



26557 Civic Centre Road
Keswick, Ontario L4P 3G1
905-476-4301

GEORGINA

March 3, 2023

Impact Assessment Agency of Canada
Ontario Region
600-55 York Street
Toronto, ON M5J 1R7

VIA EMAIL: designationontario@iaac-aeic.gc.ca

Attention: Mr. Spencer Roth, Project Analyst

RE: Designation Request for the Baldwin East Aerodrome Project under the *Impact Assessment Act*

Dear Mr. Roth,

The letter dated February 15, 2023 from Ms. Susan Tiege of the Impact Assessment Agency of Canada to Mayor Margaret Quirk of the Town of Georgina regarding the above-mentioned matter has been referred to the writer for response.

Further to the request on page 3 of Ms. Tiege's letter that the Town of Georgina advise whether it has any by-laws, programs or additional authority that may be relevant and can serve as a means to address concerns expressed about the Project, we advise as follows:

Firstly, we confirm that the Town of Georgina shares the concerns raised by the Pefferlaw Area Ratepayers in their designation request, as referenced in Ms. Tiege's letter.

If this were a more typical development proposal submitted under Ontario's *Planning Act*, R.S.O. 1990, c. P.13, there are numerous municipal and provincial bylaws, statutes and other regulatory instruments that would be engaged, and would afford opportunities for meaningful scrutiny by the Town and participation by the public. These would include:

- the Provincial Policy Statement (2020) adopted by the Province of Ontario pursuant to the *Planning Act*;
- the Greenbelt Plan adopted by the Province of Ontario;
- the *Planning Act* itself; and
- Ontario Regulation No. 406/19, being Ontario's On-Site and Excess Soil Management Regulation.

Also included would be the following instruments adopted and enacted by the Town of Georgina:

- its Official Plan (2016);
- its General Zoning Bylaw No. 500;
- its Site-Alteration Bylaw No. 2022-0038; and
- its Noise Bylaw No. 2003-0075.

However, as noted in Ms. Tiege's letter and the Transport Canada Advisory Circular (AC) No. 300-009 (Land Use and Jurisdictional Issues at Aerodromes) referred to therein, it appears that many of these instruments may not, in view of the federal jurisdiction over matters relating to Aeronautics, be capable of application in the present circumstances, and therein lies what is in our view the main argument in favour of the designation by the Minister under Section 9(1) of the *Impact Assessment Act* that has been requested by the Pefferlaw Area Ratepayers. The Advisory Circular makes reference to two Supreme Court of Canada decisions – *Quebec (Attorney General) v. Lacombe*, [2010] 2 SCR 453 and *Quebec (Attorney General) v. Canada Owners and Pilots Association*, [2010] 2 SCR 536 – and these are only two of a number of appeal court decisions, including others rendered by the Supreme Court of Canada, that reaffirm judicial recognition of the jurisdiction of the federal government over the Aeronautics field. The import of this jurisdictional issue is that where a piece of provincial (or municipal) legislation trenches on the core of a federal head of jurisdiction, the provincial or municipal legislation will not be given effect.

This is the reason why the processes provided for in most of the instruments referred to above are unlikely to be effective as far as the review of the Project at issue here is concerned, and, again, why the designation of the Project under Section 9(1) of the *Impact Assessment Act* is so important in the present case.

Having said the foregoing, it is our view that the Town's Noise Bylaw No. 2003-0075 and its Site Alteration Bylaw No. 2022-0038 (at least to the extent to which it relates to the quality of fill imported onto the site) will continue to apply to the proposal. With respect to the latter, our position is informed by the decision of the Ontario Superior Court of Justice in *Burlington Airpark Inc. v. City of Burlington*, 2013 ONSC 6990, affirmed on appeal by the Ontario Court of Appeal (2014 ONSC 468). The Town's Site Alteration Bylaw provides for the issuance of a site alteration permit and execution of a site alteration agreement governing the importation of fill to the site, but it should be noted that the process envisioned by the bylaw does not involve public or Indigenous consultation, and does not provide for adjudication by or appeals to any independent body or tribunal.

In conclusion, it is the Town's view that none of the bylaws or other regulatory instruments that remain applicable to the proposed aerodrome development, with the very limited exceptions noted above, could serve as a means to address concerns expressed about the Project, and none would involve public or Indigenous consultation or provide for any issues resolution processes.

I trust that this is satisfactory, and would be pleased to discuss this matter further with you if you would find that helpful. I would add as well that copies of any of the above-mentioned bylaws and decisions can be made available upon request.

Thank you very much for your attention to this matter.

Yours Truly,

<Original signed by>

Michael Bigioni
Director of Legislative Services
and Town Solicitor

MB/mt

Cc Mayor Margaret Quirk, Town of Georgina
Ryan Cronsberry, CAO, Town of Georgina
Susan Tiede, Regional Director, Ontario Region, IAAC