export-Based Wealth Generation ($GDP) by NAICS Sector



Source: C4SE-SPI.

FIGURE 2- EXCERPTED FROM THE MALONE GIVEN PARSONS REPORT ABOUT CLASSIFICATION OF INDUSTRIES BASED ON NAICS

The Planning questions with respect to Employment Lands focus on which uses are permitted where, and why- this question is completely unrelated to the question of preferring export used businesses versus community based businesses, which is the focus of the paragraph recited from the MGP Report, preceding Figure 2, above . To reiterate what was stated earlier, the planning issues focuses on "permitted "versus "non-permitted", uses, as opposed to establishing preferences based on earning potential. The Applicants did not introduce any evidence to demonstrate that there

exists a nexus between the permissibility of a given use on Employment Lands, and its revenue-potential.

I agree with the City where they state that if NAICS were an OP tool, it would be referred to at least once in the Planning documents that are the bread and butter of planners, such as the PPS, the Growth Plan, the Official Plan, the Zoning By-Law, and the Planning Act- the expression NAICS is nowhere to be found in the Planning Documents.

In the absence of such evidence, I find that NAICS is not a Planning Tool, and any results arrived at through the use of NAICS are not pertinent to a planning analysis of Employment Areas. In other words, I find that the Applicants have not demonstrated that Hotels are a "service use" for planning purposes

13.Are Hotels allowed on General Employment Areas, if even removed from the Core Employment Areas, as a result of the LPAT's directions resulting from the Mondelez Settlement?

The Applicants make two important arguments, which are related to each other. The first is that Hotels have "always been" allowed on General Employment Areas, notwithstanding the Mondelez Agreement, which prohibited its use in Core Employment Areas. The second component of this argument is that the permission for Hotels on General Employment exists, by virtue of the expression "*all types of retail and service uses*", as seen below in Policy 4.6.3:

"General Employment Areas are places for business and economic activities generally located on the peripheries of Employment Areas. In addition to all uses permitted in Policies 4.6.1 and 4.6.2, permitted uses in a General Employment Area also include restaurants and all types of retail and service uses."

The second component is analyzed first, followed by the first component of the above argument.

The Applicants contend that since the Mondelez Settlement made no changes to the the expression "*all types of retail and service uses*", the impilicit permission granted to Hotels, by virtue of being retail, and service uses, is undisturbed. By way of a solution to these questions, I find that if the second question can be answered i.e. the question of Hotels constituting service uses, there would be an effective answer to the first question of whether or not there is permission for Hotels on General Employment Lands, as the Applicants assert.

I note that a finding about Hotels not being Services uses for planning purposes, on the basis of NAICS, was made in the previous question. To answer the other two questions raised by the Applicants, I make the assumption that Hotels are Service uses, and then investigate if this approach helps satisfy the Policies in Section 4.6 about permissible uses.

Prima facie, the expression " *all types of retail and service uses"* reads such that it can be reasonably infered that the entire spectrum of service uses are allowable in *General Employment Areas*. Since Policy 4.6.3 refers to Policies 4.6.1 and 4.6.2, it is important to recite Policies 4.6.1 and 4.6.2 below, with relevant, and important phrases bolded and underlined, which provide information about the intended uses of the General Employment Lands:

Core Employment Areas

4.6.1. *Core Employment Areas are places for business and economic activities. Uses permitted in Core Employment Areas are manufacturing, warehousing, wholesaling, transportation facilities, offices, research and development facilities, utilities, industrial trade schools, media facilities, and vertical agriculture*.

4.6.2. ***The following additional uses are permitted provided they are ancillary to and intended to serve the Core Employment Area in which they are located****: parks, small-scale restaurants, catering facilities, and small-scale service uses such as courier services, banks and copy shops. Small scale retail uses that are ancillary to and on the same lot as the principal use are also permitted. The Zoning By-law will establish development standards for all these uses.*

It is very important to note that even in the Core Employment Areas, the additional uses listed are permitted if and only if "***they are ancillary to, and intended to serve the Core Employment Area***"- for example, a small scale restaurant is not adequate in, and of itself, to be deemed an appropriate additional use, in the absence of demonstrable services to the Core Employment Area. When the absence of the word "Hotel" in the above expression is contrasted with the presence of words such as banks, copy shops ets, there arises a fundamental question about whether Hostels can even be contemplated as "additional uses", serving the Employment Area in which they are located.

It is critical to note the limitations placed on "additional uses" by restricting them to those which demonstrably serve the Employment Area, because according to the Applicants, the Hotel use is a service use which has lingered on in the General Employment Areas, notwithstanding being removed from the Core Employment Areas. Returning to Policy 4.6.3- General Employment Areas, we find:

"*In addition to all uses permitted in Policies 4.6.1 and 4.6.2, permitted uses in a General Employment Area also include restaurants and all types of retail and service uses"*

Policy 5.6.3 (Interpretation) of the OP has pertinent information that helps contextualize the above Policy: " *Unshaded text and sidebars within Chapters One to Five are provided to give context and background and assist in understanding the intent of policies, but are not policy*." Reading the explanatory text on Page 4-15 of the OP (on the page preceding the recitation of these Policies) , the sentence recited below is found,which I find to be enlightening- I have underlined the phrases which I find to be specifically pertinent to interpretation of the Policy 4.6.3:

"General Employment Areas are generally located on the periphery of Employment Areas on major roads where retail, service and restaurant uses can serve workers in the Employment Area and would benefit from visibility and transit access to draw the broader public."

The underlined phrases impart a nuance to the interpretation of the Policy, and make it clear that there has to be a demonstrable nexus between the service use in question, and its ability to serve workers in the Employment Area. Applying this concept to whether or not a Hotel can be a service use, within the ambit of the above Policy, there would have to be a demonstrable nexus between the Hotel use, and the existing uses in the Employment Area- as a hypothetical example, if the workers employed in various industries in the Employment Area rented rooms at the proposed Hotel, there could be a demonstrable nexus between the "*service use*" and "*services to the workers*", such that the intent and purpose of the OP here would be fulfilled.

Notwithstanding the voluminous evidence from the Applicants, there is nothing to demonstrate that the workers who work in the Employment Area (Core and/or General) would benefit from the Hotel, if it were approved. The lack of a demonstrable connection between the Hotel and the workers who work in the surrounding Employment Area, is the proverbial Achiless Heel of the otherwise intriguing argument put forward by the Applicants. Consequently, I find that the Hotel is not a Service use, such that the intent and purpose of Policy 4.6.3 can be fulfilled.

I now return to the question of the "lingering use" of whether Hotels continue to be present in the General Employment Areas, even when removed explicitly from the Core Employment Areas. As I understand the Applicants' argument, Hotel uses were allowed in General Employment Areas, by virtue of the all uses allowable on Core Employment Areas being mirrored, and simultaneously allowed in the former. However, when the Mondelez Agreement removed Hotel uses from the Core Employment Lands, it did not specifically remove the Hotel use from the General Employment Lands- in other words, "Hotels" may have been removed from the Core through an explicit Order of the LPAT, but "linger" in the General Employment Areas, because they have not been removed explicitly.

I disagree with this argument because the very introduction of Hotel uses in General Employment Lands, is itself a consequence of the latter mirroring all uses on Core Employment Lands, with an emphasis on "mirror". In other words, if the "source´of a given use is specifically removed in the latter through an Order of the LPAT, the "reflection", or the "mirror" uses of the source is automatically removed i.e. Hotel uses in the General Employment Areas, are removed by virtue of how they were introduced in the first place, namely as a mirror of what exists in the Core Employment Areas- should the source of the image be removed, the image is automatically removed, and does not require a legal order- the removal of the mirrored image, when the source is removed is an axiomatic logical truth, that is beyond contention, and does not have to be specifically ordered by a Tribunal. Consequently, I disagree with the reasoning of the Applicants, that a specific Order is required to remove the "lingering" uses of Hoteld from General Employment

Areas, when the Mondelez Settlement removed the source of the use from the Core Employment Areas. This finding is supported by the lack of the specific appearance of the word "Hotel" in the list of secondary uses found in Policy 4.6.2 (*parks, small-scale restaurants, catering facilities, and small-scale service uses such as courier services, banks and copy shop*). In addition, Hotels don't demonstrate any benefit to the users/workers in the Core or General Employment Areas, as discussed and established in this Section.

I note that the Applicants highlighted that the question of "retail uses" is before the LPAT - I agree with their observation, and will consequently not make a finding about a Hotel being a retail use, for the purposes of interpreting Policies 4.6.1- 4.6.3 of the OP.

As a result of the above analysis, I find that Hotels are not permitted in General Employment Areas, as service uses, unless there is demonstration of a a very explicit relationship between the Hotel, and services provided to workers who work in the Employment Area. When this finding is juxtaposed on the earlier finding about Hotels not constituting service uses, as a result of NAICS analysis, I find that Hotels are not Service uses, in the *General Employment Areas*, as the Applicants contend.

14. Can there be uses permitted by the OP, which cannot constitute conversion, because they were allowed before Conversion Policies came into play?

Before leaving this discussion, it is important to answer another issue raised by the Applicants- namely "*There are uses permitted by the OP, which under certain circumstances , cannot constitute conversion, because they were allowed before the Conversion Policies came into play*"

According to the Applicants themselves, the above position rests on two "premises"- the first is that if the policies governing the application when it was submitted, permitted a certain use, then the application does not constitute a conversion. The second premise is that if a use is permitted by the OP, before the Policies regarding a conversion came into place, then the use would not constitute a conversion.

The second premise, as stated above, is clearly erroneous, because the OP looks to implement higher level Provincial Policies, and cannot consequently allow a use, that has been disallowed through changes to higher level Provincial Policies. If one wanted to introduce a use that has been disallowed, then one does not have a choice but to apply through an MCR.

The first premise, about a given use not constituting a Conversion, because it was allowable under a former set of Policies, is questionable because none of the Policy documents made available to the TLAB, make reference to the idea of "grandfathering" such uses. Indeed, the Applicants did not bring forward any examples of how such uses have been grandfathered, nor offered any other evidence in support of their assertion. Given that the OP implements the higher level Provincial Policies, changes to the latter result in changes to the implementation of

the OP- one cannot shelter from the impact of changes to Provincial Policies, with the argument that has been no direct change to the OP, because the latter always reflects the former.

As a consequence of the above analysis, I find that a Hotel cannot be permitted at the Site, because it was allowed by the OP at some point in time

15. Could the Hotel constitute a Sensitive use, which would then negatively impact the as-of-right uses , such as Employment in an Employment Area?

The Applicants stated numerous times during the course of their own questioning of the City's Witnesses, that a "*sensitive land use did not have to be eliminated, but mitigated, and that the means of mitigation could be identified through specific studies, such as the Valcoustics Report for noise, as well as the Trinity Consultants Report on pollution*. The City's Witnesses were unwavering in their response- while the Applicant may have submitted these reports two years ago, no "peer review" had been conducted, as a consequence of which no issues with the Site, or the Studies in question, had been identified. In response to the Applicants' suggesting that OPA 231 had a "framework" to manage the sensitive uses, ***if the use in question was an appropriate use***, (my emphasis), the City's Witnesses repeatedly stated that such issues are best responded to through an MCR request, as opposed to a minor variance application, given the scope of an MCR process, and the range of involvement and engagement of other City departments, besides Planning. Given that I have found that the Hotel uses are themselves not permitted on Employment Lands, I find that there is no need to make a finding on whether the Hotel is a sensitive use- the finding is redundant, and of theoretical interest at best.

This finding is supported by the Applicants' very own approach to this issue, where they agreed that the use in question would have to be found to be appropriate, before the issue of sensitive uses can be addressed.

No weight is given to the "counter example", provided by the Applicant about the introduction of a "day care centre" at the Unilever Site in the Don Valley area, which is a consequence of a Settlement between the City and the services provider, which included the removal of industrial uses from the Site. As stated in the answer to Question 2 in the Section, there is a contrast between the contested, and the consented, and the latter cannot be used to model the former.

16. Does the proposal satisfy the test of maintaining the purpose and intent of the Official Plan?

Of the corpus of evidence placed before me by the Applicants, the most voluminous, and complex components correspond to the test of maintaining the purpose, and intent of the Official Plan. Many of the questions raised by the Applicants hav already e been answered separately by way of specific questions, earlier in this Section. I think that it would be helpful if the main elements of the Applicant's

argument on which findings have been made earlier in this Section can be listed separately, followed by the findings in question.

- The Order passed by the LPAT on August 16, 2018, with respect to restricting Hotel uses on Employment Lands, was an Interim Order, and the Order passed on January 8, 2019, was the Final Order. Because the Application for the approval of variances was commenced in between these two dates, the Clergy Principle ought to apply, and the Application should be analyzed according to the former OP, which allowed Hotel uses on Employment Lands- ***My finding is that the the Clergy Principle is inapplicable because the Order, passed by the LPAT on August 16, 2018, makes an explicit finding about disallowing Hotels on Employment lands. The Order dated January 8, 2019, merely "tidies" up the Order dated August 16, 2018- there are no substantive changes in content between the Orders, with respect to generally permitting Hotels on Employment Lands.***

- Notwithstanding the LPAT's Orders resulting from the Mondelez Settlement which removes Hotel Uses from Employment Lands, the Applicants submit that Hotel Uses can be allowed on General Employment Lands, because they are "Service Uses". The "Service Uses" argument relies on the classification of Hotels as Services Uses under NAICS- ***My finding is that NAICS is not a planning tool, and that conclusions made on the basis of NAICS, cannot be applied to decisions regarding Policies in the Official Plan***. ***Secondly, even if Hotels are assumed to be Service Uses, the Policies in Section 4.6 are not fulfilled, because the Policy is crystal clear about the need to demonstrate benefit to the individuals working in the General Employment Area, and the use in question. Since no such benefit is demonstrated in this case, the Hotel is not found to be a service use, which can be established in the General Employment Area.***

It is important to note that the question of "lingering uses" of Hotels on Employment has been explored under Policies 4.6.1- 4.6.3, earlier in this Section, and the finding is that there is no such lingering use resulting from these Policies, which permits Hotels on General Employment Lands.

The discussion below focuses on Policies 2.2.4.2 and 3.5.1.1, of the Official Policy, because the the Applicant states that their proposal satisfies these Policies:

However, I believe that it would only be fair to analyze the evidence by the Applicants in analyzing Policies 2.2.4.2 and 3.5.1.1, in light of the volume of work and effort invested by them to present their evidence:

Relevant Sections of Policy 2.2.4.2 are recited below:

Employment Areas will be used exclusively for business and economic activities in order to:

c)provide for and contribute to a broad range of stable employment opportunities;
k) contribute to complete communities by providing employment opportunities that support a balance between jobs and housing to reduce the need for long-distance commuting and encourage travel by transit, walking and cycling; and

The key question is whether these positions satisfy the definition of "employment" in the context of "***Employment Areas***" (my emphasis), as stated at the very beginning of the Policy. It is interesting to note that there is no definition of "Employment" provided in any of the standard Planning documents, such as the Zoning By-law, or the OP. However, the definition of "***Employment Areas***" , as provided in the Growth Plan, 2019, is:

Means those areas designated in an Official Plan for clusters of businesses and economic activities including, but not limited to, manufacturing, warehousing, offices and associated retail, and ancillary facilities."

When discussing the economic advantages of permitting the proposed hotel at the Site, the Applicant discussed how approving the proposal would help increase the overall capacity of hotels in Toronto, which in turn, would increase the overall capacity to bid for conferences. Even if the creation of overall capacity in Toronto's hotels were an undisputable fact, there is no demonstrable connection between the proposal, and the proposed industrial or manufacturing uses, as emphasized in the definition of "Employment Areas", as stated above.

I find that the proposal for a Hotel, even if providing "employment" in a literal sense, falls short of satisfying the definition of "Employment Areas" as defined in the Growth Plan.

The relationship between this proposal, and Policy 3.5.1.1, is examined next, beginning with a recitation of the Policy, and pertinent clauses:

Toronto's economy will be nurtured and expanded to provide for the future employment needs of Torontonians and the fiscal health of the City by:

- ***a)*** *contributing to a broad range of stable full-time employment opportunities for all Torontonians*;
- ***b)*** *promoting export-oriented employment*
- ***c)*** *attracting new and expanding employment clusters that are important to Toronto's competitive advantage*;-;
- ***d)*** *supporting employment and economic development that meets the objectives of Toronto's Workforce Development Strategy, including people-based planning and the Vision Statement on Access, Equity and Diversity and promoting infrastructure and support programs to ensure that all Torontonians, particularly equity-seeking groups, such as racialized youth, persons with disabilities, single mothers and new comers, especially refugees, have equitable access to employment opportunities;*

I find that by virtue of the proposal not satisfying the definition of "Employment" in the context of Employment Areas, component (a) of Policy 3.5.1.1 is redundant. With respect to component (c), it is important to acknowledge the voluminous evidence on how the Hotels would contribute to a cluster of Hotels, that would increase the overall capacity of Hotels in Toronto to bid for conferences and conventions. While the evidence did not highlight how the approval of this one Hotel would singularly boost the overall capacity of Toronto's ability to bid for conventions, I am prepared to make the finding that this Hotel, if allowed, would increase, however infinitesimally, the City's overall capacity to bid for conferences and conventions. I also accept that approving this Hotel could result in a concentration of more Hotels in the vicinity of the Site.

However, as per the discussion in Question 9, I also find that this capacity for hosting conventions and conferences, cannot happen at the cost of other Policies in the OP, and applicable tests under Section 45.1. In other words, a final finding of the ability of the proposal to satisfy component (c) is contingent on the ability of the proposal to satisfy other applicable policies, and tests under Section 45.1 of the Planning Act. This question need not be revisited for the purposes of making a finding, unless the proposal satisfies all other policies in the OP, and other tests under Section 45.1 of the Planning Act.

I now examine the evidence pertaining to Component (b)- **Promoting Export oriented Employment**

I note that there the expressions "Export", or "Export oriented Employment" are not found in any of the standard Planning Documents. Consequently, I have to rely on dictionaries to help understand what is an "Export", which in turn informs "Export Oriented Employment"

The Applicants take the view that the services provided by a Hotel constitutes an "export" because there is a purchase of service by an individual, who is outside Toronto. While I don't dispute the intuitiveness of the explanation, the dictionaries interprets "export" differently than has been suggested, as seen below:

MERRIAM WEBSTER- ***to carry or send (something, such as a commodity) to some other place (such as another country)***

OXFORD LEARNERS DICTIONARY- ***the selling and transporting of goods to another country***

It is important to note that in the word "export", there is an inherent element of trading with ***another country*** (my emphasis) as is very explicitly stated in the dictionaries cited above. Even if I were prepared to interpret "*Export*" such that it would not involve another country, it is very clear that the word carries with it, an inherent notion of an "outwardly" movement of goods (from the originating spot to elsewhere) in exchange for benefits, usually of a monetary nature, which move in the opposite direction (i.e. from elsewhere to the originating spot). In others words, if Hotels were an "export" based in Toronto, then the expectation would be that while some definable, or discernable "benefit"/"goods" move from Toronto to any place

outside Toronto, money moves in the opposite direction to Toronto. The "discernable" or "definable" goods in this case are "hotel rooms", which are static, and consequently cannot "move" from Toronto. Given that travelers and tourists move to Toronto from elsewhere to occupy its hotel rooms , I find that Hotels are not an export., and consequently cannot satisfy "Export Oriented Employment". I also note that the Applicants did not introduce any documentation, or reference, by way of evidence, that can be relied upon to support their assertion that a Hotel is an expor, which fortifies my finding that a Hotel is not an export.

Component (d)- Does the proposal satisfy the policy objective of providing "equitable access to employment opportunities"?

I note that the word "equity" occurs three times in Clause (d):

a) *people-based planning and the Vision Statement on Access**, Equity** and Diversity and promoting infrastructure and*

b) *support programs to ensure that all Torontonians, particularly **equity-seeking groups**, such as racialized youth, persons with disabilities, single mothers and new comers, especially refugees,*

c) *have **equitable access to employment opportunities;***

The proposal needs to simultaneosuly fulfill the triple application of "equity" (i.e. (a), (b) and (c)) in the above Policy in order to be approved -any failure to fulfill even one of the three uses of "equity", means that the proposal has failed this component of Policy 3.5.1.1 in its entirety. The expression occurs for the first time in a reference to the Vision Statement on Access, Equity and Diversity. The second reference is found when listing the intended beneficiaries, where we find the reference to the expression "**Equity seeking groups**". The third reference is found when the intended outcomes are discussed i.e. **Equitable access to employment opportunities.**

Consequently, it is important that "equity" be defined, and interpreted, as appropriate in all the three contexts. I begin with the third instance of the use of the word "equity" i.e. "*equitable access to employment opportunities*"

It is commonly understood,(and was acknowledged as such in Oral Argument by both Parties), that "equity" focuses on the comparability of outcomes, as opposed to a comparability of treatment- in other words, "equity" focuses on the ends as opposed to the means. Given the emphasis on the ends, I interpret this expression "*equitable access to employment opportunities*" to mean that employment outcomes have to be comparable for all individuals, irrespective of whether they are encumbered by barriers, (as would be true of the intended beneficiaries of this Policy), or whether the individual is born, and brought up with a silver spoon in the mouth.

Seen from the perspective of equity, touting minimum wage jobs as a "benefit" of the proposal, for disadvantaged groups, contributes to the the very perspective that equity statements are conceived to challenge. The City of Toronto's Workforce

Development Strategy is aspirational in its objectives, and seeks to broaden opportunities for those who face barriers to finding better jobs- in other words, it aims to obtain "better" employment outcomes than what is currently available to the intended beneficiaries, which defaults to minimum wage jobs, because these are the least paying jobs at the very bottom of the employment ladder. I find that promoting minimum wage jobs to communities, who cannot currently access wages higher than minimum wage, essentially exemplifies the concept of "old medicine in a new bottle", which cannot satisfy the aspirational nature of better job outcomes, as discussed here. The Applicants did make reference to a few management jobs, that paid more than minimum wage jobs, but provide little information about how much these jobs pay, and more importantly, how do they satisfy equity principles discussed here.

There is no evidence submitted to demonstrate that higher wages cannot be accessed by equity seeking groups in the manufacturing industry, notwithstanding the existing barriers for the intended beneficiaries in this case. There is also no evidence to demonstrate that the intended beneficiaries, including equity groups, are encumbered in terms of finding minimum wage jobs, in the Greater Toronto Area, or the vicinity of this Site.

Lasty, there is no evidence to demonstrate that people from privileged backgrounds are interested in, much less make a beeline to acquire minimum wage jobs- consequently, I find that the positions created through this proposal, cannot satisfy the definition of "equitable access", because it cannot fulfill the expected result of "comparable outcomes".

Given that the proposal has to satisfy all three uses of the expression "equity" in the proposal, I find that its inability to satisfy ***Clause (c)*** i.e.***have equitable access to employment opportunities***,, prevents the proposal from satisfying the policy, in its totality, as a result of which it fails Clause (d) of Policy 3.5.1.1.

Given my earlier observations about clauses (a) of Policy 3.5.1.1 being redundant, and a final finding being made on (c) if and only if other tests under Section 45.1 are fulfilled, and the proposal's inability to fulfill component (b) and (d), I find that the proposal fails Policy 3.5.1.1 of the OP.

On the basis of the analysis presented above, I find that the proposal does not satisfy the Intent and purpose of Policies 3.5.1.1. and 2.2.4.2, in addition to Policy 4.6.3., and consequently fails the test of maintaining the intent, and purpose of the Official Plan.

17. Does the proposal satisfy the intent and purpose of the Zoning By-Law?

One of the prinicipal differences between the Zoning By-Laws and the Official Plan, is while the latter allows for interpretation of words and expressions, the former is very prescriptive, and does not allow for interpretation of words and expressions- the reading of the Zoning By-Law is textual. The consequence of this contrast is that it becomes difficult to read meanings into a given word, by way of interpretation, or

interpolation to signify a given use, unless the use is explicitly stated, or the use proposed by the proposal, closely parallels one of the stated uses.

On the basis of Zoning By-law 569-2013, the allowable uses in areas zoned Employment are

1) Use - E Zone

In the E zone, the following uses are permitted:

Ambulance Depot, Animal Shelter , Artist Studio Automated Banking Machine Bindery, Building Supply Yards , Carpenter's Shop, Cold Storage, Contractor's Establishment Custom Workshop Dry Cleaning or Laundry Plant , Financial Institution , Fire Hall Industrial Sales and Service Use Kennel , Laboratory

All Manufacturing Uses except Abattoir, Slaughterhouse or Rendering of Animals Factory; Ammunition, Firearms or Fireworks Factory; Asphalt Plant; Cement Plant, or Concrete Batching Plant; Crude Petroleum Oil or Coal Refinery; Explosives Factory; Industrial Gas Manufacturing; Large Scale Smelting or Foundry Operations for the Primary Processing of Metals; Pesticide or Fertilizer Manufacturing; Petrochemical Manufacturing; Primary Processing of Gypsum; Primary Processing of Limestone; Primary Processing of Oil-based Paints, Oil-based Coatings or Adhesives; Pulp Mill, using pulpwood or other vegetable fibres; Resin, Natural or Synthetic Rubber Manufacturing; Tannery Office Park Performing Arts Studio; Pet Services; Police Station; Printing Establishment ; Production Studio Public Works Yard Service Shop Software Development and Processing Warehouse Wholesaling Use

It is important to note that there are none of these listed uses correspond, or parallel Hotel uses. It is important to look at uses that are permitted with conditions:

Permitted Use - with Conditions

Use with Conditions - E Zone

In the E zone, the following uses are permitted if they comply with the specific conditions associated with the reference number(s) for each use in Clause 60.20.20.100 of Zoning By-law 569-2013

Body Rub Service (32), Cogeneration Energy (26), Crematorium (33) Drive Through Facility (5,21), Eating Establishment (1,19,30) Marihuana production facility (2) Metal Factory involving Forging and Stamping (25) Outdoor Patio (9), Open Storage (10), Public Utility (27,29), Recovery Facility (8), Recreation Use (7), Renewable Energy (26), Retail Service (3) Retail Store (4,30), Shipping Terminal (11), Take-out Eating Establishment (1,30), Transportation Use (28) Vehicle Depot (6)

Vehicle Fuel Station (16,30), Vehicle Repair Shop (23) Vehicle Service Shop (17,31), Vehicle Washing Establishment (18) [By-law: 1198-2019]

Even without reference to the specific conditions, identified through the reference numbers, I find that none of the stated uses are comparable to Hotel uses- indeed the closest is an Eating Establishment, which already exists in the form of the Banquet Hall at the Site. Given that the LPAT still has to address the issue of Retail use in the context of Employment Areas, there is no information before me that supports the use of Hotels as fulfilling the intent and purpose of the Zoning By-law 569-2013.

I note that Conditions 3 and 4, in the text of the Permitted uses, which follow the listing above, are not recited, because they discuss “Retail Services” and “Retail Store- together with manufacturing use”, which cannot be determined at this point in time

18. Does the proposal satisfy the test of minor?

The test of minor focuses on the impact of the proposal on the Employment Area, such that proposals reaching the threshold of unacceptable adverse impact, have to be refused.

The Applicant argued that the withdrawal of the Appeal by Party Nosiru, and the obtaining of ECAs by the five properties identified by the City as needing ECAs, as proof of the proposal’s having no impact, and consequently satisfying the test of minor. I understand that Party Nosiru’s Appeal rested on traffic parking issues, as opposed to the larger question of introducing Hotels use on Employment lands. Consequently, no weight is attached to the withdrawal of Party Nosiru’s Appeal, and the proposal’s ability to satisfy the test of minor.

From the evidence, it is unclear at what point in time did the properties in the vicinity of the Site that currently have ECAs obtain them, and what information was relied upon to grant the businesses ECAs, and whether the framework for granting ECAs has remained the same over a period of time. I find the ECA certifications that have been granted to the businesses identified by the Applicants to be an empiricism, without a theoretical rationale linking it to planning grounds- consequently, no weight is attached to these empirical observations for the purposes of making a finding on the test of minor

In the discussion respecting the OP, I made the finding that the proposal fails Policies 4.6.3, and 3.5.1.1., because there is no demonstrable benefit whatsoever, or even a demonstrable connection to local businesses. Consequently, I find that introduction of uses, which may benefit as a result of location, proximity to highways and the Airport, but without demonstrable benefit to others, including businesses in the vicinity, are the antithesis of the much praised “symbioitic relationship” in the Official Policy, and consequently cannot satisfy the test of “minor”.

Lastly, I am concerned that introducing a Hotel use in the General Employment Areas, where this Site is located, in the absence of evidence demonstrating that the Hotel is a Service use, can result in a slow erosion of the LPAT's landmark decision of restricting Hotel uses on Employment Lands, based on the Mondelez Settlement- while allowing this Application to succeed may not result in a dramatic dismantling of the LPAT decision *per se* , there is the realistic risk that the Mondelez Settlement decision will be chipped away gradually, brick by brick, building by building, block by block, because of the creation of an alternate route for approval of Hotels on Employment Lands, through minor variance applications. A Decision that results in the creation of an alternative methodology to the approvals of Hotels on Employment Lands cannot be deemed to be minor.

As a result of the above reasons, I find that the proposal does not satisfy the test of minor.

19. Does the proposal satisfy the test of appropriate development?

I find that the proposal fails the test of appropriate development for the following reasons, :

Hotel Uses are not allowed on Employment Lands: This question has been answered very clearly in the negative by the Mondelez Settlement, which in its final Order dated January 8, 2019, stated that Hotel uses were not permitted on any Employment lands outside SASP 531. Nothing has changed in terms of the impact of this decision, because I have disagreed with the Applicant's contention that Hotels can be allowed on General Employment Lands by virtue of being a "service use". In other words, Hotel uses are "not appropriate" for Employment Lands

The proposal does not align with Public Interest: On the basis of the findings of the appropriate uses of Employment Lands (Question 4 in this Section) , I find that replacing manufacturing uses by Hotels on Employment Lands exemplifies the colloquialism about fixing something that ain't broke, with the addition of hitherto unexperienced issues, such as the potential reduction of intended benefits to beneficiaries, because it offers minimum wage positions, compared to manufacturing jobs which offer a significantly higher wage. Lastly, it means that land specifically set aside for Employment Uses, which is a limited, if not precious resource, is being sacrified, without the accrual of any benefits to the community, or the government- such a result is not consistent with the stated intentions in the higher level Policies about the use of Employment Lands. The Applicants did refer to a few "management" jobs, but did not offer any details about how much these positions paid, though they presumably pay more than minimum wage.

As a result of these reasons, I find that the proposal does not satisfy the test of appropriate development.

20 .Is the proposal consistent with Section 3 of the Planning Act?

To determine whether the proposal satisfies Section 3 of the Planning Act , which requires applications to satisfy higher level Provincial Policies, such as the **Provincial Policy Statement (PPS, 2014) and Growth Plan for the Greater Golden Horsehoe (Growth Plan, 2019)** , it is important to understand how the Higher Level Provincial Policies intend Employment Lands to be used. By way of an editorial note, the evidence provided to the Tribunal focused on the former PPS and former Growth Plan, which will be relied on for analysis, though both plans were introduced in 2020- however, the evidence did not directly address the new Provincial Plans.

I find that in the Growth Plan (2019), the need to "protect" Employment Lands is stated in no uncertain terms. The Growth Plan identifies different methodologies, e.g. limiting the use of retail, prohibiting residential uses on Employment Lands, to ensure that Employment Uses cannot be used for non-employment uses. The PPS(2014) also discusses the need to "*protect and preserve employment areas for current and future uses, and ensure that the necessary infrastructure is provided to support current and projected needs*."

I find that that there is nothing in the higher level Policies that explicitly encourages Hotel Uses. In addition, I note my earlier findings about Hotel uses cannot be allowed on Employment Lands, even in the context of the Official Policy, and the fact that the Official Policy implements the higher level Provincial Policies at the Municipal level- when these findings are juxtaposed on each other, I find that the Provincial Policies do not allow for Hotel uses at a theoretical, as well as at a practical/implementational level.

Consequently, I find that the proposal for a Hotel at 1745 Albion Road does not satisfy the higher level Provincial Policies under Section 3 of the Planning Act.

Given that the proposal has failed all four tests, I find that the City's Appeal should be allowed, and the decision of the Committee of Adjustment be set aside.

21. **Does the proposal constitute a Conversion?**

To reiterate what was stated at the beginning of this Section, the City contended vigorously throughout the Proceeding that the proposal for a Hotel at 1745 Albion Road constitutes a Conversion, and is best addressed through a MCR . While I respect the City's conclusion, no finding is made about the proposal constituting a Conversion, because such a finding is beyond the jurisdiction of the TLAB.

Based on the reasoning stated in the answer to Question 1, there is no need to recite or analyze the conditions submitted by the Applicants, since the proposal itself is refused . As stated at the beginning of the Analysis Section, Variances 2 and 3, recited below, would have to be approved only if the Hotel use were approved.

1. The building setback to the lot line abutting Highway No. 27 of 3.4m instead of minimum 26m.
2. The Landscape strip is 0.06m along the Highway No. 27 front lot line, instead of minimum 3m

Given my finding that the proposal for a Hotel use at the Site needs to be refused, the variances listed above are automatically refused.

In conclusion, it is important for me to acknowledge the length of time it has taken to release this Decision, after the completion of the Proceeding, and the submissions by the Parties. Besides having to consider a very complex question, with numerous facets, it has taken me a significant amount of time to traverse the labrynthine arguments laid out by the Parties, each of which has multiple moving parts, with mutual nexuses with other parts. This task was complicated by the initial quality of the Hearing tapes that I had obtained, which had to be heard multiple times to refresh my memory- I am very grateful to the TLAB Staff for their patience in helping me access good quality recording of the tapes, and allowing me to access the TLAB offices, when necessary, to complete the task of transcribing the evidence. The fact that all these tasks had to completed in the middle of COVID complicated an already complex process, resulting in the length of time taken to release this Decision.

Lastly, I take this opportunity to thank both Ms. Amber Stewart, and Mr. Michael Mahoney, Counsel for the Applicants, and Appellants respectively, for their respectful cooperation, thought provoking discussions and able arguments throughout this long Proceeding. As an Adjudicator, I am satisfied when the process of adjudicating an Appeal provides me with food for thought; adjudicating this Appeal has resulted in my being rewarded with a veritable feast for thought.

DECISION AND ORDER

1) The Appeal respecting 1745 Albion Rd is allowed, and the decision of the Committee of Adjustment dated October 25, 2018**,** is set aside. The requested variances are refused.

So orders the Toronto Local Appeal Body.

X

S. Gopikrishna
Panel Chair, Toronto Local Appeal Body