

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: January 30, 2020

CASE NO(S): PL140860

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

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

Appellant:	10 QEW Inc. et. al.
Subject:	Proposed Official Plan Amendment No. 231
Municipality:	City of Toronto
LPAT Case No.:	PL140860
LPAT File No.:	PL140860
LPAT Case Name:	A. Mantella & Sons Limited v. Toronto (City)

Heard: September 16 - October 3, 2019 in Toronto, Ontario

APPEARANCES:

Parties

Counsel

City of Toronto (the “City”)

Andrew Biggart and Christina Kapelos

Building Industry and Land
Development (“BILD”)

John Dawson

Toronto Industry Network (“TIN”)

Calvin Lantz

Canadian Propane Association
 (“CPA”)

Calvin Lantz

Morguard Investments and Revenue
Properties (“Morguard”)

Johanna Shapira and Lee English

RioCan REIT (“RioCan”)

Joel Farber and Michael Reedjik

DECISION DELIVERED BY GERALD S. SWINKIN

[1] This hearing event of the Local Planning Appeal Tribunal (the “Tribunal”) was the Phase 3 hearing of appeals against Official Plan Amendment 231 (“OPA 231”) as adopted by the Council of the City of Toronto (“City”) and as approved by the Minister of Municipal Affairs and Housing (the “Minister”).

[2] OPA 231 replaces the Employment Lands policies of the City Official Plan. There were numerous appeals filed with respect to OPA 231 and these have been dealt with by the Tribunal over a course of years since the issuance of the Minister’s Notice of Decision. In the interest of managing those appeals in a reasonable and efficient manner, the Tribunal has, with the assistance of counsel, divided them into categories and has been hearing them in phases and disposing of settlements and procedural matters through case management conferences.

[3] The subject matter of this Phase 3 hearing has been identified as Forecasting and Conversions. The title of the phase perfectly fairly describes the substance of the evidence heard by the Tribunal in this phase, which was evidence as to population and job growth forecasts through to a forecast year of 2031, and to the policies which are intended to govern the conversion of employment designated land to non-employment uses.

[4] At the outset of the hearing, Joel Farber, counsel to RioCan, rose to advise that he was requesting authorization to withdraw from the hearing. This withdrawal was predicated on the fact that a Phase 4 hearing has been authorized by the Tribunal, with the commencement date of that phase now fixed, which will deal with retail uses in employment areas. The nature of the RioCan appeals is that they are essentially related to the retail use policies of OPA 231 and will fully be dealt with in the Phase 4 hearing.

[5] Consequently, the Tribunal accepted Mr. Farber’s request and authorized the withdrawal of RioCan from this Phase 3 hearing.

OPA 231 and the Application of the Growth Plan for the Greater Golden Horseshoe, 2006

[6] OPA 231 was adopted by City Council at its meeting on December 16, 17 and 18, 2013 and was the subject of modification and approval by the Minister's Notice of Decision issued on July 9, 2014.

[7] Counsel for the Parties all acknowledge that, based upon application of the Transitional Matters – Growth Plan Regulation 311/06, as amended by O. Reg. 305/19, as filed, in particular, s. 4(1) paragraph 7 therein, the appropriate lens through which to test the conformity of OPA 231 with Provincial plans for the purpose of s. 3 of the *Planning Act* ("Act") is the Growth Plan for the Greater Golden Horseshoe, 2006 ("GP 2006"), which was the prevailing Growth Plan at the time of approval.

[8] The Tribunal, therefore, for the purpose of this Decision, will apply the test of conformity with Provincial plans upon the policies in GP 2006.

[9] However, counsel for BILD pressed upon the Tribunal the opportunity for the Tribunal to hear evidence through its witnesses as to the policies which are now applicable by virtue of the Places to Grow Growth Plan, 2019 ("GP 2019"), which came into effect on May 16, 2019.

[10] GP 2019 has brought about a new concept with respect to employment lands in the form of Provincially Significant Employment Zones ("PSEZ"), which has its own significance but also has significance with respect to the timing for consideration of requests for conversion of employment lands to non-employment uses. The Tribunal accepted that, although not to be treated as binding policy in this appeal, such evidence may have some relevance to the matters before it in these appeals and allowed the adduction of such evidence.

[11] A key aspect of what is before the Tribunal in these appeals is the consideration of the population and jobs forecasts set forth on Schedule 3 to the GP 2006 and attempting to obtain an understanding of where the City is in achieving those forecasts as well as

understanding the likely arc of the projections developed to ascertain the prospect of achieving those forecasts by the year 2031.

[12] Knowledge of the measure of jobs in the City and the rate of job growth is key to planning for the identification of employment lands to accommodate those jobs now and into the future, with specific reference to the year 2031 as set forth on Schedule 3 to the GP 2006.

[13] Knowledge of the population in the City and the rate of population growth is key to planning in order to accommodate that population in housing units. This necessarily connects to a land base which has the capacity to accommodate the required number of dwelling units to house that population.

[14] These two knowledge streams inform the judgment which the Tribunal must make concerning the GP 2006 objective of protecting and preserving employment lands for the long-term against the potential need to convert such lands to non-employment purposes.

The Witnesses

[15] The Tribunal heard from nine witnesses as follows:

On behalf of the City

- Russell Mathew – a Registered Professional Planner with expertise in land economics
- Michael Wright – a Registered Professional Planner with expertise in demographics
- Rebecca Condon – a Registered Professional Planner with expertise in economic development matters

- Stephen Dixon – a Registered Professional Planner with expertise in policy planning

On behalf of TIN

- Ian Graham - a Registered Professional Planner with expertise in policy and development planning.

On behalf of CPA

- Dana Anderson – a Registered Professional Planner with expertise in policy and development planning.

On behalf of BILD

- Jeanette Gillezeau – a Registered Professional Planner with expertise in land economics.
- Peter Smith – a Registered Professional Planner with expertise in policy and development planning.

On behalf of Morguard

- David McKay – a Registered Professional Planner with expertise in policy and development planning.

[16] All of the witnesses prepared and filed, in advance of the hearing, Expert Witness Statements and Reply Witness Statements. As a result of the Replies and evidence taken in during the course of the hearing, the Tribunal received further revised proposed modifications to the relevant OPA 231 policies during the course of the testimony of each witness. The final version of requested modifications by each Party were consolidated and submitted as part of final submissions by counsel for each Party.

The Opening Position of Each Party

[17] City Council, at its meeting in June 2019, authorized a number of significant and minor modifications to OPA 231 as recommended by City staff as a result of consideration of appellant objections. The version as so modified was advanced by counsel for the City as the version for which the Tribunal's approval was being sought. Mr. Biggart points to this act of City Council as a reflection of the good faith of the Council, that they have given consideration to fair comment and have positively reacted to the requested modifications in order to improve the policies.

[18] Counsel for the City advances its defense of OPA 231 on the basis that the policies in it are consistent with the policies of the Provincial Policy Statement, 2014 ("PPS") and conform with the GP 2006.

[19] The City treats these Provincial policies as imposing upon the municipality a clear need and obligation to protect and preserve employment lands, and OPA 231 has been designed for that purpose.

[20] The City says that employment growth has been extremely robust. They further say that based upon the Schedule 3 population forecast from the GP 2006, the land designated for housing purposes and the potential for the production of the required housing units, indicates that there is no demonstrated need for conversion of employment lands to accommodate that housing.

[21] Calvin Lantz, counsel to TIN and CPA, advises that, on behalf of both clients, he appears before the Tribunal essentially in support of OPA 231. That support extends generally to the modifications to OPA 231 that were directed by City Council in June, but his clients are seeking the intervention of the Tribunal to further enhance the protective nature of the policies.

[22] Mr. Lantz asserts that both of his clients represent interests which have substantial investments in employment areas and wish to preserve the ongoing operations of those businesses as well as the reasonable opportunity to expand their facilities. This leads him to advance requests for more explicit provisions regarding notice of changes of use and the provision of appropriate compatibility studies involving the participation of potentially affected industries.

[23] John Dawson, on behalf of BILD, acknowledges the objectives which the City is pursuing in keeping with Provincial policy for the purpose of protecting employment lands. However, he expresses the view that there is a balance to be kept on the policy front between those objectives and the need to respond to the provision of a range of housing in the City. He suggests that the policies in OPA 231 are too rigid with respect to consideration of conversion of employment lands to non-employment uses where the circumstances warrant. The way he puts it is that applicants for certain characters of conversion should be able to advance their case without the restraint of awaiting a municipal comprehensive review ("MCR"), as that term is used in the Provincial planning policy documents.

[24] In this regard, BILD further advances a view that OPA 231 should reflect a categorization akin to what is incorporated in GP 2019. GP 2019 now incorporates an identification of PSEZs. In tandem with this new characterization, GP 2019 has introduced policy that will allow consideration of conversions of employment lands to non-employment uses outside of the MCR process, on specified policy grounds, provided that the lands are not PSEZs. Launching from this, BILD, through its planning witness, advances a proposition that OPA 231 should distinguish between what he refers to as strategic employment lands and non-strategic employment lands, the latter being open to consideration for conversion when circumstances warrant.

[25] Johanna Shapira, on behalf of her two clients (collectively referred to herein as Morguard), comes to the Tribunal under her clients' appeals seeking a fair set of policies for conversion. Her position is that the policies must conform with GP 2006 and that as adopted, and now as proposed to be modified by City Council, they do not conform.

[26] Her clients take issue with the absence of the phrase “clusters of” in the description of employment areas. Her clients view the expression of policy in OPA 231 as changing the meaning of ‘need’ as found in GP 2006 and that the clarity changes wrought by Council in the June modifications are not in conformity with GP 2006.

[27] Lastly, she expresses the view that it is not appropriate or desirable to create conflict with the provisions in the most recent GP 2019.

The Evidence of Russell Mathew

[28] Russell Mathew’s evidence was extensive. He was the City’s first witness. In many ways, his evidence set the scene for the balance of the hearing. It is important to understand that Mr. Mathew comes to the matter before the Tribunal on this appeal with a brocade of experience that would warrant a reference to gravitas.

[29] Mr. Mathew is a partner of Hemson Consulting Ltd. (“Hemson”), a planning and land economics consultancy of long standing. Mr. Mathew’s experience runs to 34 years, with his services extending to most of the municipalities in the Greater Golden Horseshoe and including the Government of Ontario.

[30] Of signal importance to the matter before the Tribunal in this hearing, Mr. Mathew prepared the City’s Long-Term Employment Land Strategy in 2006, which served as a precursor to the report *Sustainable Competitive Advantage and Prosperity – Planning for Employment Uses in the City of Toronto* (2012 Employment Report), Malone, Given Parsons, that served as the basis for OPA 231.

[31] The tracking of employment growth since that time is documented in a further Hemson publication, *Toronto Employment Areas 2018 Update*.

[32] Further informing his opinion evidence in this proceeding is his work on behalf of the Province of Ontario, for whom he completed the Growth Outlook for the Greater Golden Horseshoe, a forecast of long-term growth in population, housing and employment in the Greater Golden Horseshoe. This report was an update of the forty-year forecasts originally

prepared for the Office for the Greater Toronto Area. In 2012, he completed an update to the growth forecasts, to 2041.

[33] This work also included assistance to the Ministry of Municipal Affairs with preparation of a standardized Provincial Land Needs Methodology for upper, lower and single tier municipalities to use when conducting land budgeting exercises in accordance with the newly implemented requirements of the Growth Plan for the Greater Golden Horseshoe, 2017.

[34] Mr. Mathew provided evidence on the primary issues identified as the following questions.

Did the City use employment forecasts other than the employment forecasts contained in Schedule 3 of the GP 2006 in developing Policies 14 and 17, contrary to the policies in the GP 2006 and PPS?

[35] Mr. Mathew affirmed that the City Planning Division did undertake exercises using more and less ambitious growth forecasts in order to test such alternate scenarios. However, it was his evidence that the growth forecast upon which OPA 231 was developed was that set forth on Schedule 3 of the GP 2006.

[36] The high growth scenario was largely predicated on growth in health care, social assistance, Professional, Scientific, Technical and Finance industries, being industries which are not likely to occupy employment lands.

[37] The data from the 2018 Employment Update suggests that there are 430 hectares ("ha") of vacant land in Employment Areas. That equates to a 5.4% land vacancy rate, which includes 70 ha. of parcels less than 0.5 ha, which, due to size and geometry, are not likely to be attractive to new industry. After removing areas used for parking or storage and considering only vacant parcels of 1 ha or larger, the inventory decreases to 211 ha., which represents 2.6% of employment area lands. By conventional observation, this would be treated as being at or near full build out.

[38] Despite continuing declines in Manufacturing and Warehousing since 2011, a historic sector which has occupied Employment Areas, total employment in these areas has remained remarkably stable over the 35 years of the survey. In fact, since 2011, employment has grown by 12.1%. Mr. Mathew advises that this is reflected in the evolution of the building stock in these areas and significant reinvestment. In his view, this reinvestment is an indicator that the goal of OPA 231 Policy 2.2.4.3 encouraging a more intensive use of lands in Employment Areas is being realized and sustains the appropriateness of that policy, which policy conforms with the intensification objectives of the PPS and GP 2006.

[39] Using the observed absorption rate of land that was developed in the period between 2011 and 2018, supports the conclusion that all presently designated employment land should be maintained as employment designated land in order to protect for targeted growth to 2031.

[40] Mr. Mathew comes to what he treats as an incontrovertible conclusion. All Employment Area lands need to be retained to support economic activity and employment in Toronto.

Do the conversion policies set forth as Policies 14 to 17 in OPA 231 conform with the GP 2006?

[41] In Mr. Mathew's opinion, no modifications are required to these policies. It was his view that any modifications to Policy 17 that would be considered more permissive to Employment Area conversions, would be contrary to meeting the economic development objectives of the GP 2006.

[42] He said that these economic development *Growth Plan* objectives are addressed in policies 2.2.4.2 and 2.2.4.3 of OPA 231. The Core and General Employment areas of the policy already permit a wide range of employment uses, including a range of employment densities. The mix of employment sectors currently present within both land use categories indicates a reasonable degree of flexibility while also protecting for the intended and desired mix of employment uses.

[43] He suggested that the *2018 Employment Update* demonstrates the considerable employment growth that has occurred across a variety of sectors in both the Core and General Employment Areas. This growth as well as the low vacancy rates and high demand for space in these areas are precisely meeting these *Growth Plan* economic development objectives.

[44] It was his opinion that the supply of lands designated as Employment Areas in Toronto through OPA 231 are all required to meet the long-term needs of a diverse and growing employment base in the City. The high occupancy and job growth in the City's Employment Areas indicate that intensification of employment has been occurring and that neither previous land-use permissions nor the current OPA 231 designations have limited occupancy or growth. Any conversions facilitated through a modified Policy 17 would act to reduce the long-term land supply and long-term employment potential of Employment Areas.

[45] He underlined that in relation to Policy 17, it was his opinion that Policy 17, as revised by Toronto City Council on June 18, 2019, is both appropriate and necessary, and not unnecessarily restrictive or onerous.

[46] In this regard, he said that the conversion tests in Policy 17 do provide more than the minimum requirements of the GP 2006 policy 2.2.6.5, which, with the Council endorsed revisions, represents a streamlined set of considerations. The shortened list of considerations for conversion are not necessarily more restrictive than the GP 2006, but instead serve to clarify how the GP 2006 requirements are to be applied. In particular, clarity is provided to the "need" for the conversion to include land use conflicts and by providing an explanation of how viability is to be tested.

[47] Some of the detailed criteria such as meeting environmental regulations or the availability of community infrastructure, are very standard planning matters for any planning application. Their inclusion in the conversion may be seen by some as redundant to other plan policies, but they do not in themselves take the conversion policies beyond those of the GP 2006.

[48] A rather considerable observation is made by Mr. Mathew in saying that in Toronto's unique circumstance of being nearly fully built out, bearing in mind its older denser character, means that converted sites cannot be replaced. This fact alone warrants a careful and comprehensive set of considerations during the conversion assessment. It also means that the details and clarifications flowing from the GP 2006 conversion policies are reasonable.

[49] He concludes on the point by advising that the economic buoyancy of Toronto's employment areas and the diversity of employment provided indicate why it is the clear intent of the GP 2006 and OPA 231 to not make the conversion of employment land an easy undertaking. In his view, these policies also follow from the Act, which contains quite specific sections regarding the definition of employment land, conversions and the need for conversion criteria when appeal rights are to be limited.

Do the conversion policies of OPA 231 impede the redevelopment of brownfield sites or the provision of a full range and mix of housing to meet current and future residential housing need?

[50] Mr. Mathew spoke to this issue and offered his opinion that no modifications to Policy 17 are required to meet brownfield or residential intensification policies of the PPS

[51] He indicated that brownfield sites have the potential to be redeveloped for residential uses, but they also serve as potential redevelopment sites for employment uses. Given recent employment growth trends and the limited remaining supply of vacant employment lands, brownfield sites that are within Employment Areas are needed for future employment uses.

[52] He said that OPA 231 policies do not impede the cleanup and use of brownfield lands for employment uses, consistent with policies concerning brownfield lands. Over the last 30 years, much of brownfield land that existed in Toronto has been converted and much of it has been remediated and redeveloped particularly in central Toronto, the waterfront and south Etobicoke.

[53] Relying on the evidence of Mr. Wright, he suggested that more than enough lands are designated for residential uses in order for the City to meet its population forecast targets. Some of this potential future supply is on brownfield sites. At the same time, employment growth in the City's Employment Areas indicates a continued demand for employment land.

Is OPA 231 Policy 14 appropriate regarding the treatment of permission of General Employment Area uses into Core Employment Area or Core Employment Area uses into General Employment Area only as a conversion?

[54] It was Mr. Mathew's opinion that the policies defining what constitutes a conversion are reasonable and necessary and implement the GP 2006 conversion policies. Due to how the conversion policies are now structured in the most recent Growth Plan, revisions may be required when the Toronto Official Plan is brought into conformity with the Growth Plan by 2022. However, that is most appropriately left to be dealt with in the next municipal comprehensive review.

[55] Through OPA 231, the City introduced the concept of Core and General Employment Areas. The definition for these two different types of Employment Area permit a wider range of employment uses into the General Employment Areas than that defined in the GP 2006, including all types of retail and service uses, fitness centres, restaurants and ice arenas (legally established as of March 26, 2018). These General Employment Areas permit a more flexible set of uses, which also serve to buffer and protect the Core Employment Areas from more sensitive uses, like residential.

[56] Mr. Mathew explained that at the same time, the distinction between the two types of Employment Area prevent certain types of retail and other employment-uses from undermining the industrial uses that are permitted in the Core Employment Areas. While these more flexible uses often serve as functional neighbours to traditional employment uses, like manufacturing and transportation and logistics, they could prove disruptive if allowed to locate within Core Employment Areas due to land economics, site specific needs and potential conflicts created by attracting large numbers of customers into the core of these business areas.

[57] He advised the Tribunal that the requirement that a change from Core to General also be subject to conversion policies at the time of a Municipal Comprehensive Review also implements the GP 2006, since a primary difference between the two designations is the retail permissions. At the time when the City of Toronto passed OPA 231, the GP 2006, considered major retail to be a non-employment use. GP 2006 policy 2.2.6.5 clearly states that "Municipalities may permit conversion of lands within *employment areas*, to non-employment uses, only through a *municipal comprehensive review*" and "For the purposes of this policy, major retail uses are considered non-employment uses."

[58] Mr. Mathew was firmly of the view that the OPA 231 requirement that a conversion of lands to a non-employment use only be considered during a municipal comprehensive review, as provided for in policies 14, 15 and 16, is simply implementing the requirements of the GP 2006 concerning conversions.

Complete Communities

[59] Mr. Mathew finally addressed a more diffuse issue, being the question of whether OPA 231 supported the GP 2006 and PPS policies of supporting the principle of a complete community. It is the view of the Tribunal that this principle touches upon, and is a character of compendium of, a variety of policies found under each of those planning policy documents directed toward a goal of balance amongst them.

[60] Mr. Mathew reacts to this issue by taking the large, or macro, view. He understands the City, not any circumscribed area thereunder, to be the complete community. The Official Plan has been designed to provide a full range of housing and employment choices for its current and future residents, and a healthy and diverse economic base. In his view, Employment Areas are part of the employment and economic opportunity within a complete community. He then squarely says that less land for employment or fewer opportunities for a broad range of types and skills would make Toronto a less complete community.

[61] In this, the Tribunal will concur.

The Evidence of Michael Wright

[62] Mr. Wright is a planner in the City Planning Division with an expertise in demographics. He provided the Tribunal with detailed background on the City's population, primarily in the period from 2011 forward along with projections as to expected population growth.

[63] Mr. Wright spent time in explaining the techniques involved in establishing population count. Although the principal source of this information is from Statistics Canada, the bulwark being the census data which is derived every five years, there are other factors applied to account for undercounting and migration.

[64] It is not material for this Decision, so the explanation provided by Mr. Wright will not be reproduced here, but it must be said that the population for any given year is not a static number. Population figures are revised continually on an ongoing basis for many years after the initial determination. The key is simply understanding this fact and properly correlating data between time periods.

[65] The primary purpose of this evidence was to then juxtapose what was understood as the projected population growth with an analysis of what was identified as the potential supply of land available for development or redevelopment for residential purposes in order to house this growth.

[66] The identified issue for the hearing was whether the policies of OPA 231 might have the effect of removing from deployment for housing purposes lands within Employment Areas and thereby potentially negatively affect the provision of that housing.

[67] Mr. Wright asserted that the overall housing supply is affected by many factors, including the total residential potential and the timing of the potential supply. In referring to the *Housing Potential Analysis* for which an interim report was presented to and adopted by Planning and Growth Management Committee of Council on November 21, 2013, he conveyed the opinion from that report that the City contains more than

sufficient housing potential in areas currently designated for residential growth by the Official Plan to accommodate the forecasted population growth to 2031 and 2041 per Schedule 3 of the Growth Plan for the Greater Golden Horseshoe, as amended in June 2013. Staff findings were that no areas designated as an Employment Area needed to be converted to residential uses in order to achieve the population growth forecast of the GP 2006. He further advised that the *Housing Potential Analysis* has been updated and was completed in 2015. It identified more than sufficient residential potential in areas identified for residential growth by the Official Plan to achieve the population forecasts to 2031 and 2041 in Schedule 3 of the GP 2006 and as amended in 2013.

[68] Mr. Wright communicated to the Tribunal that the City Planning Division publishes a bulletin, *How Does the City Grow? Update 2019*, which was adopted by the Planning and Housing Committee of Council on July 3, 2019. In that bulletin, it states on page 4:

Over the last five years, Council has approved more residential units than were built (see Table 4 on page 5). City Council approved an average of 21,182 residential units per year between 2014 and 2018, while 18,000 units on average were built annually. This surplus helps to ensure a steady supply of approved housing will be available for construction and eventual occupancy.

[69] On his review of all of the available data, he was of the opinion that from a land use policy perspective there is more than sufficient residential potential in areas identified for residential growth by the Official Plan to achieve the population forecasts to 2031 and 2041 in Schedule 3 of the GP 2006 and as amended in 2013, and the 2017 Growth Plan, and the GP 2019, and, that over the past several years, Council has approved more residential units than were built in each of those years. His concluding opinion was that, consequently, from a land use policy perspective, there is more than sufficient residential potential in areas identified for residential growth by the Official Plan to accommodate the population forecasts of GP 2006 and the Official Plan.

The Evidence of Rebecca Condon

[70] Ms. Condon is a Registered Professional Planner and Professional Land Economist employed by the City as a Senior Business Development Officer in the Economic Development and Culture Division. In this role, she functions as a kind of ambassador on behalf of business and she has acquired an understanding of the needs of business, and concerns of business, as a result of her years of activity in this area.

[71] Ms. Condon spoke to her perception that the City is under pressure to permit employment lands to be converted and redeveloped for uses other than employment uses, which pressure she attributes to the higher value and short-term return that can be achieved from these other uses, most particularly residential use.

[72] Ms. Condon says that applications that succeed in converting designated employment land to non-employment uses undermine the long-term growth management strategy of the City Official Plan by harming the competitiveness of employment lands throughout the City. In her opinion, applications for conversions apply pressure and land use uncertainty to existing industry causing them to consider relocation. They also send a signal to the market that the default use for all vacant or underutilized employment land is residential or other non-employment uses.

[73] She expresses the view that this has had a significant impact on the financial viability of developing these lands for employment purposes. There is a significant land value differential between designated employment lands and lands designated to permit residential development. For example, allowing residential permissions may increase the land value of industrial properties up to 12 times higher than that of an employment land only designation. She relayed that in her experience, she has found that developers will often seek the designation that produces the highest return.

[74] She advises that the areas designated as Employment Areas accommodated 92% of all manufacturing employment in 2017. These industries often require large tracts of land with adjacent buffering to reduce land use conflict with sensitive uses. She further

corroborated Mr. Mathew's assessment that the inventory availability of such land is at about 1%, as supply has been declining and is at an all-time low.

[75] There is a further impact. She advised that in her experience, businesses seek, in their long-term planning, land use certainty. Encroachment, within or near designated Employment Areas by residential uses has the potential to disrupt the operation of a current business and, also, to impact the decision to be made by a business owner who is deciding where to locate his or her business.

[76] If there is the potential to have a business site impacted by sensitive uses being located at or near a business site, the potential business site is less desirable to that business owner. Business owners, given the substantial investments that they make to locate and maintain a business, value certainty of land use permissions not only upon the site where their business is located but also on lands that are in the vicinity of their business. Having sensitive uses located near a business can have negative financial and operational impacts upon a business.

[77] Ms. Condon concludes that as there is a finite supply of employment lands and a limited supply of existing buildings, it is necessary to plan for and preserve space in the designated Employment Areas for businesses and economic activities in order to accommodate anticipated employment growth.

[78] Ms. Condon spoke to the relevant policies in the GP 2006 and the PPS and offered her opinion that OPA 231 conformed with, and was consistent with, respectively those policies. As the details of those policies were dealt with more specifically by the final City witness, Mr. Dixon, they will be detailed there.

The Evidence of Steven Dixon

[79] Mr. Dixon is a Senior Planner in the Strategic Initiatives, Policy and Analysis section of the City Planning Division. He is a Registered Professional Planner. Although not employed with the City at the time of adoption of OPA 231, since joining the City Planning

Division in February 2017, he has been involved with this planning instrument in the appeal proceedings before the Tribunal.

[80] As noted at the outset of the Decision, at its Council meeting in June 2019, Council revisited OPA 231 for the purpose of endorsing a variety of modifications to its text in response to issues raised by various appellants. Mr. Dixon detailed those modifications, which were essentially issues raised by TIN and CPA.

[81] Above and beyond the Council endorsed modifications, Mr. Dixon, having given further consideration to evidence filed in the hearing, provided some additional minor textual amendments which he recommended be accepted by the Tribunal. The final version of modified text being recommended by the City for approval by the Tribunal was filed by the City's counsel as part of final submissions.

[82] Mr. Dixon addressed the relevant policies of the PPS and the GP 2006. It is to be noted that at the time of preparation of his witness statement, the transition regulation regarding the GP 2019 had not been finalized and Mr. Dixon therefore went on to discuss the question of Provincial plan conformity of OPA 231 with respect to it as well as GP 2006. As noted above, due to the finalization of that regulation prior to this hearing, the matter of conformity was judged by the Tribunal with reference to GP 2006. As such, Mr. Dixon's opinions in his pre-filed witness statement regarding the GP 2019 were not pursued in his oral testimony and will not be reflected in this Decision.

[83] Although there was reference to a number of policies, the key policies from the PPS which he identified for the purpose of addressing the issues in the hearing were these:

1.2.6 Land Use Compatibility

1.2.6.1 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.

1.3 Employment

1.3.1 Planning authorities shall promote economic development and competitiveness by:

a) providing for an appropriate mix and range of employment and institutional uses to meet long-term needs; b) providing opportunities for a diversified economic base, including maintaining a range and choice of suitable sites for employment uses which support a wide range of economic activities and ancillary uses, and take into account the needs of existing and future businesses; c) encouraging compact, mixed-use development that incorporates compatible employment uses to support livable and resilient communities; and d) ensuring the necessary infrastructure is provided to support current and projected needs.

1.3.2 Employment Areas

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.

1.3.2.2 Planning authorities may permit conversion of lands within employment areas to non-employment uses through a comprehensive review, only 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.

1.3.2.3 Planning authorities shall protect employment areas in proximity to major goods movement facilities and corridors for employment uses that require those locations.

1.3.2.4 Planning authorities may plan beyond 20 years for the long-term protection of employment areas provided lands are not designated beyond the planning horizon identified in policy 1.1.2.

s.1.1.3 –

1.1.3.3 Planning authorities shall identify appropriate locations and promote opportunities for intensification and redevelopment where this can be accommodated taking into account existing building stock or areas, including brownfield sites, and the availability of suitable existing or planned infrastructure and public service facilities required to accommodate projected needs.

Intensification and redevelopment shall be directed in accordance with the policies of Section 2: Wise Use and Management of Resources and Section 3: Protecting Public Health and Safety.

[84] Similarly, the key policies from the GP 2006 which he identified for the purpose of addressing the issues in the hearing were these:

s.2.1

Providing opportunities for businesses to locate in the GGH is fundamental to using land wisely and ensuring a prosperous economic future. Therefore, it is important to ensure an adequate supply of land for employment areas and other employment uses.

2.2.6 Employment Lands

1. An adequate supply of lands providing locations for a variety of appropriate employment uses will be maintained to accommodate the growth forecasts in Schedule 3.
2. Municipalities will promote economic development and competitiveness by: –
 - a) providing for an appropriate mix of employment uses including industrial, commercial and institutional uses to meet long-term needs
 - b) providing opportunities for a diversified economic base, including maintaining a range and choice of suitable sites for employment uses which support a wide range of economic activities and ancillary uses, and take into account the needs of existing and future businesses
 - c) planning for, protecting and preserving employment areas for current and future uses
 - d) ensuring the necessary infrastructure is provided to support current and forecasted employment needs.

2.2.2.1 Managing Growth

- f) ensuring the availability of sufficient land for employment to accommodate forecasted growth to support the GGH's economic competitiveness
- g) planning and investing for a balance of jobs and housing in communities across the GGH to reduce the need for long distance commuting and to increase the modal share for transit, walking and cycling

2.2.5 Major Transit Station Areas and Intensification Corridors

1. Major transit station areas and intensification corridors will be designated in official plans and planned to achieve
 - a) increased residential and employment densities that support and ensure the viability of existing and planned transit service levels
 - b) a mix of residential, office, institutional, and commercial development wherever appropriate

s.2.2.6

5. Municipalities may permit conversion of lands within employment areas, to non-employment uses, only through a municipal comprehensive review where it has been demonstrated that:
 - a) there is a need for the conversion
 - b) the municipality will meet the employment forecasts allocated to the municipality pursuant to this Plan
 - c) the conversion will not adversely affect the overall viability of the employment area, and achievement of the intensification target, density targets, and other policies of this Plan
 - d) there is existing or planned infrastructure to accommodate the proposed conversion
 - e) the lands are not required over the long term for the employment purposes for which they are designated
 - f) cross-jurisdictional issues have been considered.

[85] For the purposes of this policy, major retail uses are considered non-employment uses.

[86] With respect to the issue on the Issues List regarding implementation of Major Transit Station Area policies, it was the opinion of Mr. Dixon that this only arose as a policy imperative through the 2017 Growth Plan, which was subsequent in time to GP 2006. As well, the establishment of Major Transit Station Areas is a matter left to the municipal

council to be undertaken as part of a municipal comprehensive review, which the City will be undertaking in the next round of conformity review.

[87] The Tribunal shares the view of Mr. Dixon that this is best, and appropriately, left to Council as part of the upcoming municipal comprehensive review.

[88] In going through the various hearing issues, of which there were many, what became clear to the Tribunal is that the opinion expressed by Mr. Dixon that OPA 231 (as proposed to be modified as the City has recommended) is consistent with the PPS and conforms with the GP 2006 rested upon certain premises that, in his view, underpinned the policies in OPA 231. Those premises were that OPA 231 designates lands to meet long-term economic needs by providing for a range and choice of suitable sites for employment uses that support a range of economic activities and ancillary uses.

[89] Furthermore, in his view, the establishment of both General Employment Areas and Core Employment Areas helps to ensure that employment lands are appropriately designed, buffered and separated from sensitive land uses to ensure long-term stability of employment uses.

[90] Each of these designations has a planning purpose. Specifically, the General Employment Area designation allows uses which may draw heavier general public usage. That character of usage can be disruptive to more intense industrial operations. It tends to be located on the periphery of employment areas. For this reason, the City has determined to treat redesignations as between these two designations as a conversion. As a conversion, it can only be achieved through a municipal comprehensive review. Such a review promises a broader consideration of ramifications and a proper consideration of City-wide need.

[91] In his opinion, these premises reflect the objectives of the Provincial policy. In its blunt statement, s. 2.2.6.2 (c) of GP 2006 requires municipalities to promote economic development by planning for, protecting and preserving employment areas for current and future uses. By the terms of the GP 2006, conversion of employment lands to non-

employment uses can only be done through a municipal comprehensive review. Mr. Dixon takes the position that because there is a distinct mix of uses provided for in these two employment designations, in furtherance of the goals of protecting and preserving, along with ensuring compatibility, it does not offend the Provincial policy for the City to treat such changes between the two as a conversion requiring close scrutiny. In his view, the reference to non-employment lands does not have the effect of constraining what the City treats as a change that may have the effect of undermining the stability of either or both of these designations.

[92] The policies of OPA 231 are strict deliberately in order to adhere to the Provincial objectives. As Mr. Biggart put it to the Tribunal, OPA 231 sets a high bar in the interest of protecting and preserving employment lands. The policies in OPA 231 were not meant to be flexible.

The Evidence of Ian Graham

[93] Ian Graham is a Registered Professional Planner. He was called on behalf of TIN, an incorporated association of mostly large manufacturers with facilities in Toronto. As noted at the outset of the Decision, TIN is supportive of OPA 231. Their presence at the hearing was to preserve OPA 231 and enhance its provisions to be, in their view, more protective of employment uses.

[94] To this end, TIN, through the filing of their submissions with the City, was able to convince City staff of the value and advantage of quite a variety of text modifications, which City staff then recommended to City Council, where those modifications were endorsed.

[95] Mr. Graham took the Tribunal through those issues and submissions and confirmed to the Tribunal TIN's endorsement of these modifications.

[96] Despite the broad acceptance of TIN's submissions, Mr. Graham spoke to concerns over the conversion text potentially constraining the introduction of new employment uses.

He sought more detail regarding the contents of a Compatibility/Mitigation Study and the introduction of a further sidebar dealing with the definition of “Influence Area” as distinct from that used with respect to uses external to employment areas.

The Evidence of Dana Anderson

[97] Ms. Anderson is a Registered Professional Planner. She appeared before the Tribunal on behalf of CPA, which is a national organization with over 400 member companies involved in the production, wholesaling, transportation and retailing of propane. At the outset of her testimony she provided the Tribunal with a broad overview of the propane industry in Canada and Toronto.

[98] The overview included an explanation of the regulatory regime which governs the manufacture, storage and distribution of propane. The primary focus of the chain of activities/facilities for this hearing was the bulk storage and transfer facilities which are located in the City. These facilities are generally, but not exclusively, found in Employment Areas.

[99] Propane storage operators are obliged, by Provincial regulation administered by the Technical Standards & Safety Authority, to develop risk and safety management plans for their facilities. A key feature of these plans is to assess the potential for hazard and to develop physical features and operating programmes and policies to anticipate and deal with hazard events.

[100] As with TIN, the CPA is supportive of OPA 231 and its underlying rationale to protect and preserve employment uses. A number of recommendations to improve the text of OPA 231 which were advanced by TIN were supported by CPA.

[101] One matter specific to CPA was its concern that based upon the current notice requirements, their operators may not be receiving notice of proposals to introduce new land uses that could create compatibility issues for the propane operator. This arises as the identified hazard area may be more extensive than the prescribed notice area under

the Act. City staff recognized this issue and have included further text in the version now being advanced before the Tribunal to expressly include an obligation to give notice to operators of these facilities based upon their obligatory separation distances. The evidence before the Tribunal is that the municipalities are provided with this separation distance information in order to be able to make that notice determination.

[102] The Tribunal understood Ms. Anderson to be seeking as well, text amendments which would control the introduction of new or changed uses that may affect the hazard control obligations of propane operators and essentially preclude such new or changed uses in that circumstance. The Tribunal understands the desire for protection and certainty, but this request would appear to deprive the municipal council of its authority to assess matters of compatibility and the costs of achieving it.

[103] The Tribunal appreciates that the additional clause in Policy 17(d) would bring precise focus to the matter of propane facilities but this arguably is already completely covered by the prior clause iv), which addresses the need to consider the ability to ensure compliance with environmental approvals, registrations, legislation, regulations and guidelines. This is a broad obligation to consider regulatory operational impacts on any character of existing use. The concern of the Tribunal relates back to the Latin maxim, *expressio unius, exclusio alterius*, that by calling out one industry specifically other industries may not warrant the same attention.

The Evidence of Jeanette Gillezeau

[104] Ms. Gillezeau is an economist with a background in urban and regional planning. She has considerable experience in municipal development charges. She was retained by BILD to provide research and analysis regarding the changes wrought by OPA 231. Her witness statement says that she was asked to provide data and analysis regarding economic and housing trends and forecasts for the City of Toronto to provide context for Peter Smith's evidence regarding the planning issues identified for the hearing.

[105] The framing of her understanding of her task suggests that Mr. Smith had formulated his views of the planning issues and was seeking a statistical underpinning to support his conclusions.

[106] Ms. Gillezeau confirmed that in conducting her review, she essentially relied upon the same material as did Mr. Mathew, much of which was prepared by Mr. Mathew's firm, Hemson Consulting Ltd.

[107] This means that there was basic agreement on employment data and population at the relevant windows of time.

[108] In dealing with the various issues identified for comment by her, Ms. Gillezeau provided a summary of her findings.

[109] Her first observation is that, in her view, the new conversion policies in OPA 231 are more restrictive than the conversion policies in the PPS and the GP 2006. The Tribunal would observe that this statement is a fair representation. However, the Tribunal also notes, as identified by City witnesses and counsel for the City, both the PPS and the Growth Plan, in their implementation policies provide latitude to municipalities to go beyond the minimum standards and targets of the Provincial policy and plan. The Tribunal here, then, does not take policy which may be more restrictive in and of itself as a basis upon which to reject it.

[110] Ms. Gillezeau draws upon the policy mandate to plan for complete communities, being a composition of residential, employment, institutional, recreational and other uses to meet long-term needs. In her view, this calls for the provision of a balance of jobs and housing across the Greater Golden Horseshoe.

[111] She rightly notes that the City has already achieved the GP 2019 employment forecast for 2031 and that it is expected that the City will achieve the Growth Plan 2041 forecast sometime between 2024 and 2026. Much of this employment is accounted for outside of designated Employment Areas.

[112] Ms. Gillezeau echoed the data referred to by Mr. Mathew regarding the reductions in employment in the manufacturing and warehousing sector, which character of uses is largely accommodated in the designated Employment Areas, and which reductions are expected to continue.

[113] This brought her to a discussion of the policies in the PPS and the GP 2006 which identify the redevelopment of brownfield sites and their conversion to residential use, especially to achieve intensification of use, as activity to be encouraged.

[114] This discussion then circles back to ensuring that the Official Plan policy is benevolent to such brownfield conversions so that they can be accommodated when the circumstances present them.

[115] Ms. Gillezeau relies upon the population data produced by Statistics Canada and as found in the Hemson reports. Her view about population growth is consistent with the City witnesses.

[116] Where this takes Ms. Gillezeau is to a conclusion that the OPA 231 policies have been drafted too restrictively to properly accommodate brownfield conversions and that such conversions may indeed be necessary to facilitate a complete community.

[117] The vulnerability with this conclusion is that Ms. Gillezeau makes no reference to the very low vacancy rate which prevails with respect to Employment Area lands and to the reinvestment in, and reoccupation of, buildings on these lands which has persistently been occurring for employment uses which are not the traditional manufacturing/industrial uses but are employment uses nonetheless upon lands which accommodate these uses very well.

[118] Ms. Gillezeau also undertakes no independent analysis of the potential of non-Employment Lands to yield the number of housing units that will be required by the population growth forecast by GP 2006 and the population which is actually being experienced. That is, there is no basis from her analysis to conclude that conversion of

Employment Area lands will be required in order to meet the necessary housing production.

The Evidence of Peter Smith

[119] Mr. Smith is a Registered Professional Planner. He has almost 40 years of experience in planning policy matters and in managing development applications. He appears regularly before the Tribunal and was entirely conversant with the issues that were before the Tribunal in this appeal. He was retained in this matter by BILD.

[120] A good part of Mr. Smith's evidence was prefigured by that of Ms. Gillezeau, which linkage the Tribunal noted above.

[121] As was suggested by Ms. Gillezeau, Mr. Smith also indicated his view that the conversion policies in OPA 231 were unduly, and unnecessarily, restrictive. He did not acknowledge the Provincial policy provisions which authorize a municipality to adopt minimum standards and targets which are greater than in the Provincial policy. Instead, he viewed the greater restrictiveness of the OPA 231 policies as interfering with the Provincial objectives of complete communities, intensification, conversion of brownfields and optimization of infrastructure and land resources.

[122] Mr. Smith understood the statistics about the decline in the manufacturing and warehousing sector (although warehousing in the form of logistics facilities seems to be enjoying something of a renaissance and becoming a driver of the re-uptake of old industrial space and land) and looked at this as creating opportunities for brownfield redevelopment, which he advised would typically be in the form of uses which were non-employment.

[123] As with Ms. Gillezeau, he did not seem to treat the very low Employment Area building vacancy rate and vacant land rate as a sign of robust demand for this space and a signal that this inventory may need protecting, bearing in mind the very clear directive of both the PPS and the GP 2006 that employment lands are to be protected and preserved,

along with the mandate that a mix and range of employment uses should be provided to meet long-term needs.

[124] As the Tribunal perceives it, the concern of the Province and the City is that employment land is not readily created and once converted out of employment use will not revert to that use. This results in a shrinking inventory, which can undermine the need to have a land base that will over time sustain especially the more intense employment uses.

[125] In something of a telling exchange, the Tribunal made the assertion that employment land, once converted to non-employment purposes, will not convert back to employment uses. With a view to dispelling this assertion, Mr. Smith produced an example in the City of a site in the Scarborough area which had been designated employment lands, was converted to non-employment uses (Neighbourhoods, in fact) and then was converted back to employment uses. In cross-examination by Mr. Biggart, a Planning Department Staff Report was produced which explained that the conversion of that property out of employment uses was as a result of a mapping error and the action requested of Council in that report was simply to restore the correct state of affairs as to the designation of those lands as employment lands.

[126] Mr. Smith was not able to produce any other examples of a re-conversion to employment land designation once converted out.

[127] It is also a fact worth noting, as it was adduced in the evidence of the City witnesses, that part of the Employment Lands review process involved entertaining requests for conversion, of which there were just over 100 such requests. Based upon employing the criteria set out in the PPS and GP 2006, City Council did authorize the creation of certain regeneration areas and some free-standing conversions as this was conducted as part of an MCR. This fact is noted in response to the dire predictions of BILD and Morguard that these conversion policies will spell the end of employment land conversions.

[128] Another tack taken by Mr. Smith related to the Province's most recent initiative through the release of the GP 2019. This concerns the creation of what is referred to in that document as a PSEZ. The PSEZ signifies employment areas which are not susceptible of conversion to non-employment uses except through an MCR. The inference from this new designation is that employment lands which are not designated as PSEZ under the Growth Plan 2019 would be susceptible to conversions outside of an MCR.

[129] Mr. Smith characterized this new step under the GP 2019 as an attempt to identify truly strategic employment lands and differentiate them from other employment lands. His suggestion was that this reflected sound planning policy and should have been adopted in OPA 231. He also suggested that as this is now in the GP 2019, City Council will have to deal with this in the next conformity review.

[130] In fairness to Mr. Smith, when his expert witness statement was prepared, the transition regulation had not been filed and it would not have been clear that the review of OPA 231 by the Tribunal would, by law, be constrained to be reviewed through the lens of GP 2006. As noted at the outset, for OPA 231, the matter of Provincial plan conformity is with respect to GP 2006. Although the Tribunal deigned to hear evidence about GP 2019, that evidence does not take on a greater importance or require the Tribunal in this hearing to cleave to any attempt to reflect the new initiative in OPA 231.

[131] The matter of conformity with GP 2019 and the concept of PSEZ will come before City Council in due course and the Tribunal is of the view that it is best left to City Council in the first instance to deal with that new initiative when they conduct their conformity review exercise.

[132] Mr. Smith raises a concern about the conversion policies in OPA 231 potentially limiting the introduction of new and previously unanticipated employment uses in Employment Areas on the basis that the introduction of anything other than a permitted use in either of the Employment Land designations would be treated as a conversion and would require assessment through the MCR process.

[133] The Tribunal treats this as more of a theoretical concern than a real one. The permitted uses for Core Employment Area and General Employment Area as laid out in Policies 4.6.1-4 are expressed in categories of considerable breadth. There was no example provided of an employment use, new or emerging, which would not reasonably be treated as being comprehended as a permitted use in either of the Employment Area designations.

The Evidence of David McKay

[134] David McKay is a Registered Professional Planner. He has many years of experience in connection with development applications, including many employment land type uses. He was retained in this matter by Morguard

[135] A significant part of Mr. McKay's testimony was directed to what is referred to as "wordsmithing", as it was Mr. McKay's view that a key objective in the drafting of policy is to achieve clarity and consistency. His various edits were laid out in detail in his expert witness statement and, as further updated by reason of hearing all of the prior witness testimony, further augmented in his oral testimony.

[136] Mr. McKay was of the view that OPA 231 should properly track the Provincial policy documents and not depart from what he viewed as essential elements of those instruments. This came down to a criticism of the lack of reference in OPA 231 to "clusters" of business activity when referencing areas of employment. By reason of the City's willingness to introduce sidebar text that would carry this reference, it appeared to the Tribunal that Mr. McKay treated that as sufficient to address the concern which he raised.

[137] His principal substantive complaint was with respect to the matter of a change from one employment designation to another being treated as a conversion. It was his view that GP 2006 did not reasonably support such an outcome and that conversions should properly be understood to be re-designations to non-employment uses.

[138] During the City's case, the City produced a letter from the Ministry of Municipal Affairs and Housing with comments on the draft OPA 231. That letter was dated March 27, 2013, from Mark Christie, Manager, Community Planning and Development, Municipal Services Office, at the Ministry to Kerri Voumvakis, Director, Strategic Initiatives, Policy and Analysis at the City Planning Department.

[139] The Ministry letter contained the following statements (bearing in mind that at the time of the letter the draft document made provision for three categories of employment land, Retail Employment Area later being dropped):

Permitted uses on lands within "General Employment Areas" and "Retail Employment Areas" are generally broader, allowing for additional secondary uses to be established without disturbing the planned function of the Core Employment Areas. While the draft policies include a conversion policy to protect lands in Core Employment Areas, General Employment Areas and Retail Employment Areas from conversion to non-employment uses only through a Municipal Comprehensive Review, there doesn't appear to be a policy to address redesignation between the three Employment Area designations. The lack of such a policy may threaten the supply of Core Employment Area lands which represent approximately 80% of the total lands proposed to be designated as Employment Areas and which are preserved for traditional industrial uses.

[140] The letter also contained a proposed definition for "conversion":

Conversion: means a redesignation from an Employment Area designation to another designation or to another sub-Employment Area designation, or the introduction of a use that is otherwise not permitted in the Employment Area designations.

[141] Mr. Dixon addressed this point in his reply evidence. He suggested that, in his opinion, the introduction of additional accessory or ancillary uses that are not otherwise permitted in a Core Employment Area should be considered a conversion of the Core Employment Area, even if the proposed land use designation is General Employment Areas. The distinction being that although the additional accessory or ancillary uses permitted in General Employment Areas provide a type of employment, they are not employment uses within the context of Core Employment Areas as defined by the Official Plan. Lands designated Core Employment Areas are intended to provide security of land

use for employment area employment. A proposed conversion from Core Employment Areas to General Employment Areas could change the planned function and character of the Core Employment Area and have the potential to pose a risk to the planned function of any remaining Core Employment Areas lands in the vicinity. Employment area employment uses permitted on lands designated Core Employment Areas are not appropriate elsewhere in the City due to noise, vibration, emissions and other contaminants, traffic and operational requirements. Equally, not all types of employment are appropriate uses to be permitted in Core Employment Areas lands.

[142] Mr. Dixon affirmed in his reply evidence that the City understood the intent of the Ministry's comment and, based upon this letter from the Ministry, included the referenced conversion policy into OPA 231. It appeared to the Tribunal that the City had deduced that OPA 231 would not obtain Ministerial approval without this modification.

[143] The Tribunal understands the position which has been taken by the City on the matter of internal employment land conversion, and especially in light of the apparent directive from the Ministry, the Tribunal accepts that the action of the City in incorporating this provision can fairly be treated as reasonable and in conformity with GP 2006 even if there are no examples from other municipalities of such treatment in their Official Plans, as Mr. McKay has alleged.

THE DISPOSITION OF THE TRIBUNAL

[144] Based upon the evidence heard by the Tribunal, the Tribunal makes the following core findings:

1. The City has a robust employment sector and the City will have no difficulty meeting its employment targets as laid out in GP 2006.
2. The City's employment land base as presently delineated has limited vacant land and low vacancy rates.
3. There is evidence of the renewal and updating of the building stock within the City's employment lands to signify the demand for space within the City's employment lands.

4. As a general proposition, once converted out of employment land use to another land use designation, there is no evidence that such lands are likely to be re-converted to employment land use.
5. The City appears to be on track to meet its population forecast targets under the GP 2006.
6. There appears to be a sufficient rate of development approvals on an annual basis and supply of land with the potential for residential development to accommodate the production of dwelling units to house the forecast population growth.
7. There is no evidence to support the view that there is a need to convert employment lands to non-employment uses to meet the land supply necessary to create the dwelling units that are necessary to accommodate the City's forecast population growth.

[145] The Tribunal, as it relates to the matter before it in this appeal hearing, treats the following Provincial policies as paramount:

1. Policy 1.3.2.1 of the PPS: 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.
2. Policy 1.3.2.2 of the PPS: Planning authorities may permit conversion of lands within employment areas to non-employment uses through a comprehensive review, only 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.
3. Policy 2.2.6.1 of the GP 2006: An adequate supply of lands providing locations for a variety of appropriate employment uses will be maintained to accommodate the growth forecasts in Schedule 3.
4. Policy 2.2.6.2.c of the GP 2006: Municipalities will promote economic development and competitiveness by planning for, protecting and preserving employment areas for current and future uses.
5. Policy 2.2.6.5 of the GP 2006: Municipalities may permit conversion of lands within employment areas, to non-employment uses, only through a municipal comprehensive review where it has been demonstrated that:

- a) there is a need for the conversion

- b) the municipality will meet the employment forecasts allocated to the municipality pursuant to this Plan
- c) the conversion will not adversely affect the overall viability of the employment area, and achievement of the intensification target, density targets, and other policies of this Plan
- d) there is existing or planned infrastructure to accommodate the proposed conversion
- e) the lands are not required over the long term for the employment purposes for which they are designated
- f) cross-jurisdictional issues have been considered.

[146] The paramountcy of these policies is not meant to signify that the other policies of the Provincial planning policy documents, such as the need to create complete communities and to provide a range and mix of housing, have not been taken into account in this appeal hearing. The Tribunal, based upon the facts as it has found, essentially determines that by approving OPA 231 as proposed to be modified, will fully and fairly implement these paramount policies while not undermining or ignoring the other policies of the PPS and GP 2006.

[147] It is the determination of the Tribunal that OPA 231, as modified, is consistent with the PPS and conforms with GP 2006.

[148] In the result, the Tribunal will allow the appeals relating to these Phase 3 issues for the purpose of implementing the modifications which have been proposed by the City based upon the comments and input from the Appellants through the appeal process. The finally modified version of OPA 231 was submitted by the City through its counsel as part of final submissions. That version was submitted showing highlighting, underlining for additions and strikethroughs for deletions.

[149] The Tribunal will issue its Order approving OPA 231 as modified by City Council and through the documented concessions of Mr. Dixon reflected in the version submitted by Mr. Biggart as part of his final submissions once it receives a clean copy from counsel for the City.

“Gerald S. Swinkin”

GERALD S. SWINKIN
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

A constituent tribunal of Tribunals Ontario - Environment and Land Division
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