

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



**ISSUE DATE:** July 10, 2018

**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:	Multiple Appellants
Subject:	Proposed Official Plan Amendment No. 231
Municipality:	City of Toronto
OMB Case No.:	PL140860
OMB File No.:	PL140860
OMB Case Name:	A. Mantella & Sons Limited v. Toronto (City)

**Heard:** June 14, 2018 at Toronto, Ontario

**APPEARANCES:**

**Parties**

City of Toronto

Al Reisman Ltd. and D. Crupi & Sons Ltd.

Mondelez Canada Inc.

Morguard Investments Ltd. and Revenue Properties Co. Ltd.

Toronto Industry Network and Canadian Propane Association

**Counsel**

Andrew Biggart

David S. White

Mary Bull

Dennis Wood and Raj Kehar

Jonathan Cheng (for Calvin Lantz)

1147390 Ontario Ltd., Queen's  
Quay Avante Ltd. and BILD                      John Dawson

Greenland Lakeside Development              Patricia Foran  
Inc. and Leslie-Lakeshore  
Developments Inc.

**MEMORANDUM OF ORAL DECISION DELIVERED BY GERALD S. SWINKIN ON  
JUNE 14, 2018**

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[1] This hearing session dealt with a hearing phase relating to the appeals of City of Toronto (the "City") Official Plan Amendment No. 231 ("OPA 231"), which amendment relates to Employment Lands policies in the City Official Plan.

[2] This particular phase is referred to as Phase 1B-Part III, which concerned itself with matters of compatibility and mitigation regarding the development and use of lands outside of the Employment Lands designation but which may affect, or be affected by, uses within the Employment Lands designation.

[3] The City, through mediation, was able to come to terms with those appellants who had issues with these policies and the matter came before the Local Planning Appeal Tribunal (the "Tribunal") at this hearing session as a settlement.

[4] On consent of the Parties, the City called Christina Heydorn, a Senior Planner in the Policy Unit of the Strategic Planning, Initiatives and Analysis Section of the City Planning Division. She was qualified to offer opinion evidence on land use planning matters.

[5] Ms. Heydorn referenced the relevant and applicable statutory and policy background which informed the adoption of OPA 231 arising out of the *Planning Act*, the Provincial Policy Statement, the Growth Plan for the Greater Golden Horseshoe, Provincial Land Use Compatibility Guidelines, and the City Official Plan.

[6] Ms. Heydorn provided background as to the process which led up to the adoption of OPA 231 and its adoption by City Council at its meeting on December 16 -18, 2013 by way of By-law No. 1714-2013.

[7] OPA 231 was submitted for approval to the approval authority, the Minister of Municipal Affairs and Housing. The Minister issued a decision on July 9, 2014, which approved OPA 231 with minor modifications, save and except for lands located within the Lower Don Special Policy Area.

[8] A total of 178 appeals were filed against the Minister's decision. These appeals are being managed by the Tribunal in phases based upon a categorization of the appeal issues.

[9] This hearing session relates to Phase 1B-Part III, which has been characterized as the Compatibility/Mitigation category which, as noted above, deals with policy applicable to lands outside of designated Employment Lands that may affect, or be affected by, uses within designated Employment Lands or by major facilities as those are defined.

[10] Ms. Heydorn advised of the settlement discussions which occurred and of the presentation of recommendations from same, which were brought before City Council at its meeting on April 24-27, 2018. City Council adopted the recommendations of City staff regarding acceptance of the proposed settlement modifications to OPA 231. Those settlement modifications were attached to her Witness Statement and are attached hereto as Attachment 1.

[11] As spoken to by Ms. Heydorn, the key elements of the modifications are as follows:

- i. Add non-policy text to encourage a collaborative approach to planning sensitive land uses adjacent to and near to *Employment Areas* or within the influence area of *major facilities*;

- ii. Expand policies regarding the planning of sensitive land uses outside of and adjacent to or near *Employment Areas* to add clarity;
- iii. Add policies to ensure the long-term viability of major facilities;
- iv. Add policies to require a Compatibility/Mitigation Study in prescribed circumstances as well as detailed requirements of such a Study.
- v. Add the Terms of Reference for the Compatibility/Mitigation Study to the City's Development Guide to inform applicants of the necessary information required to address the policies;
- vi. Add policies to expand notice of a development proposal in prescribed circumstances as well as the geographic extent of the required notice;
- vii. Modify the definition of "Sensitive Land Uses" in the sidebar to remove reference to the Provincial Policy Statement and to refine the types of uses that are considered sensitive land uses for the purpose of the Plan; and,
- viii. Add new definitions to the sidebar for "Major Facilities" and "Influence Area". New policy has been added concerning major facilities and influence areas. The new sidebar definitions clarify the types of facilities and the geographic extent to which the policies apply.

[12] Ms. Heydorn offered her professional opinion that the proposed modifications clarify and strengthen the compatibility and mitigation policies as they apply to sensitive land uses planned outside of and adjacent to or near to Employment Areas or within the influence area of major facilities. Her view was that the modified policies strike an appropriate balance between policies requested by industrial users and those requested by proponents of new sensitive land uses outside of but adjacent to or near to Employment Areas.

[13] In her opinion, the proposed modifications are consistent with the Provincial Policy Statement and conform with the policies of the Growth Plan for the Greater Golden Horseshoe as well as the principles in the City Official Plan.

[14] This opinion was uncontroverted and the Tribunal will accept it for the purpose of approving the modifications as set out in Attachment 1.

[15] The Tribunal will note that John Dawson was seeking a certain clarification from Ms. Heydorn as to the general guiding principle behind the modifications. A pre-exchanged set of questions and answers between Mr. Dawson and Ms. Heydorn was tendered and taken in as Exhibit 3. To attempt to extract the essence from this document, the Tribunal would suggest that Ms. Heydorn acknowledged that in a number of instances the effect of the modifications was to make explicit what had perhaps only been implicit, and that application of the policies will always be subject to context and the need to balance the variously articulated goals and objectives of the City Official Plan.

[16] The formal Order of the Tribunal, which was also the subject of negotiation amongst the Parties and resulted in a draft tendered to the Tribunal, will carry certain controlling provisions with respect to the disposition of the balance of the appeals and the impact of this approval on those matters. That Order will issue in due course.

### **Pre-Hearing Conference for Phase 3 – Population and Employment Forecasting /Conversion**

[17] At the request of the City, a Pre-Hearing Conference (“PHC”) is scheduled for the purpose of organizing the hearing of what is categorized as Phase 3 – Population and Employment Forecasting/Conversion. That PHC shall take place on **Thursday, September 20, 2018 at 10 a.m.** at the:

**Local Planning Appeal Tribunal  
655 Bay Street, 16<sup>th</sup> Floor  
Toronto, Ontario M5G 1E5**

[18] It is the Tribunal's expectation that the Parties to this Phase will develop a Procedural Order ("PO") to govern the hearing of this Phase. The Tribunal obtained an undertaking from Mr. Biggart that a draft PO would be circulated to all counsel involved in this Phase in advance of the PHC for the purpose of obtaining comment and input on the draft. It is the expectation of the Tribunal that a final version of the draft PO will be filed with the Tribunal, through the case co-ordinator, at least one week prior to the PHC. That draft will either be a draft consented to by all or a draft being advanced by the City with notations or appended commentary as to paragraphs being challenged by identified appellants.

[19] Mr. Biggart also undertook to prepare an agenda for that PHC, which will be circulated to counsel involved in this Phase. The agenda may include the return of motions for party status that were previously deferred and/or such other matters that are pertinent to be dealt with at the PHC.

[20] There will be no further notice of the PHC.

[21] This Member is not seized.

*"Gerald S. Swinkin"*

GERALD S. SWINKIN  
MEMBER

If there is an attachment referred to in this document,  
please visit [www.elto.gov.on.ca](http://www.elto.gov.on.ca) to view the attachment in PDF format.

**Local Planning Appeal Tribunal**

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## ATTACHMENT 1

### Proposed OPA 231 Modification Regarding the Land Use Compatibility and Mitigation of Sensitive Land Uses Adjacent Or Near to *Employment Areas*

**1. Section 2.2.4 *Employment Areas: Supporting Business and Employment Growth* is modified by adding the following subheading and non-policy text after Policy 4:**

**"Compatibility/Mitigation**

In order to address land use compatibility, a collaborative approach is encouraged among applicants of sensitive land uses, including residential uses, major facilities and the City. The City encourages applicants of sensitive land uses, including residential uses and major facilities to exchange relevant information, subject to appropriate measures to protect confidentiality, for the purpose of undertaking and completing all relevant required studies.

**2. Section 2.2.4 *Employment Areas: Supporting Business and Employment Growth* is modified by deleting Policy 5 and replacing it with the following new policies and renumbering subsequent policies in Section 2.2.4 accordingly:**

**"5. Sensitive land uses, including residential uses, where permitted or proposed outside of and adjacent to or near to *Employment Areas* or within the influence area of major facilities, should be planned to ensure they are appropriately designed, buffered and/or separated as appropriate from *Employment Areas* and/or major facilities as necessary to:**

- a) prevent or mitigate adverse effects from noise, vibration, and emissions, including dust and odour;
- b) minimize risk to public health and safety;
- c) prevent or mitigate negative impacts and minimize the risk of complaints;
- d) ensure compliance with environmental approvals, registrations, legislation, regulations and guidelines at the time of the approval being sought for the sensitive land uses, including residential uses; and,
- e) permit *Employment Areas* to be developed for their intended purpose.

**6. A complete application to introduce, develop or intensify sensitive land uses, including residential uses, in a location identified in Policy 5 shall include a Compatibility/Mitigation Study, which will be addressed in the applicant's Planning Rationale.**

**7. The Compatibility/Mitigation Study will:**

- a) be peer reviewed by the City at the applicant's expense;
- b) identify and evaluate options to achieve appropriate design, buffering and/or separation distances between the proposed sensitive land uses, including

residential uses and nearby *Employment Areas* and/or major facilities to address the matters in Policy 5; and

c) identify facilities, including propane storage and distribution facilities, where a separation distance is required by law and/or regulation may include any portion of the applicant's property and describe the extent to which the application may affect facilities' compliance with such required separation distances.

8. The costs of studies and mitigation measures shall be borne by the applicant of the sensitive land uses, including residential uses, in a location identified in Policy 5. Also, the cost of collecting and producing relevant information for the studies shall be borne by those requesting the information, in the event that such relevant information is not readily available.

9. Upon receipt of the City's Notice of Complete Application for a sensitive land use, including a residential use, in a location identified in Policy 5, the applicant shall provide expanded notice of the proposal as follows:

a) notify all major facilities identified by the City on the basis that their influence areas may include any portion of the applicant's property, and

b) notify all facilities that store, distribute or handle propane whose separation distances required by law and/or regulation may include any portion of the applicant's property."

10. When considering applications to introduce, develop or intensify sensitive land uses, including residential uses, in a location identified in Policy 5, Council may consider:

a) the extent to which the applicant and the major facilities or other employment use have exchanged relevant information subject to appropriate measures to protect confidentiality;

b) any regulatory obligations of the major facility or other employment use; and

c) the reasonableness of implementing any recommended mitigation measures.

**3. Section 2.2.4 *Employment Areas: Supporting Business and Employment Growth* is modified by adding the following new sidebars adjacent to Policy 5:**

"Major Facilities

'Major facilities' means facilities which may require separation from sensitive land uses, including but not limited to airports, transportation infrastructure and corridors, rail facilities, marine facilities, sewage treatment facilities, waste management systems, oil and gas pipelines, industries, energy generation facilities and transmission systems, and resource extraction activities.



## Influence Area

'Influence Area' means any lands and land uses within the potential zone of influence of a major facility, taking into consideration both current and reasonable potential future operations, within which there could be a potential for adverse effect. A zone of influence may extend beyond the boundaries of *Employment Areas*."

**4. Section 3.5.1 *Creating a Strong and Diverse Civic Economy*, Policy 2, is modified by deleting sub-policy (b) and replacing it with the following new subpolicy:**

"b) Protects *Employment Areas* as stable places of business and protects major facilities across the City consistent with the policies of this Plan, in particular, all Compatibility / Mitigation policies in Sections 2.2.4, 3.4.21 and 4.6.5."

**5. Section 4.6 *Employment Areas*, Policy 5, is modified by deleting sub-policies (a), (e), (i), (k) and (l) and replacing them with the following: "**

"a) Supporting, preserving, and protecting major facilities, employment uses and the integrity of *Employment Areas*;

e) Mitigating the potential negative impacts from traffic generated by development within *Employment Areas* and adjacent areas;

i) Mitigating the potential adverse effects of noise, vibration, and emissions, including dust and odour, on other businesses;

k) Providing a buffer and/or mitigating adverse effects, where appropriate, to *Neighbourhoods*, *Apartment Neighbourhoods*, and *Mixed Use Areas*; and,

l) Ensuring that where zoning by-law(s) are to permit open storage and/or outdoor processing of goods and materials as accessory/ancillary uses, the open storage and/or processing is:

i) limited in extent;

ii) generally located on an area of the property where potential adverse effects on sensitive land uses, including residential uses, are mitigated;

iii) well screened by fencing and landscaping where viewed from adjacent streets, highways, parks and neighbouring land uses; and

iv) in terms of noise, vibration and emissions, not adversely effecting sensitive land uses, including residential uses, outside of *Employment Areas* where permitted or existing within the influence area of the proposed open storage and/or outdoor processing use."

**6. Section 4.6 *Employment Areas* is modified by deleting the sidebar definition for Sensitive Land Uses and replacing it with the following new sidebar:**

"Sensitive Land Uses

For clarity and for the purpose of this Plan, the term sensitive land uses means: buildings, amenity areas, or outdoor spaces where routine or normal activities occurring at reasonably expected times have the potential to experience an adverse effect, due to nearby major facilities or due to emissions that may be generated by the land uses permitted by this Plan within an Employment Area. Sensitive land uses may be a part of the natural or built environment, principal uses or accessory/ancillary uses. Residential uses shall be considered sensitive land uses. Other examples may include, but are not limited to: day care centres, and educational and health facilities."

**7. Schedule 3: Application Requirements is modified by adding the following new additional application requirement to the Official Plan:**

ADDITIONAL REQUIREMENTS of the OFFICIAL PLAN	OP	OZ	SB	Plan of Condominium	Consent to Sever	SA
Compatibility/Mitigation Study - a technical report that provides a written description of the land use compatibility of sensitive land uses, including residential uses, where permitted or proposed outside of and adjacent to or near to <i>Employment Areas</i> or within the influence area of major facilities.	X	X				X

**8. A new Terms of Reference for the proposed Compatibility/Mitigation Study is adopted as follows:**

<b>Description</b>	<p>A technical report that provides a written description of the land use compatibility of sensitive land uses, including residential uses, where permitted or proposed outside of and adjacent to or near to <i>Employment Areas</i> or within the influence area of major facilities.</p> <p>The report will identify any existing and potential land use compatibility issues and will identify and evaluate options to achieve appropriate design, buffering and/or separation distances between the proposed sensitive land uses, including residential uses, and nearby <i>Employment</i></p>
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*Areas* and/or major facilities. Recommended measures intended to eliminate or mitigate negative impacts and adverse effects will be addressed in the applicant's Planning Rationale where one is required.

This report will be used to assist City Council in making its decision concerning the proposed sensitive land uses, including residential uses, and will be peer reviewed by the City at the cost of the applicant.

The report:

1. Provides a written description of:

- any potential land use compatibility impacts by type (i.e.: traffic, noise, vibration, and emissions, including dust and odour) and the severity, frequency and duration of such impacts, as may be appropriate for each type, that may cause an adverse effect on the proposed development;
- any existing approval or other authorization from the Ministry of the Environment and Climate Change (MOECC), such as an Environmental Compliance Approval or a registration in the Environmental Activity and Sector Registry, for major facilities whose influence areas include any portion of the applicant's property and the extent to which the proposed development may affect the major facilities' compliance with applicable environmental policy, regulations, approvals, authorizations and guidelines, including the noise provisions of the City's Municipal Code;
- within the immediate area of the proposed development, the history of any complaints received by the City and MOECC;
- reasonable potential intensification, operational changes and expansion plans for existing major facilities and the potential for new employment uses to be established in the *Employment Areas* and the potential impacts of such changes;
- the potential land use compatibility issues the proposed development may create that could have a negative impact on the integrity of adjacent or nearby *Employment Areas* and major facilities. Impacts on the integrity of *Employment Areas* and major facilities shall be considered based on the potential:
  - effects on major facilities' compliance with applicable environmental policy, regulations, approvals, authorizations and guidelines, including the noise provisions of the City's Municipal Code;
  - increased risk of complaint and nuisance claims;

- operational constraints for major facilities;
- constraints on major facilities to reasonably expand, intensify or introduce changes to their operations;
- constraints for new major facilities to reasonably be established in the *Employment Area*; and,
- the extent of non-compliance with land use separation requirements for existing employment uses in the vicinity, including propane storage and distribution facilities, if applicable;
- the extent to which the applicant of the proposed development and businesses within the nearby *Employment Area* and/or major facilities have exchanged relevant information where applicable and to the extent appropriate. This would include the written undertakings given to affected businesses that any information regarding their processes, emissions data and expansion plans not already part of the public record would be treated on a confidential basis.

2. Identifies and evaluates options to achieve appropriate design, buffering and/or separation distance to prevent or mitigate potential adverse effects from traffic, noise, vibration, and emissions and to address the matters in Policy 2.2.4.5. This would include details on the following:

- **At-Source Mitigation:** Technology that businesses in *Employment Areas* and/or major facilities may consider implementing to mitigate adverse effects;
- **Buffers:** Physical structures, building design elements or distance separation that could be incorporated into the site design of the proposed sensitive land uses, including residential uses, to mitigate adverse effects and negative impacts;
- **At-Receptor Mitigation:** Technologies, building materials, design features etc. that could be incorporated both on-site and within the built structure of proposed sensitive land uses, including residential uses, to mitigate negative impacts and adverse effects;
- **Other:** Any other potential techniques, strategies and approaches not identified above, including but not limited to, warning clauses, environmental easements, agreements with major facilities to secure at-source and at-receptor mitigation and classifying lands as a Class 4 Area in accordance with the requirements of the MOECC “*Environmental Noise Guideline, Stationary and Transportation Sources – Approval and Planning Publication NPC-300*”, as amended

	<p>or replaced from time to time.</p> <p>3. Recommends the methods to secure the recommended mitigation techniques to ensure that such mitigation is installed, performs as intended and will be maintained to ensure land use compatibility.</p> <p>The Land Use Compatibility/Mitigation Study is to be prepared on behalf of the applicant by a Consultant (or Consultants) that is/are fully accredited, qualified and/or certified in the relevant matters being evaluated and recommended (for example air quality assessments should be performed by an engineer fully accredited in such field, etc.).</p>
<b>When Required</b>	<p>A Compatibility/Mitigation Study may be required to support the following applications for sensitive land uses, including residential uses, where permitted or proposed outside of and adjacent to or near to <i>Employment Areas</i> or within the influence area of major facilities:</p> <ul style="list-style-type: none"> <li>• Official Plan Amendment</li> <li>• Zoning By-law Amendment</li> <li>• Site Plan Control</li> </ul>
<b>Rationale</b>	<p>Official Plan Section 2.2.4 (Policy 5) requires that sensitive land uses, including residential uses, where permitted or proposed outside of and adjacent to or near to <i>Employment Areas</i> or within the influence area of major facilities, should be planned to ensure they are appropriately designed, buffered and/or separated from <i>Employment Areas</i> and major facilities.</p> <p>Official Plan Section 2.2.4 (Policy 6) refers to the possible requirement of a Compatibility/Mitigation Study in the circumstances identified in Section 2.2.4 (Policy 5). The Compatibility/Mitigation Study will be addressed in the applicant's Planning Rationale.</p>
<b>Required Contents</b>	<p>During pre-application consultation, City Planning staff will work with the applicant and the applicant's consultant(s) to determine if such a Study is required and, if so, the specific requirements of the Study, based on the nature of the proposed application and the context of the study area.</p> <p>The Study should, but not be limited to:</p> <ul style="list-style-type: none"> <li>• Provide details of assessment criteria.</li> <li>• Provide details regarding the methodology used and assessment locations.</li> <li>• Discuss how the proposed development is consistent with the Provincial Policy Statement, is in accordance to the <i>Planning Act</i> (as</li> </ul>

	<p>amended), and conforms to The Growth Plan for the Greater Golden Horseshoe, as such policy and regulations may be amended or replaced from time to time, as it applies to the planning and development of sensitive land uses in proximity to <i>Employment Areas</i>.</p> <ul style="list-style-type: none"> <li>• Discuss all of the required technical details listed in the “Description” for the Study as listed above.</li> <li>• Identify and analyse the potential impact current, future and reasonable potential operations and activities of the nearby <i>Employment Areas</i> and/or major facilities may have on the proposed development.</li> <li>• Identify and analyse the impact the proposed development may have on the current and reasonable future operations and activities of the nearby <i>Employment Areas</i> and/or major facilities. This will include an assessment of all existing approvals or other authorizations from the MOECC, such as an Environmental Compliance Approval or a Registration in the Environmental Activity and Sector Registry for major facilities whose influence area includes any portion of the applicant’s property. It will also include a description of the extent to which the proposed development may affect the existing approvals or other authorizations from the MOECC, such as an Environmental Compliance Approval or a Registration in the Environmental Activity and Sector Registry.</li> <li>• Identify and analyse any complaints received by the City and/or the MOECC concerning nearby <i>Employment Areas</i> and/or major facilities.</li> <li>• Recommend mitigation measures for incorporation into the proposed development, <i>Employment Areas</i> and/or the major facilities.</li> <li>• Demonstrate how the recommendations adhere to all MOECC minimum standards for noise, dust and odour as set out in all applicable environmental legislation, regulations and guidelines and how the recommendations allow for <i>Employment Areas</i> to be planned/used for their intended purpose.</li> </ul>
<p><b>Peer Review</b></p>	<p>The objective of the peer review is to provide Council with an independent, expert, third party assessment of the potential land use compatibility issues as well as the proposed mitigation measures. The purpose is to assist Council in making fully informed land use planning decisions.</p> <p>The peer reviewer will provide to the City, at the cost of the applicant of the proposed development, a report that will include the following:</p>

	<ul style="list-style-type: none"> <li>• Cover letter signed by the lead reviewer who is/are fully accredited, qualified and/or certified in the relevant mitigation topic(s) being reviewed and discussed (for example air quality assessments should be performed by an engineer fully accredited in such field, etc.), the cover letter should highlight key findings, conclusions and any recommendations;</li> <li>• Executive Summary;</li> <li>• Table of Contents;</li> <li>• General overview of the proposed development;</li> <li>• An assessment of the proposed development's context and relationship to nearby <i>Employment Areas</i> and/or major facilities and if this is consistent with what is identified in the applicant's materials;</li> <li>• An assessment of the land use compatibility issues (current and future) as identified by the applicant;</li> <li>• An assessment of the appropriateness of the applicant's methodology and data;</li> <li>• An assessment of the applicant's recommended mitigation measures, in particular, the ability to meet all MOECC minimum standards for noise, dust and odour as set out in all applicable legislation, regulations and guidelines and how the recommendations allow for <i>Employment Areas</i> to be planned/used for their intended purpose.</li> <li>• An assessment of the applicant's stated impact of the proposed development on the current, reasonable future and potential operations and activities of the nearby <i>Employment Areas</i> and/or major facilities; and,</li> <li>• Conclusions and recommendations of the peer reviewer that will provide a professional opinion on whether: <ul style="list-style-type: none"> <li>○ the proposed mitigation measures for the proposed development meet or are equivalent to the 'best practices' within the industry;</li> <li>○ it has been demonstrated that the recommended mitigation will provide that there are no compatibility issues due to the possibility of adverse effects.</li> </ul> </li> </ul>
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