

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: February 25, 2022

CASE NO(S): PL140860

PROCEEDING COMMENCED UNDER subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: 10 QEW Inc.
Appellant: 100 Metropolitan Portfolio Inc.
Appellant: 1095909 Ontario Limited (Wynn Group of Companies)
Appellant: 1107051 Ontario Ltd.; and others
Subject: Proposed Official Plan Amendment No. 231
Municipality: City of Toronto
OLT Case No.: PL140860
OLT File No.: PL140860
OLT Case Name: A. Mantella & Sons Limited v. Toronto (City)

Heard: December 6 to 17, 2021 by Video Hearing

APPEARANCES:

Parties

Counsel

City of Toronto

A. Biggart, B. Kapelos

Al Reisman Ltd., 1182929 Ontario Inc. and May Flower Landscaping Design Ltd.

D. White

Loblaw Properties Limited and CP REIT Ontario Properties Limited

D. Neligan

DECISION DELIVERED BY G. BURTON AND D.S. COLBOURNE AND ORDER OF THE TRIBUNAL

[1] These four Appeals to the Ontario Land Tribunal (“OLT” or the “Tribunal”) (previously, the Ontario Municipal Board and then, the Local Planning Appeal Tribunal) resulted from the enactment of Official Plan Amendment No. 231 (“OPA 231”) to the City of Toronto Official Plan (“OP”) in 2013 (see Tab 8 of Exhibit 1A). It established economic health policies for the City of Toronto and the policies, designations and mapping for *Employment Areas* within it.

[2] Following ministerial approval of the OPA in 2014, a total of 178 appeals were filed to the Tribunal, including appeals of the whole of OPA 231 on a city-wide basis as well as site-specific appeals.

[3] Certain events now contribute to the need for an early disposition of most of these appeals. The City of Toronto is obliged to conduct Growth Plan for the Greater Golden Horseshoe (“GP”) conformity exercises, as well as a Municipal Comprehensive Review (“MCR”) by July 1, 2022. Thus, the City of Toronto wishes to finalize these matters, rather than having the previous MCR run into the 2022 requirement. This would permit the Tribunal’s findings to be incorporated into the new MCR. Another factor was the filing of Ontario Regulation No. 305/19 (“O.Reg. 305/19”) on September 6, 2019, providing transitional rules for growth plans under the *Places to Grow Act, 2005*. This effectively transitions the consideration of OPA 231 and the Appeals to it, back under the **GP 2006**, so that later GPs do not apply to these Appeals.

[4] The conversion policies for employment lands in the GP 2006 differ from those in the later GP 2019. The City of Toronto had already started to receive conversion requests under the GP 2019, but this later GP has no application to these Appeals.

[5] The Tribunal had determined, in April 2021, to use a phased approach to address the City-wide Appeals, based on their subject matter. Six phases were established, along with several sub-phases. These included Phase 4 – Retail in Employment Areas, and Phase 5 – Cultural Policies, both already brought into effect by a Tribunal Order of April 26, 2021.

[6] The Tribunal established by the Order of April 8, 2021 that the site-specific Appeals to OPA 231 would be considered as Phase 6 of the Hearing. This would include number 6B, the lands under appeal located in North East Scarborough.

Phase 6B – North East Scarborough

[7] Phase 6B addressed the following site-specific Appeals in the Milliken Employment Area (“MEA” or “Milliken”), as numbered originally by the Tribunal:

1. Appeal No. 54, by Al Reisman Ltd. concerning 3241, 3251, 3261 Kennedy Road and 19, 23, 25, and 27 Passmore Avenue ("Reisman");
2. Appeal No. 9, by 1182929 Ontario Inc. concerning 29, 31 & 31A and 41 Passmore Avenue ("1182929");
3. Appeal No. 123, by May Flower Landscaping Design Ltd. concerning 33 Passmore Avenue ("May Flower"); and,
4. Appeal No. 119, by Loblaw Properties Limited concerning 681 Silver Star Boulevard ("Loblaw" or “Choice”).

[8] The factual background and professional planning opinion for the City of Toronto for all these Appeals was provided by Christine Heydorn, qualified as an expert land use planner and land economist of 20 years’ experience, many of these with the City of Toronto. She provides policy leadership and professional advice for corporate initiatives, with planning and policy studies, and also, reviews development applications. She has been involved in the current matters and thus, these Appeals since 2016. In the Fall of 2021, she participated in virtual meetings with officials of businesses located in Milliken to better understand business operations in its north portion.

CONTEXT

[9] Ms. Heydorn outlined the context of all the Appeals within this MEA, so designated on Map 19, Land Use Plan of the OP, entitled *Employment Areas* (Exhibit 1, Joint Document Book, Tab 6, p. 319). This includes about 180 hectares, bounded by Midland Avenue to the east, Kennedy Road to the west, Steeles Avenue to the north, and Finch Avenue to the south. The City of Toronto's 2020 employment survey shows about 1,100 businesses are there, employing about 6,500 people, full- and part-time.

[10] Milliken is essentially divided north-south by a Metrolinx rail line, carrying both freight and passenger service. To provide more frequent GO service on the Stouffville line, Metrolinx is carrying out major improvements to both rail and road infrastructure at the Milliken GO Station (a designated Major Transit Station Area ("MTSA") under the **2006** GP), and also, improvements to Steeles Avenue. These include a grade-separated crossing, a pedestrian bridge over Steeles Avenue, a second track and station platform, and renovations to the existing platform. Also planned for pedestrians are two new tunnels, canopies and shelters, and covered walkways. The construction is expected to be completed by the end of 2022.

[11] Lands south of Steeles Ave. on the west side of the Milliken GO Station, over to Redlea Avenue further west, were subject to the Steeles-Redlea Regeneration Study (see s. 4.7 of the OP). This assessed certain uses other than employment for this area. The result was OPA 231, which redesignated certain lands fronting on the south side of Steeles Avenue as *Mixed Use Areas*. The remaining lands retained the *Employment Areas* designation, together with a Site and Area Specific Policy ("SASP") No. 395. This provided greater details on urban design, built form, and compatible development.

[12] Steeles Avenue forms the boundary between the City of Markham to the north in York Region, and the City of Toronto to the south. The City of Markham's OP identifies the land on the north side of Steeles Avenue as the Local Centre of the Milliken District. This area is thus planned by City of Markham as a focal point for the Milliken community. It

would develop there as an integrated mixed-use area, with transit-supportive residential densities adjacent to the Milliken GO Station.

[13] The present Appellant, Loblaw or Choice, wishes to redesignate its parcel east of the Milliken GO Station and close to the south side of Steeles Ave. from the present *General Employment* (“GE”) designation imposed by OPA 231, to *Mixed Uses* (“MU”).

[14] The other Appellants seek a redesignation of their lands from *Core Employment* (“CE”) to *General Employment* (“GE”).

Reisman – Appeal No. 54, 1182929 – Appeal No. 9, and May Flower – Appeal No. 123

[15] Evidence, on behalf of Reisman and the other Appellants nearby, was provided by John McDermott, a Registered Professional Planner and Member of the Canadian Institute of Planners who has been practicing in the Province since 1971. He was initially retained by Reisman in 2002 to assist with *Planning Act* approvals related to the properties in question. He has provided ongoing consulting services during various initiatives of the City of Toronto, which affect the use of the lands in question, inclusive of OPA 231 as it relates to Employment Lands.

[16] Since June of 2011, upon the City of Toronto initiating a MCR of the policies for lands designated as Employment Areas, he has been actively involved in these considerations and the designations for Employment Lands, especially the lands in these Appeals. He has made numerous written submissions, and attended the Planning and Growth Management Committee of the City of Toronto during various iterations of the policies and designations prior to OPA 231.

[17] Mr. McDermott’s document book contains extensive mapping of the north MEA, Maps 1A-4, together with a very helpful list of the properties by owner (Figure 1B, Land Use Index). His Maps identify existing uses, with an overlay of the OPA designations, separation distances and potential influence areas (see below) for existing uses.

[18] The owner Appellants, in the Reisman appeals, propose that portions of their lands have a GE or **General Employment** subcategory of the Employment designation, while OPA 231 created a CE or **Core Employment** subcategory for the subject lands.

Location of the Lands

[19] The Reisman lands are approximately two blocks fronting on the south side of Passmore Avenue (one street south of Steeles Avenue), between Kennedy Road on the west and the Metrolinx corridor on the east. They do not include the corners at Kennedy Road and Passmore Avenue (a service station) and Passmore Avenue and the Metrolinx corridor. Milliken Boulevard serves as a mid-block collector road between Finch Avenue to the south, and to the north, the intersection of Passmore Avenue and the (proposed) southerly extension of Redlea Avenue. The May Flower lands are at the south-east corner of the Reisman lands. The evidence provided by Mr. McDermott also applies to the May Flower lands, by request of their owner.

[20] The **west** block of the Reisman lands is between Kennedy Road and Milliken Boulevard (hereinafter, referred to as the Kennedy-Passmore Lands) is currently developed with seven multi-unit, retail and service commercial - industrial structures. Their combined gross floor area ("GFA") is approximately 17,351 square metres ("sq m") or 186,771 square feet ("sq. ft."). Frontage is 173.4 metres ("m") on Kennedy Road, approximately 107 m on Passmore Avenue and 236 m (i.e. 774 feet ("ft.)) on Milliken Boulevard.

[21] The **east** block is between Milliken Blvd. and the Metrolinx corridor (formerly 19, 23 and 27 Passmore Avenue and 300 Milliken Boulevard, or formerly, 25 Passmore Avenue – see below), and 275 -295 Milliken Boulevard were originally developed circa 1980 by Reisman as ten, multi-unit commercial - industrial structures.

[22] Certain of the parcels at Kennedy Road and Passmore Avenue were created by consent in 2003, and subdivided into three blocks. These were approximately 3.87 hectares (9.56 acres) in area, with seven buildings at 3241, 3251, 3261 Kennedy Road,

19, 23 and 27 Passmore Avenue, and 300 Milliken Boulevard. All were formerly 25 Passmore Avenue. The 3,572 sq m were deeded to the City of Toronto for construction of Milliken Boulevard between McNicoll Avenue and Passmore Avenue. The 2.3 hectares, with about 121.6 m (399 ft) frontage on Milliken Boulevard, at 275, 285 and 295 Milliken Boulevard (formerly known as 29, 31 and 31A Passmore Avenue), has now been developed with three multi-unit, commercial-industrial structures.

[23] Reisman acquired 41 Passmore Avenue in 2004. This is about 8,175 sq m or 2 acres, with about 67 m frontage on the south side of Passmore Avenue. Its rear lot line is at the north lot line of the Reisman lands to the south, at 275 - 295 Passmore Avenue. Despite the subdivision of lands and this acquisition, the lands for purposes of this Decision will be referred to as the **east and west block**. The property is bounded on the west by 33 Passmore Avenue, the lands are owned by May Flower.

[24] At the southerly limit of all the Reisman lands, from Kennedy Road to the Metrolinx corridor, are the lands of the Chinese Baptist Church (See 10 A and 10 B on Mr. McDermott's maps, Figs. 1A and 2). The Church is constructed on the parcel west of Milliken, and its parking lot is on the easterly portion. Further development as a daycare is proposed for the east portion (a sensitive use, as discussed below). The evidence is that a daycare on the property would not be a new use and therefore, would not introduce one to this area. These lands are subject to SASP No. 529, which was the result of an agreement with the Church. It is in part an undertaking by the Church not to object to any industrial use on the Reisman properties or in the area.

[25] May Flower is at 33 Passmore Avenue, the south-east corner of the intersection of Passmore Avenue and Milliken Boulevard. As neighbouring property owners, Reisman and May Flower share a mutual concern about the designation of lands to the south of Passmore Avenue, east of Milliken Boulevard, as CE. They prefer a GE designation as more permissive. Kathy Roidis of May Flower requested that Reisman provide planning evidence in support of its Appeal concerning this designation of 33 Passmore Avenue. The principal structure on these lands has a GFA of about 782 sq m. The salt dome

structures located in the rear yard have a combined area of about 904 sq m. The principal structure is currently leased to the following: CAO Refrigeration Inc., fabrication of commercial walk-in refrigerators and freezers; Northern Stone Inc., a landscape contractor; and United Salt Distributors Inc., a wholesale road salt distributor.

[26] All of these lands are designated as “Employment”. OPA 231 proposed that the westerly Reisman block be “*General Employment*” (GE) and the easterly block (including May Flower) be “*Core Employment*” (CE). Possible uses for each are set out in s. 4.6.1 and s. 4.6.2 (Core Employment Areas), and in s. 4.6.3 (General Employment Areas):

Section 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.

Section 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.

Section 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.

[27] Mr. McDermott elaborated:

From a land use planning perspective, the forms of land use permitted within the **Core Employment Areas** are those which may generally be described as Class 2 or 3 industrial facilities, which require relatively large sites, may involve indoor and/or outdoor operations with the potential to generate off-site impacts, point source or fugitive emissions related to dust, odour, noise or other nuisance vectors requiring mitigation in order to provide for an appropriate measure of compatibility with adjacent land uses. Within Core Employment Areas, small scale service uses which are considered ancillary to and which directly support the uses permitted within a Core Employment area are permitted. Small scale

retail uses are restricted to those that are considered ancillary to and which are located on the same lot as the principal core employment use.

In contrast, the policies applicable to lands designated within the **General Employment** land use classification provide for restaurants as well as retail and service uses in addition to the uses permitted within areas designated within the Core Employment land use classification. The policies applicable to General Employment Areas provide for a broader range of employment uses and economic activities of varying scales which are not necessarily characterized as Class 2 or 3 industrial facilities, that is, uses which do not exhibit the need for spatial separation relative to sensitive land uses, may be wholly enclosed and do not require large sites in order to function and which are reflective of smaller enterprises occupying units within a multi-unit office - commercial - industrial complex. (emphasis added).

[28] Mr. McDermott's concern involves the Guidelines for industrial facilities published by the Environmental Approvals Branch of the Ministry of Environment, Conservation and Parks ("Ministry"). These recommend certain separation distances, to prevent or minimize conflicts between "sensitive" uses (see below) and industrial uses. The Ministry issues certificates of approval ("ECPs") for emissions. The requirements of these permits must be met, or businesses could be shut down. Emissions that exceed those permitted because of effects on nearby sensitive uses do not represent good planning, he testified.

[29] Mr. McDermott explained that Industrial and sensitive uses are generally considered to be incompatible, due to adverse effects from industrial operations, especially heavy operations. These industrial uses exist and are contemplated within the Core Employment Areas (that is, east of the Metrolinx GO Rail corridor, south of Passmore Avenue and within the south-central portion of the North MEA). Examples are MetroCon and D. Crupi & Sons Limited.

[30] The Ministry Guidelines categorize industrial facilities into three Classes, according to the objectionable nature of the emissions, physical size and scale of operations, production volumes and/or intensity and scheduling of operations. The Guidelines define Class One, Two and Three Industrial Facilities as:

Class I Industrial Facility

A place of business for a small scale, self-contained plant or building which produces/stores a product which is contained in a package and has low

probability of fugitive emissions. Outputs are infrequent, and could be point source or fugitive emissions for any of the following: noise, odour, dust and/or vibration. There are daytime operations only, with infrequent movement of products and/or heavy trucks and no outside storage. (Comment - Recommended minimum separation distance from sensitive uses is 20 m)

Class II Industrial Facility

A place of business for medium scale processing and manufacturing with outdoor storage of waste or materials (i.e. has an open process) and/or there are periodic outputs of minor annoyances. There are occasional outputs of either point source or fugitive emissions for any of the following: noise, odour, dust and/or vibration, and low probability of fugitive emissions. Shift operations are permitted and there is frequent movement of products and/or heavy trucks during daytime hours. (separation distance 70 m)

Class III Industrial Facility

A place of business for large scale manufacturing or processing, characterized by: large physical size, outside storage of raw and finished products, large production volumes and continuous movement of products and employees during daily shift operations. It has frequent outputs of point source and fugitive emissions of significant impact and there is high probability of fugitive emissions. (separation distance 300 m).

[31] **“Sensitive” land uses** are generally defined under the Guidelines as any building or associated amenity area, indoor or outdoor, where humans or the natural environment may be adversely affected by emissions generated by the operation of a nearby industrial facility. Specific examples of sensitive land uses include the building or amenity area associated with residences, senior citizen homes, schools, day care facilities, hospitals, churches and other similar institutional uses.

[32] Mr. McDermott agreed that for the westerly Reisman lands, proposed by the City of Toronto to be General Employment or GE, “.. that is the appropriate designation for these lands given the existing development rights and the scale and nature of the existing built form.”

[33] However, he qualified this by stating that for the GE-designated lands, in his opinion “... it is appropriate that those lands be subject to a Site and Area Specific Policy which serves to restrict the level of retail and service commercial uses to not greater than 6,000 square metres”. The proposed SASP is set out in Appendix "D" to Mr. McDermott's Witness Statement (Exhibit 5).

[34] The reason for this, he stated, is that the designation of the lands together with a SASP will ensure that the intent of OPA 231 is recognized. This would be by forbidding a change for the entire GFA of the existing structures, or any redevelopment of a property as a “major retail facility” (as defined in s. 4.6.5 of OPA 231, Exhibit "C" to the Affidavit of Christina Heydorn). As well, designation of the lands within a SASP would ensure recognition of the development approvals already granted by the Tribunal under By-law No. 153-2011.

[35] He also opined that such a designation with a SASP is consistent with the PPS effective May 1, 2020, and conforms with the intent and purpose of the Provincial Growth Plan (GP, as above) **effective August 28, 2020** (see the Tribunal conclusion below on the applicable GP.)

[36] For the east block, including May Flower (essentially, the lands fronting on the south of Passmore Avenue, east of Milliken Boulevard), Mr. McDermott was of the opinion that the lands should also be designated GE. A Core Employment Area designation is too restrictive, in his view, and uses permitted in the Core Employment subcategory, which are unlikely to develop on these parcels. GE would allow for a range of uses, well suited to the existing built form, being multi-use commercial-industrial structures, which include retail and service commercial uses. This range fosters an opportunity for an array of smaller businesses consistent with the identified need.

[37] He stated:

It is my land use planning opinion that the Milliken-Passmore lands should more appropriately provide for a diverse range of economic functions throughout lands forming part of the Employment Areas.... An opportunity to provide for redevelopment of the Milliken-Passmore lands for Class 2 and 3 industrial facilities **does not exist** at the present time or within the foreseeable future. The introduction of Class 2 and 3 industrial facilities would be significantly restricted, if at all possible, by reason of the proximity to sensitive land uses, the area of each of the properties in question, and the need to implement mitigation measures to provide for an appropriate measure of compatibility which would negatively impact upon the economic viability of such uses. (emphasis added)

[38] Essentially, he is of the opinion that the City of Toronto cannot accomplish the uses allowed within the CE designation because of the potential “influence” of both existing uses and sensitive uses in the designations proposed, and the size of the separately-owned properties.

[39] He would also restrict the size of certain uses at 275, 285 and 295 Milliken Boulevard in a SASP, which would permit retail and service commercial uses, inclusive of restaurants. However, the GFA of any one such establishment could not exceed 300 sq m, and the combined GFA of all retail and service commercial uses within the three multi-unit commercial-industrial structures could not exceed 4,500 sq m. He opined that such a designation, along with the SASP, is consistent with the PPS 2020, and conforms with the intent and purpose of the GP 2020.

[40] Ms. Heydorn disagrees with Mr. McDermott, both in respect of the change of designation and the proposed SASPs. Once again, she points out that the applicable GP is the 2006 and not 2020.

[41] Addressing the SASP issue, Ms. Heydorn said that in her professional opinion, the requested *General Employment Areas* designation with special provisions for these lands is not consistent with the PPS 2020 and does not conform to the GP 2006. Any proposed GE designation here does not embody good planning and is not in the public interest.

[42] She pointed out that on the issue of the SASP cap, Mr. McDermott overlooked the wording change to the preamble. It now reads:

“All types of retail are provided for in General Employment Areas. However, because major retail developments have the potential for greater impacts, they may be permitted only through **an amendment to this Plan and the enactment of a site specific zoning bylaw by way of a City initiated Municipal Comprehensive Review**”. (emphasis added)

[43] Mr. Biggart in argument on the proposed 6,000 sq m cap indicates that the City does not want to be bound by policies that are not justified. No evidence was provided as

to why the figure of 6,000 was chosen. He stated that “the City wants to provide for a wide variety of uses for a wide variety of sites”, and referred to difficulties Reisman in past had experienced at the counter “ in respect of the desires of its tenants when dealing with zoning permissions. The problem at the counter with a zoning by-law matter is not a justification to redesignate lands with an SASP in the Official Plan”.

[44] Ms. Heydorn’s evidence included (Exhibit 3, para 8):

*I do not agree with the opinions expressed in Paragraphs 6.8 and 8.3 of Mr. McDermott’s Witness Statement in which he opines that the lands are not well suited for the Core Employment Areas designation, referencing sensitive uses on neighbouring properties, the area and configuration of the lands, **and the existing built form and economic function of the premises.***

In my opinion, the location of the lands relative to sensitive institutional and educational uses on neighbouring properties is relevant. However, in my opinion, the presence of these uses does not prevent the lands subject to this appeal to be used for their intended purpose as Core Employment Areas.

Mr. McDermott opines on the suitability of the lands for Class 2 and Class 3 Industrial Facilities but does not provide an opinion of the suitability of the lands for Class 1 Industrial Facilities or other permitted uses on lands designated Core Employment Areas, such as office. With respect to Figure 2 in his Witness Statement, I do not agree with some of the land use categories he has attributed to land in the vicinity of the lands.

I disagree that the area and configuration of the lands may prevent the lands subject to this appeal to be used for their intended purpose as Core Employment Areas. In Paragraph 3.2 of his Witness Statement, 29, 31 and 31A Passmore Avenue is identified as being 2.3 hectares (5.67 acres) in size with frontage on Milliken Boulevard. In Paragraph 3.6, 41 Passmore Avenue is described as being 0.82 hectares (2 acres) in size with frontage on Passmore Avenue. Both properties are regularly shaped. Also, both properties are within the same ownership, suggesting potential opportunities for land assembly and the benefits that come with it, including appeal to large-site seekers and greater opportunity for at-source mitigation buffers.

Mr. McDermott does not substantiate his opinion that the existing built form and economic function of the premises prevent the lands subject to this appeal to be used for their intended purpose as Core Employment Areas. I note that in his assessment of the Milliken Employment Area, Mr. Michael in his Witness Statement states:

1. Generally the office uses can be described as health and stable. The office vacancy rate was 1.4% in March 2021, below the city-wide vacancy rate of 6.5% (Section 4.3.1, page 31).
2. Industrial space is in high demand, with none of the 1.9 million square feet of space being available for lease as of June 2021. Very little industrial

space has come to the market in this area over the past three years (Section 4.3.2, page 32).

3. The retail uses in the Milliken Employment Area appear stable and healthy with a vacancy rate of only 0.1% as of June 2021 (Section 4.3.3, page 32).

[45] She also stated:

In my opinion, it is not appropriate to opine on the relationship of the appealed lands in the context of future potential boundaries of the Milliken GO Station MTSA; speculate as to the area's ability to achieve the established minimum density target; and, the potential influence of the proposals in achieving that target."

[46] In argument Mr. Biggart pointed out again that Mr. McDermott's evidence was focused incorrectly.

In Paragraph 5.2.4 of his Witness Statement, Mr. McDermott references Growth Plan 2020 Policy 2.2.4.6 that states that land uses and built form that would adversely affect the achievement of the minimum density targets in the Plan will be prohibited. This is a new Growth Plan 2020 requirement that is being considered as new Official Plan policy as part of the MCR. The boundaries of the Milliken GO Station MTSA have not yet been delineated and the minimum density targets have not been established.

[47] It bears repeating that it is the GP 2006 that applies in these Appeals.

[48] Ms. Heydorn reached the following conclusions on the proposed designations in the Reisman Appeals:

- The *General Employment Areas* designation is appropriate for the 3.8 hectare lands at 3241-3261 Kennedy Road and 19-27 Passmore Avenue.
- Similarly for May Flower, the *Core Employment Areas* designation is appropriate for the 3.1 hectare lands at 29, 31, 31A and 41 Passmore Avenue.
- At 33 Passmore Avenue, *Core Employment Areas* designation is appropriate for the 0.5 hectare property.

- For the 1182929 Appeal, the *Core Employment Areas* designation is appropriate for the 3.1 hectare lands at 29, 31, 31A and 41 Passmore Avenue.

[49] However, the SASP proposal for including special provisions in the OP to implement site-specific zoning permissions, is not appropriate in her view. "Special provisions" that may broaden the type or scale of uses beyond those permitted in *General Employment Areas* is not consistent with the PPS 2020, and does not conform to the GP 2006. The proposed "special provisions" in a SASP do not embody good planning and are not in the public interest, she testified.

Loblaw or Choice Appeal – No. 19

[50] Evidence on behalf of Loblaw Properties Limited ("Loblaw") and CP REIT Ontario Properties Limited ("Choice") was provided by Jonathan Rodger, an experienced land use planner hired by Loblaw in 2011, to provide advice with respect to OPA 231. He had submitted preliminary comments in 2013. Recently, he was involved for these Parties in the mediation for earlier Phases of the OPA 231 appeal process.

[51] More recently, as part of the current Toronto OP Review and the Municipal Comprehensive Review ("MCR") for conformity with the 2019 GP, he oversaw the submission of an employment conversion request (the "Conversion Request") in July 2021. This was for lands owned by Choice and located at 681 Silver Star Boulevard (the "Choice Lands"). The Conversion Request was supported by materials including a Planning Justification Report, Preliminary Concept Plan, Compatibility and Mitigation Study, Employment Conversion Review, Transportation Impact Study and Preliminary Servicing Investigation. He is aware of four other similar conversion requests for lands in proximity to the Milliken GO Station and the Choice Lands.

THE CHOICE LANDS

[52] The Choice Lands are approximately 2.72 hectares (6.71 acres). They are south of Steeles Avenue East, with frontage along Silver Star Boulevard. They are best seen in

context in Exhibit 9, Tab 1 and especially, in Tab 2. Loblaw is the leaseholder of the existing No Frills supermarket, with a gross floor area (“GFA”) of approximately 5,154 sq m (55,480 sq ft). These lands are part of a broader commercial node in Milliken extending north/south and connected by drive aisles, but under separate ownership. Other uses within the node include a bank to the north of Choice, fronting on Steeles Avenue, and a retail plaza to the south with a variety of retail and commercial outlets (Exhibit 9, Tab 2).

[53] To the west is a commercial/retail plaza, with a variety of commercial uses. Further west is the rail line and the Milliken GO Station. North of the station and west of the subject site, at 4665 Steeles Avenue East, is the Splendid China Mall site. This was redesignated to MU under OPA 231 and OPA 321, to permit residential uses. Approval has been granted for a mixed-use development here, having three towers of 17, 26 and 28 storeys and containing 793 residential units. There has also been an application for a mixed-use development (a 10-storey medical office building and two residential towers of 26 and 23 storeys with 500 units) at 4631 Steeles Avenue East.

[54] North of the Choice Lands is a bank that fronts onto Steeles Avenue East, as mentioned the northern boundary of the City of Toronto. On the City of Markham side of the boundary here, there is a mix of uses, retail/commercial, high density residential apartments and employment (industrial) uses. To the northwest above Steeles Avenue is Pacific Mall, an indoor shopping mall (Exhibit 9, Tab 3).

[55] East and south of the Choice Lands, within the City of Toronto, are existing commercial/retail uses along Steeles Avenue. Employment (industrial) uses as well as low density residential dwellings are found on the east side of Midland Avenue, further east still. There is a commercial retail plaza to the south of the Choice Lands, and further south still, employment (industrial) uses.

[56] The existing commercial node here is close to the Milliken GO Station, on the Stouffville GO Transit line, providing direct connection to Union Station in Downtown Toronto. Mr. Rodger explained that services on this line are anticipated to expand, with

more frequent service of 10-minute intervals all day, and shorter at peak periods. It would be part of the Toronto SmartTrack program, which proposes to utilize Milliken GO Station as part of this rapid service. The SmartTrack program is anticipated to be entirely constructed by 2026.

[57] As mentioned, the Minister approved OPA 231 in July 2014, with modifications. (The decision was withheld for changes applying to lands located with the flood plain Lower Don Special Policy Area, not related to these Appeals.) Both Loblaw and Choice launched Appeals in July 2014, referred to by Mr. Rodger as the Appeals. While portions of OPA 231 have been approved by the Tribunal, these decisions were without prejudice to the positions taken on any site-specific Appeals. Thus, Mr. Rodger testified, the Appeals should be determined in accordance with the City of Toronto OP Policies **prior to** the adoption of OPA 231.

Proposals for Choice Lands

[58] He then outlined the proposals for the Choice Lands. Under OPA 231, the Choice Lands were designated “Employment Areas” on Map 2 Urban Structure, and “General Employment Areas” on Map 19. He testified that it was important to have these lands designated as “Mixed Use” instead. This would permit residential uses, a more efficient use of the investment in Milliken GO Station, and would better meet the provincial direction to make efficient use of major transit. To accommodate additional job and housing growth close to transit, in his opinion there should be options here beyond the existing retail uses, which themselves are not reflective of a traditional employment (industrial) use.

[59] With a Mixed Use Areas designation, Mr. Rodger testified, the owner proposes to introduce residential uses to the Choice Lands, while also retaining the permissions and GFA of the existing supermarket. This would expand the number of people and jobs per hectare, to accommodate a mix of population-related employment and high-density residential uses.

[60] The redesignation request does not propose development, but rather would establish the types of uses that could be appropriate as part of a future redevelopment.

[61] A redesignation to Mixed Use Areas would allow for the appropriate wide range of uses for the Choice Lands, including residential, commercial, office and institutional uses. A mix of residential and population-related employment (retail, commercial and community services) uses has inherent synergies, he stated. The existing supermarket use would be supported by additional residents with immediate access to local goods and services.

SASP

[62] Also proposed is a SASP for the Choice Lands. This would ensure development in a comprehensive manner, he stated. It would provide appropriate built form and setbacks, mitigation for compatibility with surrounding uses, maintenance of minimum job numbers on site, further evaluation of existing services and facilities, and sufficient infrastructure to support the proposed development.

[63] The proposed SASP is outlined in Mr. Rodger's witness statement (Exhibit 7). It would provide (in summary) that before residential uses are permitted on the site, the following matters must be addressed to the satisfaction of the City of Toronto:

- sensitive uses must be designed to mitigate noise, vibration and other adverse effects from Employment Area lands;
- buffers must separate residential and sensitive non-residential uses from the abutting Employment Area lands to the east;
- any development with residential units must maintain or increase non-residential GFA beyond what exists on the site in 2021 (5,154 sq m);
- an environmental study in addition to those required under section 4.10.3 of the province's D-6 Guidelines for Compatibility Between Industrial Facilities

and Sensitive Land Uses, to the satisfaction of the City of Toronto and the Ministry, and subject to any resulting conditions and requirements;

- demonstrate to the satisfaction of the City of Toronto that existing or planned infrastructure and public service facilities will accommodate the proposed uses; and apply Urban Design Guidelines for appropriate built form.

Preliminary Concept Plan

[64] As part of Choice's Conversion Request, a Preliminary Concept Plan (Exhibit 1C, Tab 37) was prepared, for the proposed intensification and a range of supportive uses. This includes six towers from 18 storeys to 35 storeys above podiums, with 1,716 dwelling units. As required, a range of unit types and sizes is contemplated, with a target of 60% one-bedroom, 30% two-bedroom and 10% three-bedroom units. While retaining the existing commercial GFA with possible grocery uses, it expands the GFA for retail/commercial uses on the ground floors to approximately 6,168 sq m (66,392 sq ft). It would also create a buffer from abutting employment uses, particularly to the east where a 15 m setback is maintained. The concept plan would maintain the connections to the surrounding uses in the existing commercial node, including the vehicular connection to the commercial plaza to the south.

[65] If redesignated to Mixed Use Area, other approvals would, of course, be required. The preliminary concept plan must be refined, by additional technical studies and feedback from City of Toronto Staff, Council and the local community, following a development application.

Technical Studies

[66] The Conversion Request of July 2021 was supported by many technical studies (as set out above) that the Appellants rely on how to propose a Mixed Use Areas designation with a SASP. These include a Compatibility and Mitigation Study by SLR Consulting

(Canada) Ltd. in July 2021 (the “SLR Study”). It examined potentially sensitive uses (these include residential) on the Choice Lands, under the subjects of air quality, dust, odour, noise, and vibration impacts. It concluded that any conversion request merely establishes use. The detailed design phase would address compatibility and mitigation. The SLR Study recommended warning clauses on title and in purchase and sale documents about dust and other industrial emissions. For noise above the guidelines, it foresaw either receptor- or source-based mitigation, because of the presence of industrial operations as well as the rail corridor to the west. Vibration impacts were not considered to have adverse impacts.

[67] The SLR Study concluded that there would be no issue with compliance with provincial environmental policies, regulations, approvals, authorizations, and guidelines, including the City of Toronto’s Noise By-law, provided appropriate mitigation is included. This included the requirements of the Ministry of Environment, Conservation and Parks Guideline D-6 (Exhibit 1, Tab 20), Ontario Regulation 419/05, and Publication NPC300.

[68] The issue of an employment conversion was dealt with by N. Barry Lyon Consultants (“NBLC”) for the owner, prepared by the witness Nick Michael (see below). This report (Exhibit 8, Tab B) noted the requirements in planning documents to retain employment lands, including the MEA, a healthy employment node. There are instances, however, where it is appropriate to consider employment conversions to a Mixed Use Area designation, he testified. For the Choice Lands, these are the reasons given by the NBLC approval of this conversion:

- Improved higher-order transit will impact the land economics here. Heavy industrial operators will likely seek other locations in the City more appropriate to their function;
- From a market and land economics perspective, a MU designation is compatible with the existing retail commercial uses nearby. The General Employment (“GE”) Areas to the south form a buffer from heavier industrial uses in the Core

Employment Areas further south. In NBLC's opinion, Mr. Rodger testified, the introduction of a mixed-use community here would not cause compatibility issues with existing employment uses;

- A development with walkable live-work opportunities will support a larger and more diverse workforce. Here the job density is very low, and a modest increase in residential and commercial space could lead to a significant increase in jobs. "A mixed-use development that incorporates both residential and employment space will also allow developers to leverage the transit investment and increasing land values to deliver a transit-oriented development" (Exhibit 7, p. 11); and,
- If not converted, it is likely that the site will remain underutilized and would not generate an increase in employment levels.... a stand-alone office development would not generate the rents, and industrial users will likely look elsewhere.

[69] Thus, the NBLC report concluded, it is unlikely that market conditions alone would spur a change to a higher-intensity employment use, and this is not a desirable outcome for a site close to higher-order transit.

[70] Mr. Rodger then considered the applicable provincial and municipal policy documents, concluding that the applications are consistent with and conform to the PPS and the GP. He also pointed out that the GP 2006 (June 2013, Office Consolidation) provides guidance for decisions and growth management policy direction for the Greater Golden Horseshoe to the year 2031. All Tribunal decisions must conform with the GP. (Tribunal note: it is important to recognize that the applicable GP is the 2006, which is referred to by Mr. Rodger here, and not a later version. Other witnesses wrongly based their evaluations on the later-enacted GP, especially respecting higher-order transit.)

[71] Considering the 2010 version of the City OP, which applies to this Application for conversion, he opined that the stand-alone retail store leased by Loblaw's is indeed a

permitted use under the OP provisions as well as under SASP No. 133. However, he concluded that even though the land is within an Employment Area (Map 19), the land is located next to the Milliken GO station. Thus, it is an appropriate location for growth under a MU designation.

[72] The non-policy introduction to s. 2.2.4 of the OP 2010 provides that once lands are lost to economic activity, for example where they become residential, it is almost impossible to return them to commercial or industrial uses. Mr. Rodger counters this by stating that the MU designation and the proposed SASP would require the *existing non-residential GFA* to be retained.

[73] He finds from the SLR Study that the proposed MU designation is compatible with surrounding uses, and that appropriate separation/buffering can be achieved.

[74] His conclusion is:

..... in my opinion a Mixed Use Areas designation with the proposed SASP is appropriate for the Choice Lands, whereby commercial and residential uses will be provided in mixed use buildings in proximity to Milliken GO Station to meet the needs of the local community. With redevelopment under a Mixed Use Areas designation with the proposed SASP, the Choice Lands will provide for additional density on site and are sufficiently sized in order to provide for transition to the surrounding lands through the application of Urban Design Guidelines that will set out the framework for appropriate built form.

(Exhibit 7, para. 65).

Nick Michael – Conversion from a Market and Land Economics Perspective

[75] Loblaw and Choice also provided the expert testimony of Nick Michael, a professional planner and land economist with NBLC. His Witness Statement and Report are Exhibit 8 to this Hearing, focusing on economic and market realities for the proposed conversion from GE to MU. He had prepared the NBLC Report dated June 2021 (Exhibit 8, Tab B). While employment uses should be retained, appropriate exceptions could and should be made, in his opinion. Here, he testified, the land economics of the surroundings have changed because of the transit enhancements. The present employment designation

has been undermined. The City's suggested GE designation will not attract the desired uses, but only Office and other services instead.

[76] He stated in evidence that he had concentrated on the current GP, and not the 2006 version (Tribunal comment: the 2006 version applies here given the transition regulation, as Mr. Biggart had pointed out).

[77] The content of the NBLC Report is largely described in the earlier evidence of Mr. Rodger, as set out above. Mr. Michael's principal findings are;

- The City's industrial market is strong, and Employment Areas are attractive for medium to long-term investment; and,
- General Employment Areas (GE) permit office development, yet demand is greatest for walkable live/work office areas. Thus, residential development here is required.

[78] He sees the transit developments and expanded mixed use areas nearby (Splendid China Mall, for one) as changing the land economics and undermining the existing planning context. Land costs will rise, and will preclude industrial or office development. Low density employment (retail or industrial) would not satisfy the provincial goals for mixed use developments close to transit. More jobs could be created under a mixed use designation, resulting in more affordable housing in a transit-supportive location. With a variety of land uses such as high density residential, office and retail, other types of employment would be created, where it has been proven that such a designation attracts such investment.

[79] Ms. Heydorn then considered and evaluated the Choice proposal from the perspective of the City of Toronto's obligation and desire to retain its designated Employment Areas. These provide a wide range of economic activities to achieve its long-term growth objectives. In her opinion, the proposed conversion of 2.7 hectares at 681

Silver Star Boulevard from Employment Areas to the Mixed Use Areas designation would reduce the size and quality of the City of Toronto's supply of designated Employment Areas.

[80] Sensitive uses such as the proposed residential in a MU designation would disrupt the stable operating environment of existing employment uses nearby. Further, future investment in employment uses would be constrained here.

[81] There is no "need" for the proposed conversion. This test is not met since the City of Toronto is on track to achieve the 2031 population forecasts in the GP 2006. Thus, in her opinion, the proposed conversion is not consistent with and does not conform to the PPS 2020, the GP 2006, and the City of Toronto OP. The proposed use does not embody good planning and is not in the public interest.

Tribunal Findings and Decision

Provincial Policies

[82] As Ms. Heydorn testified, policies were modified in the PPS 2020 to better protect economic uses and facilitate conditions for economic investment. Tribunal decisions must be consistent with the PPS in force as of the date of its Decision.

[83] PPS 2020, Policy 1.2.6.1 concerning land use compatibility has been strengthened by stating that *major facilities* and *sensitive land uses* "shall" be planned and developed to "avoid" potential *adverse effects*, minimize risk to public health and safety, and ensure the long-term "operational and economic" viability of *major facilities*. The definition of *major facilities* now includes "manufacturing uses". All definitions in italics are set out in the 2020 version.

[84] Policy 1.2.6.2 has been added to set out the conditions that must be satisfied where avoidance is not possible. Policy 1.3.2.3 prohibits residential uses within *employment*

areas planned for industrial and manufacturing uses, and also limits other *sensitive land uses*. As well, it states that *employment areas* planned for industrial or manufacturing uses should include appropriate transitions to adjacent non-*employment areas*.

[85] “Employment areas” are defined in the PPS 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.

(Exhibit 1A, Tab 2)

[86] Ms. Heydorn also cited Policy 1.1.3.3, which states that planning authorities shall identify appropriate locations and promote opportunities for *transit-supportive* development, accommodating *housing options* where this can be accommodated taking into account existing building stock or areas. “*Transit-supportive*” is defined as:

in regard to land use patterns, means development that makes transit viable, optimizes investments in transit infrastructure, and improves the quality of the experience of using transit. It often refers to compact, mixed-use development that has a high level of employment and residential densities, including air rights development, in proximity to transit stations, corridors and associated elements within the transportation system ...

[87] Respecting the GP 2006, which applies to these Appeals, Ms. Heydorn pointed to s. 2.2.2 (Exhibit 1A, Tab 3), which emphasizes the approach to be used to manage population and employment growth. “Intensification” is the key for compact, mixed-use environments, both transit-supportive and pedestrian-friendly. This includes “... *the availability of sufficient land for employment to accommodate forecasted growth to support the GGH's economic competitiveness,*” (Section 2.2.2 f).

[88] Section 2.2.6 also dealt with Employment Lands. 2.2.6.1 requires an adequate supply of such lands for a variety of employment uses and the necessary infrastructure to support growth. The GP 2006 uses the same definition of employment areas as the PPS (see above).

[89] Any conversion to non-employment uses may only be permitted through a *municipal comprehensive review* (s. 2.2.6.5 of the GP 2006). For such a conversion, a proponent must prove:

- “need”;
- employment forecasts can be met;
- the conversion will not adversely affect the overall viability of the *employment area*, and
- the lands are not required over the long term for employment purposes.

[90] The Tribunal concludes that, on balance, provincial policies promote the preservation and retention of existing employment designations. They do not appear to favour either proposal before the Tribunal on these Appeals.

Findings and Conclusions on Reisman and Mayflower Appeals

[91] The question of whether the changes requested in the designations from CE to GE constituted a “conversion” was raised in the evidence. The Tribunal notes that this was not raised as an issue in the Issues List, nor was it the subject of substantial evidence or cross. Ms. Heydorn merely referred to it in her witness statements. She stated:

I disagree with Mr. McDermott that the redesignation of the lands from *Core Employment Areas* to *General Employment Areas* does not represent a removal or conversion of employment lands (Paragraph 8.6). The Conversion and Removal Policies for *Employment Areas* of OPA 231, as approved, explicitly state that:

The redesignation 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 a Municipal Comprehensive Review. The introduction of a use that may be permitted in a General Employment Area into a Core Employment Area or the redesignation of a Core Employment Area into a General

Employment Area designation is also a conversion and may only be permitted by way of a Municipal Comprehensive Review.

OPA 231, April 2021 Consolidation, Policy 2.2.4.14,
April 26, 2021 Decision and Order of the LPAT,
Case No. PL140860

[92] The Tribunal makes no finding on this issue, other than to note the procedural requirement of an MCR before significant changes are authorized.

[93] Mr. McDermott's evidence in support for the Appellants' proposal appears to be overly focused on existing development. In supporting the SASP, he says that it "will ensure current development approvals". And in support of the designations, he referred to "the existing development rights and the scale and nature of the existing built form".

[94] This appears to the Tribunal to be maintaining the status quo, and not the future as the City of Toronto is directed by the GP to accomplish.

[95] The Tribunal accepts the opinion of Ms. Heydorn with respect to these Appeals as follows:

[96] With respect to Reisman Appeal No. 54, the Tribunal agrees with Ms. Heydorn that the SASP proposed by the Appellant that would place a cap on retail uses in that block is undesirable. It is unnecessary layering and changes the intent of the designation. The cap proposed was not supported by any factual evidence. The matter of size can be more properly dealt with in a zoning by-law.

[97] With respect to Appeal Nos. 9 and 123, the Tribunal again prefers the evidence of Ms. Heydorn on the issues and of the impact on and the influence of existing uses. This is also true on their size and nature, especially the church lands which form the southern boundary of the Reisman Lands. These are the subject of a special agreement with respect to future uses and challenges to them.

[98] On the Appellants' proposals for alterations from Core to General Employment, the Tribunal is persuaded by the City of Toronto's argument for retention of the CE designation in OPA 231. The same argument in favour of adequate separation distances from industrial uses should govern here.

Findings and Conclusions on the Choice Lands

[99] One mechanism for protection of employment lands is to refuse manufacturing uses next to "sensitive" uses, or the opposite. The Choice witnesses say that this should not override the PPS policies in favour of residential uses close to higher level transit. The proposed high-rise residential uses on this site should be permitted, they argue, as they would be next to the GO station, part of the FastTrack network. While this may be true in general, this premise does not authorize the many proposed residential structures on this fairly small site. The context here includes both employment and residential neighbourhoods, existing and planned. There is no obvious "need" for this redesignation.

[100] It seems clear that significant residential towers, even with some commercial or retail uses, will do little to preserve or increase the desired employment uses. The evidence of Mr. Michael to the contrary was not persuasive, as it appeared too speculative as applied to this specific neighbourhood. Office uses are increasing elsewhere, closer to downtown neighbourhoods, he said. There is little evidence in support of increased office or other employment uses here should the desired towers be built.

[101] The Tribunal has carefully considered the provincial direction in Policy 1.2.6.2 of PPS 2020. Where avoidance of conflicting uses is not possible, planning authorities shall protect the long-term viability of existing or planned industrial, manufacturing or other uses that are vulnerable to encroachment by ensuring that *sensitive land uses* are only permitted following a Municipal Comprehensive Review, as set out above. The Tribunal finds that the conditions for permitting residential uses have not been met, from the evidence presented. There is no demonstrated "need" for the proposed use residential towers, as there are or will be many reasonable alternative residential locations nearby. It

has not been shown to the Tribunal's satisfaction that any *adverse effects* would be minimized and mitigated, as there are no final designs to consider. It is also not evident that potential impacts to industrial, manufacturing or other uses are minimized and mitigated.

[102] The Tribunal agrees with Ms. Heydorn that sensitive uses, including the residential towers proposed, would most likely disrupt the stable operating environment of existing businesses, especially the industrial ones. They could create conditions that would constrain future investment in permitted employment uses. Approvals have already been granted for significant high rise residential structures even closer to the GO station. Arguments in favour of more, and close by, are not persuasive.

[103] Mr. Rodger did point to the non-policy introductory text in s. 4.6 of the City of Toronto's OP that states that uses that detract from the economic function of these lands will not be permitted to locate in Employment Areas. However he stated that:

... in my opinion a Mixed Use Areas designation is appropriate for the Choice Lands where existing economic activity will be protected since the proposed SASP would require, at minimum, the maintenance of existing non-residential GFA under redevelopment.

(Exhibit 7, para 56).

[104] The Tribunal agrees with Mr. Biggart's submission that this is not sufficiently specific to ensure retention of "existing non-residential GFA", i.e. the grocery store, an employment use. It concludes that merely redesignating the Choice Lands to MU so as to permit large residential uses essentially WITHIN the "Employment Area" designation is not good planning. It should not be authorized when incompatibilities are likely, and even breaches of existing ECRs are possible. Mr. Rodger stated at para. 74 of his Witness Statement (Exhibit 7) that the Choice Lands are sufficiently sized to provide for transition to the surrounding lands via the Urban Design Guidelines for appropriate built form. Considering that the proposed designs including six towers from 18 storeys to 35 storeys above podiums, with 1,716 dwelling units (Exhibit 1B), the Tribunal cannot agree that there will be adequate transition and protection from the existing industrial uses nearby. Existing

industrial uses should not have to mitigate for new tall apartment buildings. Nor does it seem likely that mitigation measures proposed for the proposed structures would suffice, given the very short separation distances in the concept plan.

[105] The Tribunal has considered the recent Decision of our colleague Mr. Tousaw in *Satin Finish Hardwood Flooring Ontario Limited v. Toronto (City)*, 2021 CanLII 129311, cited by Mr. Neligan. There, a conversion to Residential was proposed to enable a residential use in a designated Employment area. The Tribunal granted this, based on the surrounding context. It stated:

[1] More than one land use choice may be appropriate for a particular property. Context is key to assessing the planning merits of land uses within the built environment. The physical, economic and social characteristics of the immediate area may lead to one or more suitable end uses.

[2] This appeal is a case on point. A request for land use conversion from Employment to Residential (“conversion”) reveals strengths and weaknesses for both land uses. Either use may be found appropriate for the planning context and either use is likely to adapt and contribute to the area’s success over the long-term. However, one use may rise in preference above another through its relative planning merits based on the particulars of context.

[3] Here, the Tribunal finds in favour of conversion. Among the many reasons supporting the Decision, is the critical finding that the contextual setting here is one in a well-established transition away from traditional employment uses.

[106] The Tribunal finds from the evidence that the surrounding neighbourhood situation in the Milliken area here, is very different from that in *Satin Finish* case. There is a rather narrow and limited Employment Area designation here. There have been recent approvals of conversions to MU on the Splendid China site (allowing significant high-rise residential). There are also many surrounding residential uses west of Kennedy Road and east of Midland Avenue. There is no “need” then for additional residential uses here, even to accommodate the policy direction for such uses that are transit-supportive.

[107] The Appellants cannot claim that this fact situation is similar to that in *Satin Finish*, as the setting does not evidence a transition away from traditional employment uses in Milliken. There are many industrial uses to the south of the Choice property. More

importantly, there is the danger foreseen by the City of Toronto that such uses might well threaten the existing industrial uses, including those granted Certificates of Approval under the *Environmental Protection Act*.

ORDER

[108] **THE TRIBUNAL ORDERS** that the Appeals of Al Reisman Ltd., 1182929 Ontario Inc., May Flower Landscaping Design Ltd., and Loblaw Properties Limited and CP REIT Ontario Properties Limited to Official Plan Amendment No. 231 to the Official Plan of the City of Toronto are dismissed.

[109] **AND THE TRIBUNAL FURTHER ORDERS** that this Decision and Order is strictly without prejudice to the position any Party may take in respect of any issue or matter, which remains to be adjudicated during other phases of the Appeals to Official Plan Amendment No. 231. For greater certainty and without limiting the foregoing:

- 1) No party may take the position that because the Tribunal has resolved an issue and/or approved certain Secondary Plan policies or provisions in this Phase 6B Hearing, that the same issue cannot have a different resolution and/or different policies or provisions approved on a site-specific basis as they apply to those lands that remain at issue in the remainder of Phase 6 of the Hearing;
- 2) The Tribunal's Decision respecting those issues, policies, and provisions that were approved pursuant to the Phase 6B Hearing shall not be considered in any way to be a disposition of same for purposes of those matters remaining at issue in the remaining Phase 6 Hearings.

[110] **AND THE TRIBUNAL FURTHER ORDERS** that in the event there are issues arising from the implementation of this Order, the Tribunal may be spoken to.

“G. Burton”

G. BURTON
VICE-CHAIR

“D.S. Colbourne”

D.S. COLBOURNE
VICE-CHAIR

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