

**FLIGHT PATH ISSUES FOR
DEVELOPMENT APPLICATIONS**

- OR -

**“TO BOLDLY GO WHERE NO PROVINCIAL
GOVERNMENT HAS GONE BEFORE”**

By: Mary L. Flynn-Guglietti
McMillan LLP
Brookfield Place
181 Bay Street, Suite 4400
Toronto, Ontario M5J 2T3
Mary.flynn@mcmillan.ca

INDEX

<u>TAB</u>	<u>DOCUMENT</u>
A.	Letter from Bridget Schulte-Hostedde, Acting Regional Director of the Ministry of Municipal Affairs and Housing to Uli S. Watkiss, City Clerk's Office at Toronto City Hall, dated October 22, 2015, including excerpt from By-Law 438-86 of east and west approaches for SickKids and St. Michael's Hospital/Registered "Flight Paths"
B.	Letter from Dr. Eric Hoskins, Minister of Health and Long-Term Care to John Tory, Mayor of the City of Toronto, dated November 26, 2015
C.	Letter from Ted McMeekin, Minister of Municipal Affairs and Housing to John Tory, Mayor of the City of Toronto, dated November 30, 2015
D.	Letter from Ted McMeekin, Minister of Municipal Affairs and Housing to Joanne Hayes, Registrar/Secretary at Ontario Municipal Board, dated December 11, 2015 re: OMB File No.: PL150845

FLIGHT PATH ISSUES FOR DEVELOPMENT APPLICATIONS

- or -

“TO BOLDLY GO WHERE NO PROVINCIAL GOVERNMENT HAS GONE BEFORE”

By: Mary L. Flynn-Guglietti¹

Introduction

In October of 2015 the Acting Regional Director of Municipal Affairs and Housing (“**MAH**”) wrote to the Clerk of the City of Toronto (“**City**”) informing her that the Ministry of MAH is requesting to be provided with notices of planning applications that fall within the operation areas of the helicopter flight paths to and from the Hospital for Sick Children (“**SickKids**”) and St. Michael’s Hospital (“**St. Michael’s**”).²

On November 26, 2015 the Minister of Health and Long-Term Care, Dr. Eric Hoskins, wrote to the Mayor of the City requesting the City to “put in place appropriate protections” to ensure that the areas within the flight paths are protected from “incompatible land uses that will conflict with the operations” of the emergency transport to the heliports at SickKids and St. Michael’s.³

The Minister of Health and Long-Term Care noted in his letter that over the past few years there has been increasing pressure from the two hospitals to adjust their helicopter flight paths to accommodate high-rise development in the City. He cautioned that “we are at a state where no further adjustments to the flight paths can be made without impacting the long term viability of the air ambulances’ operation and landing”. An identical letter was sent to the Mayor of the City on November 30, 2015 from the Minister of MAH.⁴

¹ I gratefully acknowledge the research assistance provided by Annik Forristal and Glenn Grenier of McMillan LLP in preparation of this paper. Glenn is not only a lawyer with expertise in aviation law, but also a licensed pilot.

² Letter from Bridget Schulte-Hostedde, Acting Regional Director at Ministry of Municipal Affairs and Housing to Uli S. Watkiss, City Clerk’s Office at Toronto City Hall (22 October 2015) at Tab A.

³ Letter from Dr. Eric Hoskins, Minister of Health and Long-Term Care to John Tory, Mayor at City of Toronto (26 November 2015) at Tab B.

⁴ Letter from Ted McMeekin, Minister of Municipal Affairs and Housing to John Tory, Mayor at City of Toronto (30 November 2015) at Tab C.

On December 11, 2015 the Minister of MAH, Mr. Ted McMeekin (the “**Minister**”), filed a letter with the Ontario Municipal Board (the “**Board**”) declaring a provincial interest pursuant to subsection 34(27) of the *Planning Act*⁵ with respect to an appeal by Amexon Development Corporation (“**Amexon**”) of the City’s non-decision relating to its application for amendment to Zoning By-law Nos. 438-86 and 569-2013 in connection with its property at 225 Jarvis Street.⁶ The Minister noted that the general basis for his declaration is that, the following matters of provincial interest under s. 2 of the Act “are, or likely to be, adversely affected:

- (f) the adequate provision and efficient use of communication, transportation, sewage and water services and water management services;
- (h) the orderly development of safe and healthy communities;
- (i) the adequate provision and distribution of educational, health, social, cultural and recreational facilities;
- (n) the resolution of planning conflicts involving public and private interests;
- (o) the protection of public health and safety; and,
- (p) the appropriate location of growth and development;”

Once the Minister has declared a provincial interest in a land use planning matter the Board shall not make an order in relation to the proposed Zoning By-law and the Lieutenant Governor in Council has the power to confirm, vary or rescind any decision of the Board.⁷

While the Minister does not specifically refer to the issue of flight paths in his letter declaring a provincial interest, the issue of the flight paths to the SickKids and St. Michael’s hospitals was central to the Minister’s involvement in the Amexon hearing.

Fortunately for Amexon, it was able to amend its development plans to accommodate both SickKids and the St. Michael’s flight path issues, resulting in a settlement between Amexon, both hospitals and the City. Board member Sutherland issued an oral decision on January 14, 2016 approving the amended Amexon rezoning application (PL150845). The written decision of the Board was withheld pending receipt of the final form of the by-laws and the executed Minutes of Settlement between Amexon and St. Michael’s. The parties are awaiting the written

⁵ *Planning Act*, RSO 1990, c P13, s 34(27).

⁶ Letter from Ted McMeekin, Minister of Municipal Affairs and Housing to Joanne Hayes, Registrar/Secretary at Ontario Municipal Board (11 December 2015) at Tab D.

⁷ *Supra* note 5 s 34(29).

decision of the Board. As the *Planning Act* does not provide a provision to allow the province to withdraw its declaration of provincial interest, the Board's decision will still require a decision from the Lieutenant Governor in Council, which decision may confirm, vary or rescind the decision of the Board.⁸

Although it would appear that the Amexon rezoning application has resulted in a settlement, the issue of the protection of hospital helicopter flight paths in the municipal land use planning process is both complicated and unclear. The purpose of this paper is help navigate (no pun intended) the reader through this complex process.

What is a flight path?

The term "flight paths" is used by the Ministers of Health and Long-Term Care and the MAH in their letters to the Mayor of the City of Toronto. In the first paragraph of the letters, the Ministers state that "[a]s you are aware, St. Michael's Hospital has recently raised concerns with us both regarding the protection of the helicopter flight paths to and from the emergency care hospitals in the City of Toronto."⁹ This term is also used by the City in the preamble of section 4.8 of its Official Plan wherein it states as follows:

"Some of Toronto's hospitals have specialities that draw patients from across Ontario. In emergency situations, patients are flown into heliports at hospitals. It is vital to protect the flight paths to these heliports".¹⁰

Policy 4 of section 4.8 of the City's Official Plan stipulates that "new buildings and structures in the vicinity of hospitals' heliports will be sited and massed to protect the continued use of flight paths to hospital heliports". The term "flight paths" is not defined in the City's Official Plan.

St. Michael's also uses the term "flight paths" as illustrated by the diagram supplied by St. Michael's and attached to the October 2015 letter from the Ministry of MAH to the Clerk of the City of Toronto. The diagram is titled "St. Michael's Hospital / Registered Flight Paths."

⁸ *Ibid* s 34(29.1).

⁹ *Supra* note 3, 4.

¹⁰ City of Toronto, "Toronto Official Plan", (2016), online:
<<http://www1.toronto.ca/wps/portal/contentonly?vgnextoid=03eda07443f36410VgnVCM10000071d60f89RCRD>>

The power to legislate in relation to aeronautics is firmly and exclusively in the hands of Parliament under its section 91 power to make laws for peace, order and good government of Canada.¹¹ Section 3(1) of the federal *Aeronautics Act* (the “**Act**”) defines a number of important terms:

- An *aerodrome* is defined as “any area of land, water or other supporting surface used, designed, prepared, equipped or set apart for use either in whole or in part for the arrival, departure, movement or servicing of aircraft and includes any buildings, installations and equipment situated thereon or associated therewith”;
- An *airport* is defined as “an aerodrome in respect of which a Canadian aviation document is in force”; and,
- A *Canadian aviation document* means “any licence, permit accreditation, certificate or other document issued by the Minister under Part I of the Act to or with respect to any person or in respect of any aeronautical product, aerodrome, facility or service”.¹²

If an aerodrome is located in a built-up area, it is required to be certified under the Canadian Aviation Regulations (“**CAR**”) passed pursuant to the Act.¹³ Consequently, CAR makes a distinction between aerodromes that are certified and those that are not through its definitions of airport and heliport under section 101.01 (1):

- *heliport* is “an aerodrome in respect of which a heliport certificate under Subpart 5 of Part III is in force”;¹⁴ and,
- *airport* is “an aerodrome in respect of which an airport certificate issued under Subpart 2 of Part III is in force”.¹⁵

¹¹ *Mullaney v Red Deer*, 1999 ABQB 434 at para 10, [2000] 9 WWR 740, [2000] AWLD 480.

¹² *Aeronautics Act*, RSC 1985, c A-2, s 3(1).

¹³ *Canadian Aviation Regulations*, SOR/96-433, ss 302.10, 305.02-305.03.

¹⁴ *Ibid*, s 101.01(1).

¹⁵ *Ibid*, s 101.01(1).

Therefore, both a heliport and an airport as defined under CAR constitute an *airport* within the meaning of section 3(1) of the Act, being aerodromes in respect of which a Canadian aviation document is in force.

In order to obtain a heliport certificate, the operator of a heliport is required to create a heliport operations manual¹⁶ and to establish *obstacle limitation surfaces* (“**OLS**”) that are to be comprised of approach surfaces, take-off surfaces and transitional surfaces.¹⁷ The operator of a heliport must ensure that items (a) through (g) in section 305.57 of CAR are provided and recorded in their heliport operations manual¹⁸, which items include the heliport’s OLS. The operations manual for a heliport is approved, signed and stamped by the Minister of Transport.

The heliports for both SickKids and St. Michael’s are within a built up area and, consequently, cannot operate without a heliport certificate.¹⁹ Therefore, the SickKids and St. Michael’s heliports constitute an *airport* as defined under the Act and a *heliport* as defined under the CAR. As a result, pursuant to CAR, the heliports for both SickKids and St. Michael’s must each have a heliport operations manual that records the heliport’s OLS.

The term “flight path” is not a defined term in the Act. In fact, under the Act and CAR this term is only referenced with respect to the “flight path of a balloon”²⁰ and with respect to commercial air services through use of the terms “net take-off flight path” and “net flight path”²¹ which is unrelated to this discussion. If the term “flight path” is not defined in the Act or CAR and not defined in any provincial document or the City’s Official Plan, how is a developer to determine whether a proposed building will have an impact on a flight path?

What does Obstacle Limitation Surfaces mean?

As noted above, there is no definition of “flight path” in the Act. When the province and the City refer to the term “flight path” do they really mean to use the term OLS or does a “flight

¹⁶ *Ibid*, ss 305.03.

¹⁷ *Ibid*, ss 305.29.

¹⁸ *Ibid* at s 305.57.

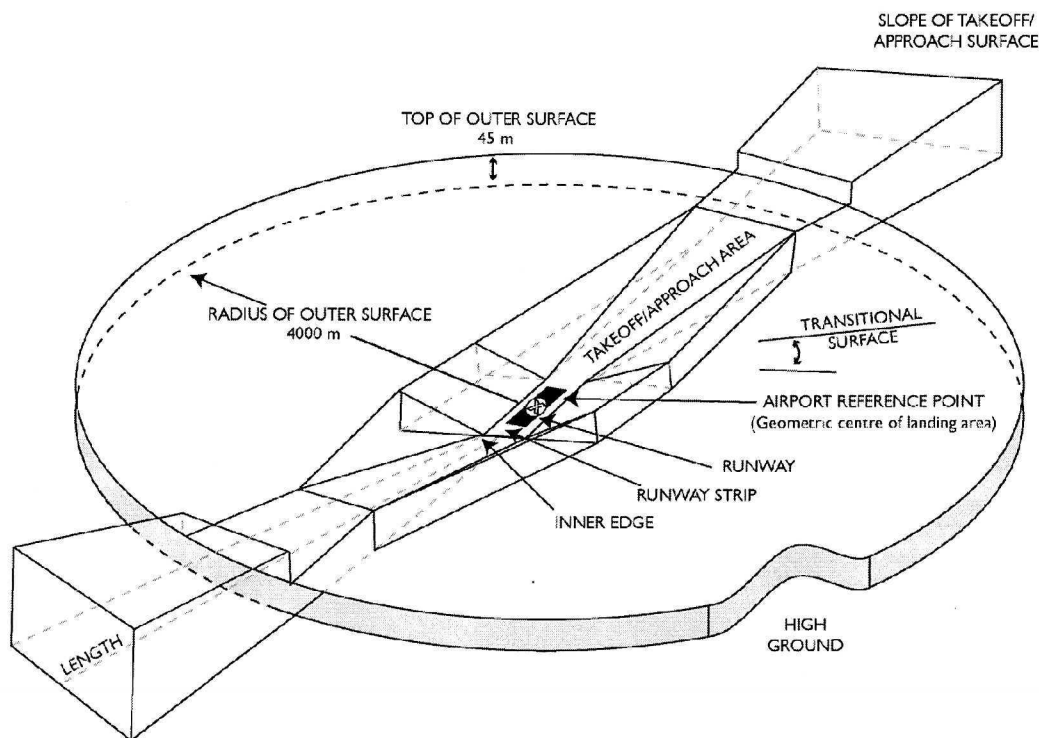
¹⁹ *Ibid*, ss 305.02 -305.03.

²⁰ *Ibid* at s 602.13.

²¹ *Ibid* at ss 700.01, 704.47, 705.57-705.59.

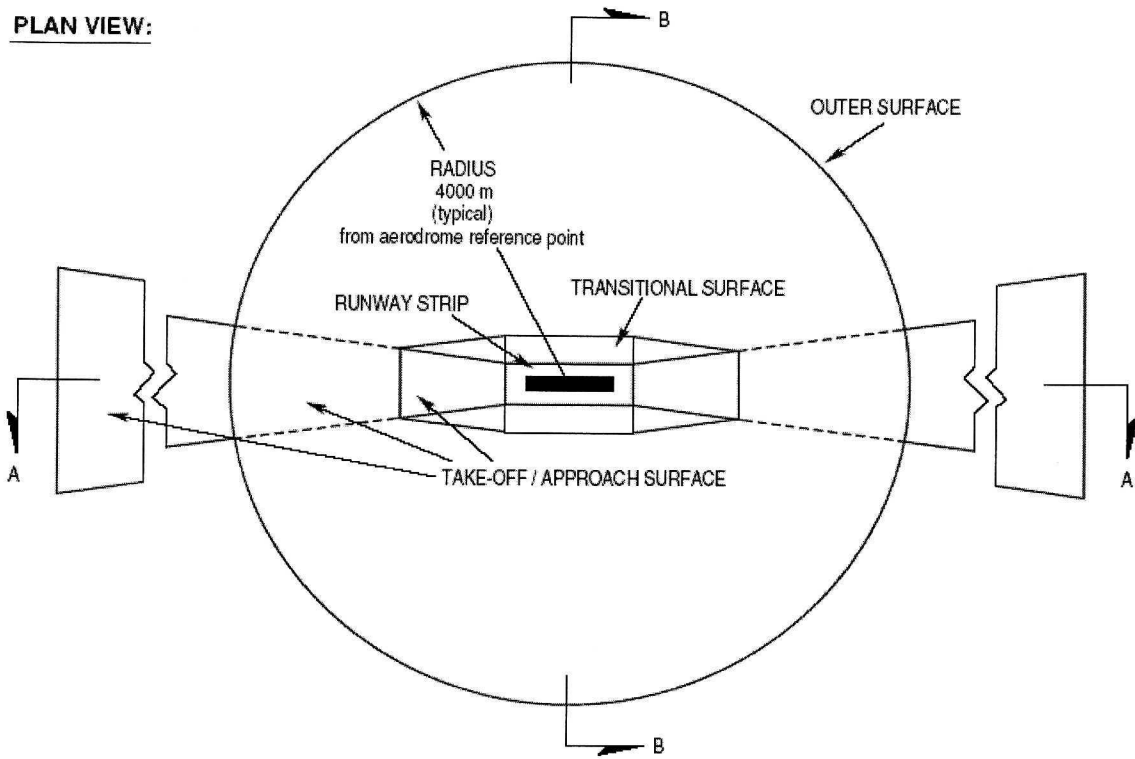
path” have some other meaning? An OLS is defined in section 101.01(1) of CAR as a surface that establishes the limit to which objects may project into an aerodrome’s airspace, so that aircraft or helicopter operations, for which the aerodrome is intended, may be conducted safely. The OLS will be different for each aerodrome. For example, a heliport would not need the same extent of surfaces for its OLS as an airport. Pursuant to section 305.29 of CAR, the OLS of a heliport consists of three (3) defined surfaces being a transitional surface, a take-off surface, and an approach surface.

As discussed earlier in this paper, a heliport in a built up area must be certified and there must be a heliport operations manual in place that establishes the OLS for the heliport. Transport Canada publications establish the standards and recommended practices for an OLS for both airports and heliports. The following diagrams are examples of the surfaces that form part of the OLS for an airport;²²

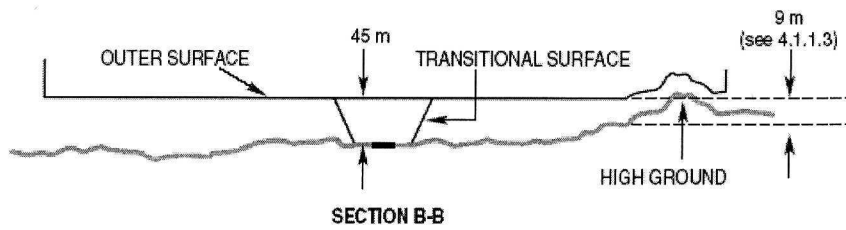
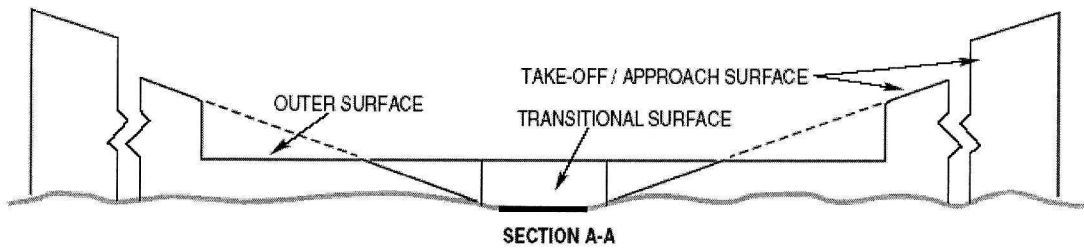


²² Transport Canada, “TP 1247 – Aviation – Land Use in the Vicinity of Aerodromes, Part I – Introduction” (5 November 2014), online: <<https://www.tc.gc.ca/eng/civilaviation/publications/tp1247-part1-1417.htm>>.

PLAN VIEW:



PROFILE VIEWS:



The following diagram is an example of the surfaces that form part of an OLS for a heliport.²³

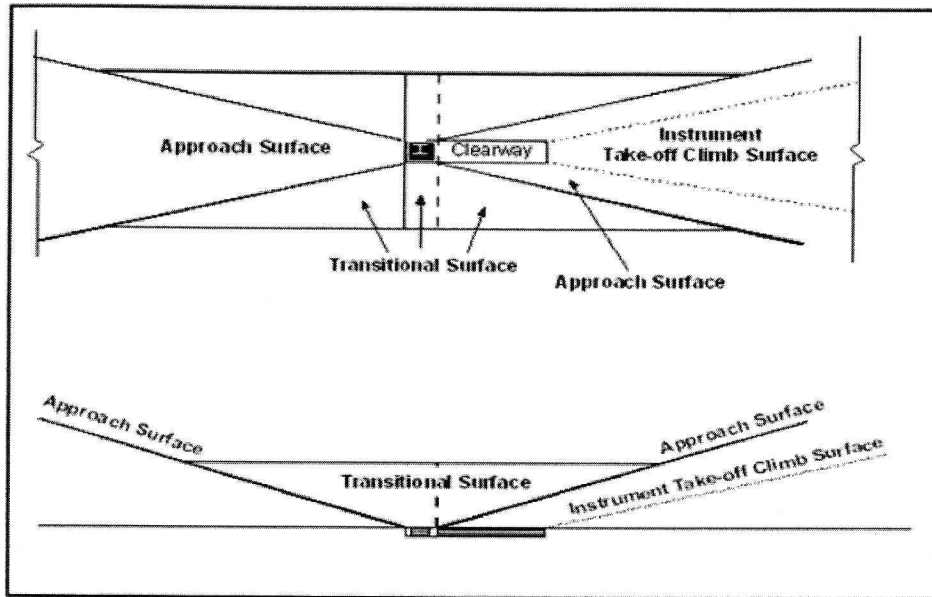


Figure 4-5. Example of obstacle limitation surfaces for a non-precision FATD

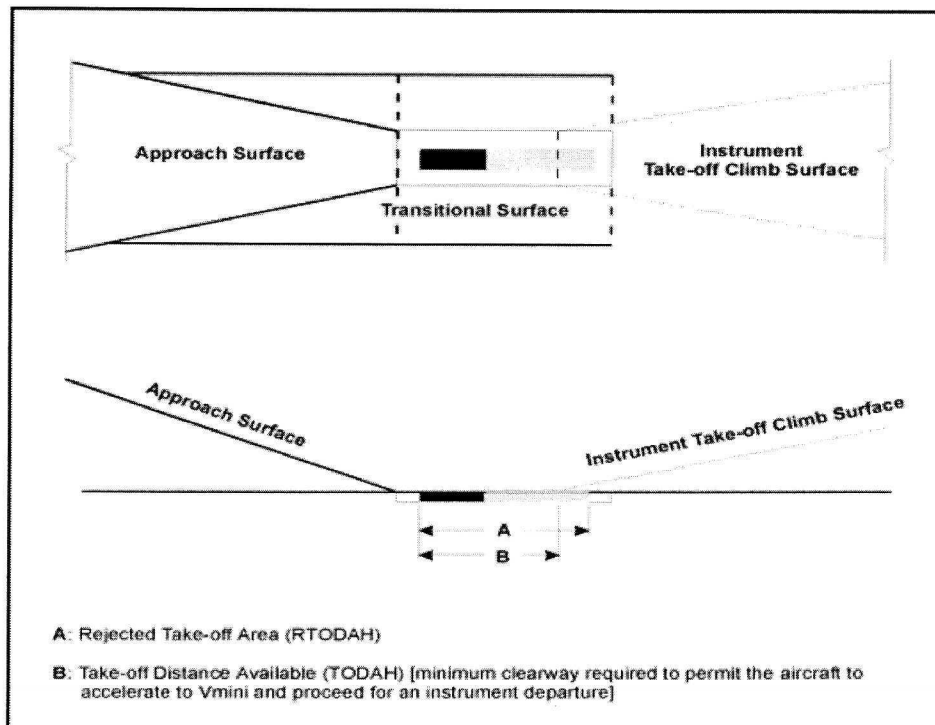


Figure 4-6. Example of obstacle limitation surfaces for a precision FATO

²³ Transport Canada, "Canadian Aviation Regulations (CARs), Part III – Aerodromes, Airports and Heliports" (15 December 2015), online: <<https://www.tc.gc.ca/eng/civilaviation/regserv/cars/part3-standards-325-325-160.htm>>.

Federal Zoning Regulations

Pursuant to section 5.4 of the Act, the Governor in Council may make regulations for airports for the purposes of:

- (a) Preventing lands adjacent to or in the vicinity of a federal airport or an airport site from being used or developed in a manner that is, in the opinion of the Minister, incompatible with the operation of an airport;
- (b) Preventing lands adjacent to or in the vicinity of an airport or airport site from being used or developed in a manner that is, in the opinion of the Minister, incompatible with the safe operation of an airport or aircraft; and,
- (c) Preventing lands adjacent to or in the vicinity of facilities used to provide services relating to aeronautics from being used or developed in a manner that would, in the opinion of the Minister, cause interference with signals or communications to and from aircraft or to and from those facilities.²⁴

As detailed above, under the Act, an airport includes both an airport and a heliport as such terms are defined under the CAR. Therefore, section 5.4 of the Act is applicable to the SickKids and St. Michael's heliports.

It is interesting to note that, prior to the Governor General in Council approving Zoning Regulations, the Minister must first establish, pursuant to section 5.4 (3)(a) and (b), that he has been unable to reach an agreement with the government of the province for the use or development of the lands in a manner that is compatible with the operation of an airport and that he believes the Zoning Regulation is necessary to immediately prevent the use or development of the lands in a manner that is incompatible with the operation of the airport.

Subsection 5.4 (4) of the Act stipulates that no Zoning Regulation shall apply to the use of land, buildings, structures or objects or a building, structure or object that existed on the day on which the Zoning Regulation comes into force. Subsection 5.4 (5) states that where all approvals for construction, required by law, have been obtained permitting a building, structure or object, that

²⁴ *Supra* note 12 s 5.4.

if constructed would not conform to the Zoning Regulation, the building, structure or object shall be deemed to exist on the day on which the Zoning Regulation comes into force.

In reviewing existing Zoning Regulations approved by the Governor in Council under the Act, both the Pearson International Airport and the Billy Bishop (Island) Airport are subject to federal Zoning Regulations. Surprisingly neither the SickKids heliport nor the St. Michael's heliport appear to be the subject of any federal Zoning Regulations passed pursuant to section 5.4 of the Act.

The Constitutional Issue

Without the benefit of a federal Zoning Regulation it would appear that the province and the City are attempting to fill the void. This raises an interesting constitutional issue. The power to legislate in relation to aeronautics is within the exclusive jurisdiction of the federal government while the provinces have exclusive jurisdiction to make laws in relation to property and civil rights.²⁵

The Ontario Court of Appeal decision in *Walker v Ontario (Ministry of Housing)*²⁶ is a particularly relevant decision to consider in reviewing the province of Ontario's recent decision to declare a provincial interest under the *Planning Act* with respect to the Amexon rezoning appeal. In the *Walker* case, an Ontario municipality agreed with the Minister of Transport to acquire lands to make improvements to a federally-licensed airport which the municipality operated and wished to expand. Mr. Walker owned land at the end of the runway and refused to sell his land to the municipality. Mr. Walker erected a silo and other buildings which obstructed the OLS of aircraft. The municipality applied to the Minister of Transport to impose Zoning Regulations imposing height restrictions under the Act, however, the Minister declined hoping the parties would resolve their differences amicably. The Minister of Housing for Ontario imposed zoning orders under the *Planning Act* which imposed height restrictions on buildings around the airport. Mr. Walker and others challenged the zoning orders in court.²⁷

²⁵ *Constitution Act, 1867*, s 91, 92(13).

²⁶ *Walker v Ontario (Minister of Housing)*, [1983] 41 OR (2d) 9, 144 DLR (3d) 86.

²⁷ *Ibid* at para 86

Associate Chief Justice MacKinnon ruled that the provincial zoning orders did not purport to control land use, but to control flights paths to and from the airport, and hence were *ultra vires*. The Court found that the orders were not concerned in their terminology with the use of land or the type of structure, only with limiting the height of any structure.²⁸

Similarly, in the *Mullaney v Red Deer (County No. 23)*, a decision of the Alberta Court of Queen's Bench, the court held that a municipal by-law imposing minimum setback requirements from public airports is *ultra vires* the municipal council's lawmaking authority because it is fundamentally aimed at regulating aeronautics, a matter exclusively within federal jurisdiction. The court held that the challenged section of the land use by-law is not about planning, rather it is in relation to the flight of aircraft and matters solely of concern to airport usage, present and future.²⁹

The municipality argued that the by-law dealt with typical planning concerns such as height restrictions, noise and adjacent incompatible uses of lands that impact each other, and that it is concerned with the safety of both the airport and adjacent lands and those objectives are legitimate planning functions. The court, however, held that "it is very clear by the very wording of the by-law that the height restrictions, setback requirements, and safety provisions are not aimed in any way at regulating the beneficial use of land in respect of development or settlement of that land, but are, in each and every instance concerned with protecting aeronautical interests".³⁰

As noted earlier in this paper, Amexon amended its application which reduced a portion of the proposed tower from 45 storeys (153.98 m total height including a 6 m mechanical penthouse) to 37 storeys (116.5 m total height with no mechanical penthouse in that portion of the building). As a result of the amendments to the height of the building a settlement was reached with both

²⁸ *Ibid* at para 14.

²⁹ *Supra* note 11.

³⁰ *Ibid* at para 15.

the hospitals and the City which meant that Amexon did not have to raise the constitutional issue of whether the Minister of MAH's declaration of a provincial interest was *ultra vires*.

Who's in Charge?

If there are no federal Zoning Regulations enacted with respect to either SickKids or St. Michael's heliports that would restrict the height of buildings or structures within the vicinity of the heliports, how are height restrictions being imposed? It would appear that the following unofficial protocol is followed:

1. The property owner files an application with the municipality for either an official plan amendment and or rezoning application, plans of subdivision or condominium.
2. If the land is in close proximity to the either SickKids or St. Michael's the application is circulated by the City's planning department to the hospitals for comment.
3. Also, as a result of the October 22nd, 2015 letter from the Ministry of MAH to the Clerk of the City, all applications concerning lands within close proximity to the hospitals are circulated to the Ministry of MAH.
4. ***How does one determine if the property owner's lands fall within a "flight path"?***
 - a) ***SickKids:*** Section 12(2)256 of the Toronto Zoning By-law 438-86 sets out the Hospital for SickKids "flight path" with attached diagrams illustrating the flight path in the east and west approach (**Tab A**). Section 5.10.40.10 of the Toronto City-Wide Zoning By-law 569-2013 discards the approach taken in By-law 438-86 and instead stipulates in section 5.10.40.10 that "if a lot is located under a flight path regulated by the Government of Canada the maximum height of a building or structure is the lower of the maximum height permitted by this by-law or the Government of Canada". It is important to note that SickKids appealed this section of the by-law on the basis that flight paths *per se* are not approved by the Government of Canada.
 - b) ***St. Michael's:*** No provision similar to SickKids exists in By-law 438-86 with respect to St. Michael's, however, presumably section 5.10.40.10 of By-law 569-2013 was intended to apply to St. Michael's as well as SickKids, but as noted is currently under appeal. In any event, the only document to assist a landowner to determine if the property is within St. Michael's "flight path" is found in the "St. Michael's Hospital/Registered

Flight Paths” dated August 16, 2015 and attached to the MAH’s October 22, 2015 letter (**Tab A**). This document has no official status and was produced by St. Michael’s with an acknowledgement of input from the Hospital’s planning firm, legal counsel and its aeronautical consultant.

5. ***What is an aeronautical consultant and why do you need one?***
At first blush, the flight path provided by St. Michael’s hospital looks like something you would see on Star Trek as perhaps a map outlining the time space continuum. As Dr. Leonard McCoy might say, “Jim, I’m a doctor not an aeronautical consultant”. The only way to interpret and identify the St. Michael’s flight path (or the “flight path” for any aerodrome) in relation to the height of your proposed building is with the assistance of an aeronautical consultant.
6. ***Who determines whether your building is within or outside of the flight path?*** The City’s planning staff will advise that they do not have the expertise to make such a determination and, therefore, the aeronautical consultant retained by the hospitals is relied upon to make the ultimate determination. In the event that a party is unable to satisfy the hospital’s consultants that the “flight path” is not impacted by the proposed development, the Planning Department will not support the application, presumably on the basis that the application does not comply with section 4.8, Policy 4 of the Official Plan. As discussed above, however, section 4.8, Policy 4 of the Official Plan may be *ultra vires* the municipality.
7. ***If you do not satisfy the hospitals’ aeronautical consultant and City planning staff and decide to appeal your application to the Board, will the province declare a provincial interest?*** As demonstrated in the Amexon case, there is a high degree of probability that the province will declare a provincial interest.

Therefore, in answer to the question of who is in charge, it would appear that although the province and the City are taking a very firm stance on the “flight path” issue, they are relying completely on the findings of a consultant hired by the hospitals.

Conclusions:

As you will conclude in reviewing this paper, the issue of the protection of helicopter “flight paths” for emergency care hospitals in the land use planning process is very complex and unclear. There is no question that both the SickKids and St. Michael’s heliports fall within the definition of an airport as defined by the Act and within the definition of a heliport as defined under CAR. The power to legislate in relation to aeronautics is within the exclusive

jurisdiction of the federal government. The Governor in Council has the power to enact Zoning Regulations to protect the OLS of a heliport and limit the height of potential obstacles, such as tall buildings.

As the City continues to grow and intensify, inevitably the buildings are becoming taller. In the absence of the federal government enacting Zoning Regulations, both the province and the City have stepped in to fill the void, however, this begs the question of whether they have the jurisdiction to limit the heights of tall buildings for the purpose of the protection of a flight path and also whether they are sufficiently informed to undertake this task. Both the City and the province identify the protection of the “flight paths” as an important tool to ensure the delivery of health care services, however, the term “flight paths” is not defined by the Act nor by the province or the City. The use of an undefined term is confusing and unclear.

Equally important is that no federal, provincial or municipal body appears to be in control of how clearance is to be achieved. The City Planning staff acknowledge that they do not possess the necessary expertise to provide final clearance and rely upon the hospitals to review the plans through its Aeronautical Consultant. It would also appear that the province is prepared to declare a provincial interest based on whether the hospital has provided clearance and not based on its own independent assessment. The document provided by St. Michael’s and relied upon by both the province and the City has no official status.

If the issue of the protection of the flight paths from potentially incompatible land uses that may conflict with the operation of the heliports, is a matter of significant importance to both the province and the City, a more transparent and clear approval process needs to be achieved. The federal government has the power and the expertise to enact Zoning Regulations to protect the OLS that involves a public process prior to enactment.³¹ What is unclear is why neither the province nor the City have requested the federal government to enact a proper Zoning Regulation and instead have created a heavy handed, unclear and complex approval process.

³¹ *Supra* note 12 s 5.5(1).

TAB A

**Ministry of
Municipal Affairs
and Housing**

Municipal Services Office
Central Ontario
777 Bay Street, 13th Floor
Toronto ON M5G 2E5
Phone: 416-585-6226
Fax: 416-585-6882
Toll-Free: 1-800-668-0230

**Ministère des
Affaires municipales
et du Logement**

Bureau des services aux municipalités
du Centre de l'Ontario
777, rue Bay, 13^e étage
Toronto ON M5G 2E5
Téléphone: 416-585-6226
Télécopieur: 416-585-6882
Sans frais: 1-800-668-0230



October 22, 2015

Ms. Uli S. Watkiss
City Clerk's Office
Toronto City Hall, 13th floor, West
100 Queen St. West
Toronto, ON M5H 2N2

RE: Request for Notices of Development Applications within Operational Areas of the Helicopter Flight Paths for Sick Kids Hospital and St. Michael's Hospital

Dear Ms. Watkiss,

I am writing to you today to first, thank you and your municipality's staff for your cooperation on this responsibility in the past. By copy of this letter, the Ministry of Municipal Affairs and Housing is requesting to be provided with notices of planning applications that fall within the operational areas of the helicopter flight paths to and from Sick Kids and St. Michael's Hospitals.

The flight path locations are identified in the two attached documents. The flight path for Sick Kids is currently identified in Zoning By-law No. 438-86 as the East and West Approach areas, and the flight paths for St. Michael's Hospital are identified within the 'Critical Heliport Obstacle Identification Area' as shown on the attached map used by City staff.

Pursuant to Ontario Regulations 543/06, 544/06, and 545/06, we hereby request notice of *Planning Act* matters related to:

- All official plans and plan amendments (including secondary plans and block plans), zoning by-laws and by-law amendments and plans of subdivision/ condominium, site plans.

Notices together with copies of the proposals/applications should be sent to:

Mr. Mark Christie
Manager, Community Planning & Development
Ministry of Municipal Affairs and Housing
Municipal Services Office – Central Region
777 Bay Street, 13th Floor
Toronto, Ontario M5G 2E5

Should you have any questions or concerns in this matter, please contact Mr. Christie at 416-585-6063 or the undersigned at 416-585-6583.

Sincerely,



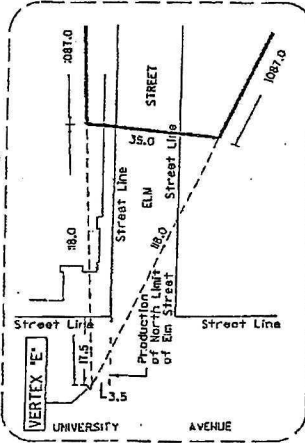
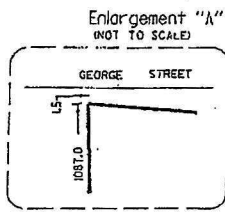
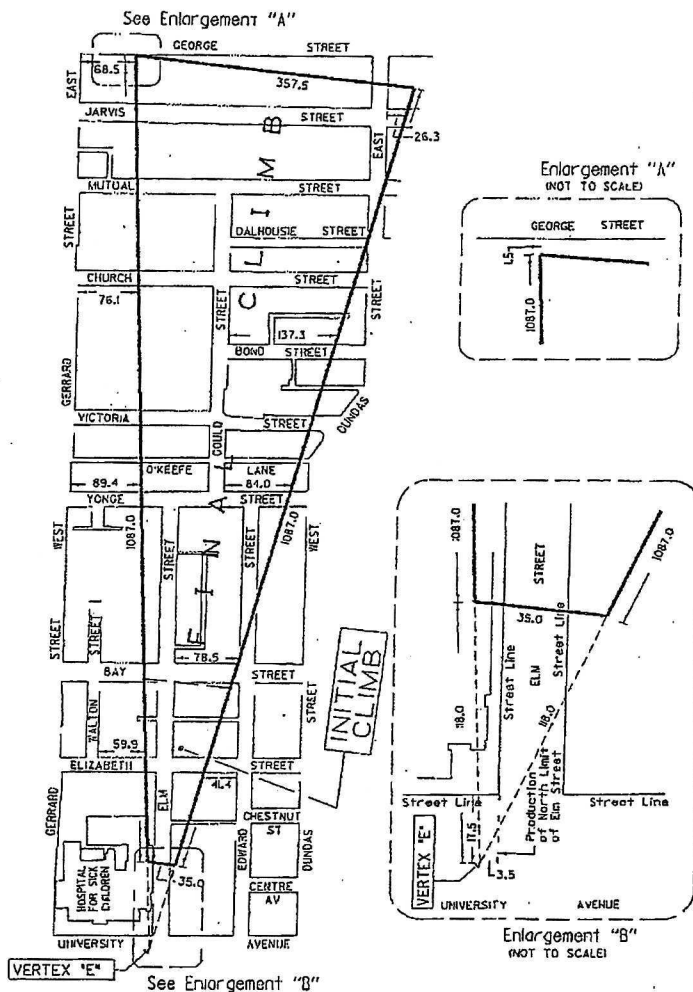
Bridget Schulte-Hostedde
Acting Regional Director

c: Gregg Lintern, Director of Community Planning, City of Toronto

256. (a) No person shall erect or use a building or structure for any purpose, whether permanent or temporary, within the *East Approach Area* where any portion of such building or structure or any object that is placed on such building or structure, including but not limited to, flagpoles, telecommunication equipment, lighting, signage, construction equipment, lies above the *East Flight Path*, except for buildings or portions of buildings lying above the *East Flight Path* existing on the lands on February 22, 1993.
- (b) No person shall erect or use a building or structure for any purpose, whether permanent or temporary, within the *West Approach Area* where any portion of such building or structure or any object that is placed on such building or structure, including but not limited to, flagpoles, telecommunication equipment, lighting, signage, construction equipment, lies above the *West Flight Path*, except for buildings or portions of buildings lying above the *West Flight Path* existing on the lands on February 22, 1993.
- (c) Paragraphs (a) and (b) are not intended to increase the maximum permitted *height* of buildings or structures within the *East Approach Area* and the *West Approach Area*. Where there is a conflict between the permitted *height* as set out in this exception and any other *height* provision in the By-law, the more restrictive provision shall apply.
- (d) By-law No. 382-91 being "A By-law To impose interim control in a flight approach surface emanating from the heliport at the Hospital for Sick Children in the vicinity of Elm Street, east of University Avenue, extending over to the vicinity of Jarvis Street", as amended by By-law No. 450-92 and By-law 34-93, is hereby repealed on the date this by-law actually takes effect.
- (e) For the purposes of this exception:
- (i) *East Approach Area* means the lands shown outlined by heavy lines on Map 1 set forth below and forming part of this exception;
 - (ii) *West Approach Area* means the lands shown outlined by heavy lines on Map 2 set forth below and forming part of this exception;
 - (iii) *East Flight Path* means the inclined planes that are set out on Map 3 set forth below and forming part of this exception; and
 - (iv) *West Flight Path* means the inclined planes that are set out on Map 4 set forth below and forming part of this exception.

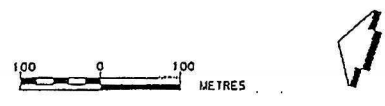
(150-93)

MAP I



□ EAST APPROACH AREA

SEE MAP 3 FOR PROFILE ALONG CENTRELINE THROUGH VERTEX "E"

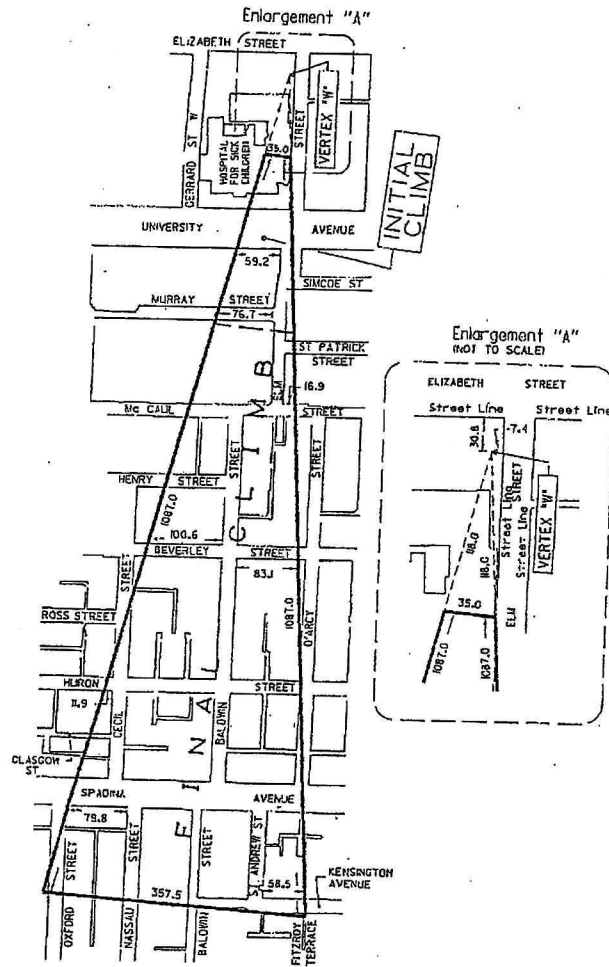


DEPARTMENT OF PUBLIC WORKS
AND THE ENVIRONMENT
SURVEY AND MAPPING SECTION
TORONTO JANUARY, 1999
FILES: U8-Z4 & 2-02.53
BL/HSCHELE.DGN DRAWN: M.G.R.
MAP Nos. 50H-313, 51H-30 &
51H-312

SECTION 12 - EXCEPTIONS APPLYING TO SPECIFIC USE DISTRICTS OR SPECIFIC LANDS

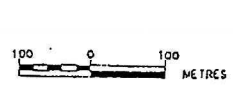
CITY OF TORONTO
ZONING BY-LAW No. 438-86

MAP 2



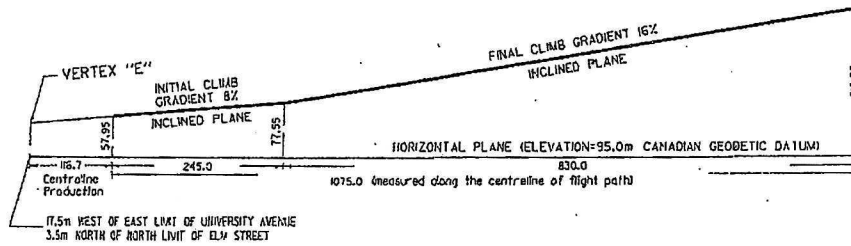
WEST APPROACH AREA

SEE MAP 4 FOR PROFILE ALONG CENTRELINE THROUGH VERTEX "W"



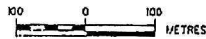
DEPARTMENT OF PUBLIC WORKS
AND THE ENVIRONMENT
SURVEY AND MAPPING SECTION
TORONTO JANUARY, 1995
FILES: UB-24 & 2402-53
BL/HSCHELIW.DGN DRAWN: W.C.R.
MAP Nos. 50H-313, 5H-34 &
5H-32

MAP 3



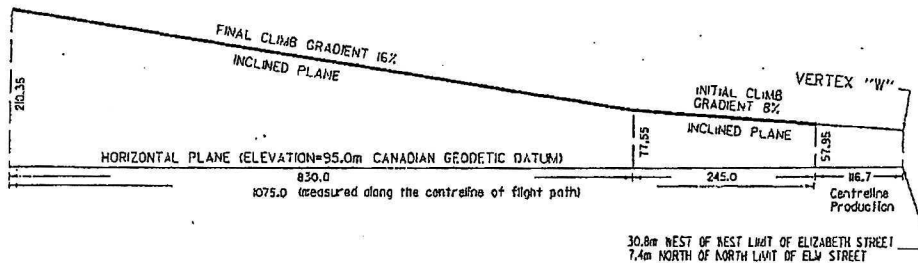
— EAST FLIGHT PATH

NOTE - THE CANADIAN GEODETIC DATUM WAS ESTABLISHED IN 1935 BY GEODETIC SURVEY OF CANADA



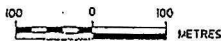
DEPARTMENT OF PUBLIC WORKS
AND THE ENVIRONMENT
SURVEY AND MAPPING SECTION
TORONTO JANUARY, 1995
FILES: UB-24 & 2402.53
BL/HSCPATHE.DGN
MAP Nos. 50H-31, 51H-31 & 51H-32
DRAWN: M.G.R.

MAP 4



— WEST FLIGHT PATH

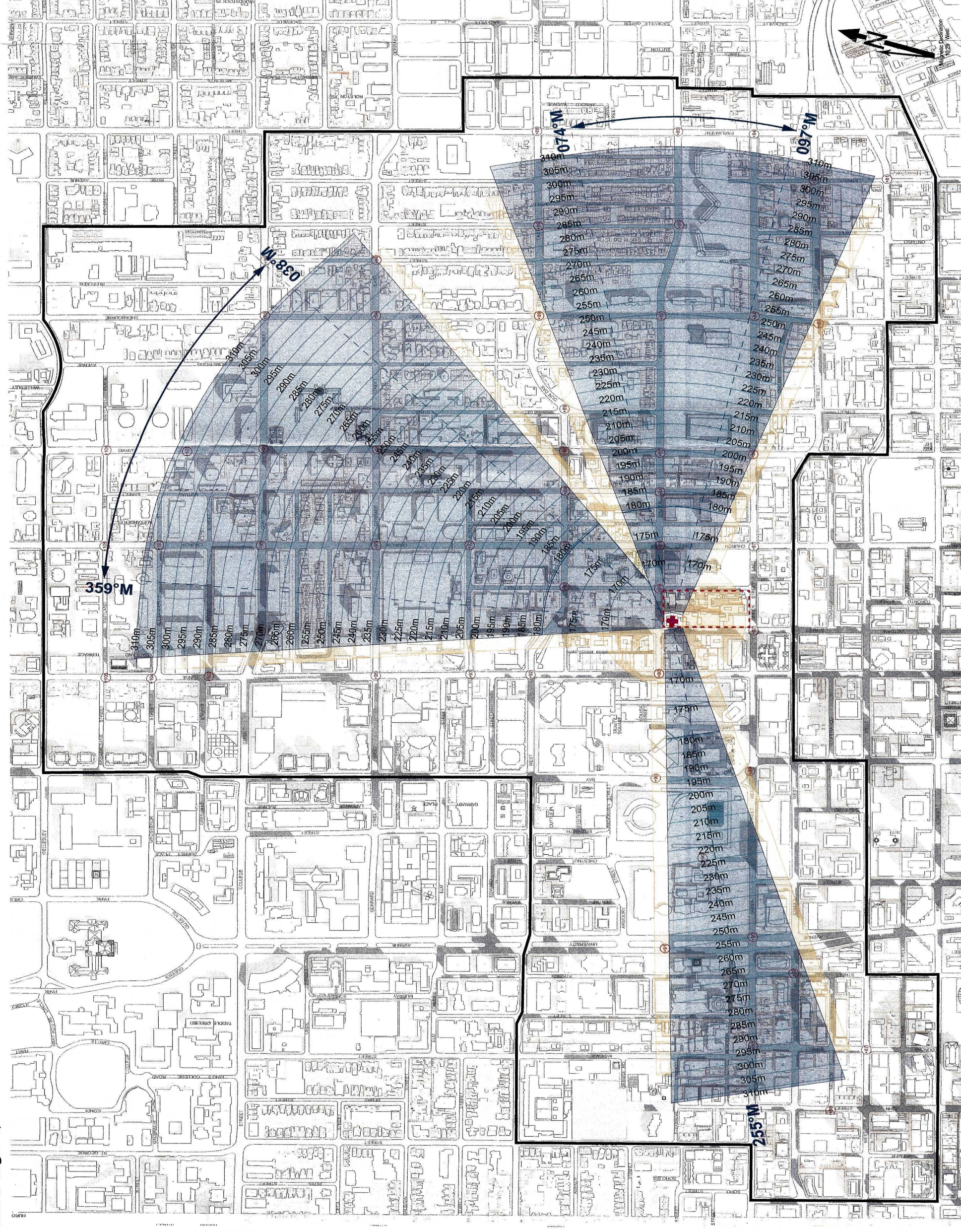
NOTE - THE CANADIAN GEODETIC DATUM WAS ESTABLISHED IN 1935 BY GEODETIC SURVEY OF CANADA



DEPARTMENT OF PUBLIC WORKS
AND THE ENVIRONMENT
SURVEY AND MAPPING SECTION
TORONTO JANUARY, 1995
FILES: UB-24 & 2402.53
BL/HSCPATHW.DGN
MAP Nos. 50H-31, 50H-32 & 50H-33
DRAWN: M.G.R.

St. Michael's Hospital | Registered Flight Paths

Issued: August 6, 2015



Legend



St. Michael's Hospital



St. Michael's Hospital Rooftop Heliport

Aerodrome Identifier: CTM4
 Heliport Geometric Centre: N 43° 39' 15", W 79° 22' 42"
 Elevation: 161.2m Canadian Geodetic Mean

Flight Path Height Restricted Area
 (Obstacle Limitation Surfaces)

Maximum permitted height of any obstacle, permanent or temporary, represented in Canadian Geodetic Mean. The maximum elevation of any structure shall not be greater than those shown within the Flight Path Height Restricted Area. Height restrictions apply to all permanent and temporary structures, including crane activities, and includes all obstacles, structures, buildings, parapets, antenna, light fixtures and any other equipment or installations. Structures below the Obstacle Limitation Surfaces may require aeronautical obstruction markings and/or lighting in accordance with Canadian Aviation Regulations.



Flight Path Obstruction Marking Area

Structures within this area may require aeronautical obstruction markings and/or lighting in accordance with Canadian Aviation Regulations.



Approximate Spot Elevations

Estimated elevation of road surface based on City of Toronto topographical data, represented in Canadian Geodetic Mean.



Critical Heliport Obstacle Identification Area

Developments within this area are subject to confirmation by the City and St. Michael's Hospital that compliance with Canadian Aviation Regulations has been achieved. Submission of a Transport Canada Aeronautical Obstruction Clearance Form and NAV CANADA Land Use Submission Form by the applicant to demonstrate this compliance is mandatory.

Heliport Operator: St. Michael's Hospital

Legal Counsel: McCarthy Tétrault

Aeronautical Consultant: WSP

Planning Consultant: Urban Strategies

TAB B

**Ministry of Health
and Long-Term Care**

Office of the Minister

10th Floor, Hepburn Block
80 Grosvenor Street
Toronto ON M7A 2C4
Tel 416-327-4300
Fax 416-326-1571
www.health.gov.on.ca

**Ministère de la Santé
et des Soins de longue durée**

Bureau du ministre

10^e étage, édifice Hepburn
80, rue Grosvenor
Toronto ON M7A 2C4
Tél 416-327-4300
Télééc 416-326-1571
www.health.gov.on.ca



Ontario

NOV 26 2015

HLTC3967MC-2015-230

Your Worship
Mayor
City of Toronto
City Hall, 2nd Floor
100 Queen St. W.
Toronto, ON
M5H 2N2

Dear Mayor John Tory:

Re: Helicopter Flight Paths for St. Michael's Hospital and Hospital for Sick Children (Sick Kids)

As you are aware, St. Michael's Hospital has recently raised concerns with us both regarding the protection of the helicopter flight paths to and from the emergency care hospitals in the City of Toronto.

Over the past few years there has been increasing pressure for the two hospitals in Toronto that provide air ambulance emergency care to adjust their helicopter flight paths to accommodate high-rise development in the City. As Toronto continues to grow and intensify, this issue becomes even greater. This issue has already resulted in impacts to the St. Michael's and Sick Kids heliports to the point that the continued viability of this emergency service is in jeopardy. I have been advised that we are at a state where no further adjustments to the flight paths can be made without impacting the long term viability of the air ambulances' operation and landing.

The provision of emergency transport to the heliports at St. Michael's Hospital and Sick Kids are vital components to the delivery of health care services in the City of Toronto and Southern Ontario, and areas within the flight path should be protected from incompatible land uses that will conflict with the operation of the heliports.

Within my ministry, among other matters, air ambulance service delivery remains an essential component of Ontario's blueprint putting patients first by improving access to healthcare by providing faster access to the right care e.g. transporting patients from remote locations and community hospitals to tertiary care centres in the City of Toronto. Both the Ministers of Municipal Affairs and Housing and Health and Long-Term Care are supportive of all efforts to ensure the long term protection of the helicopter flight paths for St. Michael's Hospital and Hospital for Sick Children.

-2-

Mayor John Tory

I understand that ministry and city staff have met a number of times to discuss the best methods to provide this needed protection. The province will continue to work with the city to ensure that this vital service and its needs are protected and provided for.

The ministry looks forward to working with the city to put in place the appropriate protections.

Sincerely,



Dr. Eric Hoskins
Minister

c: The Honourable Mr. Ted McMeekin, Minister of Municipal Affairs and Housing
Patricia Li, Assistant Deputy Minister, Direct Services Division

TAB C

Ministry of
Municipal Affairs
and Housing

Office of the Minister

777 Bay Street, 17th Floor
Toronto ON M5G 2E5
Tel. 416-585-7000
Fax 416-585-6470
www.ontario.ca/MAH

Ministère des
Affaires municipales
et du Logement

Bureau du ministre

777, rue Bay, 17^e étage
Toronto ON M5G 2E5
Tél. 416-585-7000
Télééc. 416-585-6470
www.ontario.ca/MAH



NOV 3 0 2015

15-68153

Your Worship
Mayor John Tory
City of Toronto
100 Queen Street West, 2nd Floor
Toronto ON M5H 2N2

Dear Mayor Tory:

Re: Helicopter Flight Paths for St. Michael's Hospital and Hospital for Sick Children (SickKids)

As you are aware, St. Michael's Hospital has recently raised concerns with us both regarding the protection of the helicopter flight paths to and from the emergency care hospitals in the City of Toronto.

Over the past few years, there has been increasing pressure for the two hospitals in Toronto that provide air ambulance emergency care, to adjust their helicopter flight paths to accommodate highrise development in the City. As Toronto continues to grow and intensify, this issue becomes even greater. This issue has already resulted in impacts to the St. Michael's and SickKids heliports, to the point that the continued viability of this emergency service is in jeopardy. I have been advised that we are at a state where no further adjustments to the flight paths can be made without impacting the long term viability of the air ambulances' operation and landing.

The provision of emergency transport to the heliports at St. Michael's Hospital and SickKids is a vital component to the delivery of health care services in the City of Toronto and Southern Ontario. Areas within the flight path should be protected from incompatible land uses that will conflict with the operation of the heliports.

Within my Ministry, among other matters, the protection of public health and safety, the efficient and effective use of public infrastructure, as well as the orderly development of safe and healthy communities, are matters of Provincial Interest. The Minister of Health and Long-Term Care and I are supportive of all efforts to ensure the long term protection of the helicopter flight paths for St. Michael's Hospital and Hospital for Sick Children.

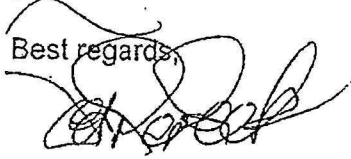
-2-

I have copied the Minister of Health and Long-Term Care in this letter as this is a joint interest.

I understand that Ministry and City staff have met a number of times to discuss the best methods to provide this needed protection. The Province will continue to work with the City to ensure that this vital service and its needs are protected and provided for.

The Ministry looks forward to working with the City to put in place the appropriate protections.

Best regards,



Ted McMeekin
Minister

c: The Honourable Dr. Eric Hoskins
Minister of Health and Long-Term Care

TAB D

Ministry of
Municipal Affairs
and Housing

Office of the Minister

777 Bay Street, 17th Floor
Toronto ON M5G 2E5
Tel. 416 585 7000
Fax 416 585 6470
www.ontario.ca/MAH

Ministère des
Affaires municipales
et du Logement

Bureau du ministre

777, rue Bay, 17^e étage
Toronto ON M5G 2E5
Tél. 416 585 7000
Télééc. 416 585 6470
www.ontario.ca/MAH



December 11, 2015

Ontario Municipal Board
655 Bay Street, Suite 1500
Toronto, ON M5G 1E5

Attention: Joanne Hayes, Registrar/Secretary

Dear Ms. Hayes,

**RE: Declaration of Provincial Interest
Appeal of City of Toronto Non-Decision – Application for Zoning By-law
Amendment
Amexon Development Corp. – 225 Jarvis Street
OMB File No. PL150845**

Pursuant to s. 34(27) of the *Planning Act*, I am writing to advise the Board that I am of the opinion that matters of provincial interest are, or are likely to be, adversely affected, by the following matter:

- Appeal by Amexon Development Corporation of the City of Toronto's Non-Decision relating to an Application for Amendment to Zoning By-law Nos. 438-86 and 569-2013, in its entirety;

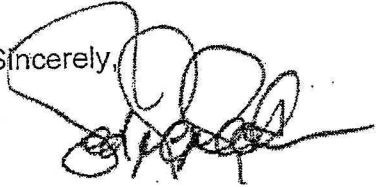
The general basis for my opinion is that, the following matters of provincial interest under s. 2 of the *Planning Act* are, or are likely to be, adversely affected:

- (f) the adequate provision and efficient use of communication, transportation, sewage and water services and water management services;
- (h) the orderly development of safe and healthy communities;
- (i) the adequate provision and distribution of educational, health, social, cultural and recreational facilities;
- (n) the resolution of planning conflicts involving public and private interests;
- (o) the protection of public health and safety;
- (p) the appropriate location of growth and development;

Subsection 34(29) of the *Planning Act* provides that the Board shall not make an order in relation to the proposed Zoning By-Law. Pursuant to subsection 34(29.1) of the *Planning Act*, the Lieutenant Governor in Council may confirm, vary or rescind the decision of the Board.

If you have any questions in relation to this matter, please contact Irvin Shachter, Counsel for the Ministry of Municipal Affairs and Housing at (416) 585-6543.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ted McMeekin', written over a circular stamp or mark.

Ted McMeekin
Minister